




Mohammed Choudhury
State Superintendent of Schools

To: Members of the State Board of Education
From: Mohammed Choudhury, State Superintendent of School: 
Date: September 27, 2022
Subject: Permission to publish COMAR 13A.03.05 *Administration of Home and Hospital Teaching for Students*.

Purpose

The purpose of this item is to request permission to publish amendments to Code of Maryland Regulations (COMAR) 13A.03.05 Administration of Home and Hospital Teaching for Students.

Regulation Promulgation Process

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board of Education to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

Background/Historical Perspective

The Maryland (MD) Code, Health Occupations, § 8-101 – Definitions, was updated in 2015, removing the requirement that Nurse Practitioners (NP) be aligned with a medical doctor and granted them the authority to practice independently. The changes to MD Code, Health Occupations, § 8-101, apply to all NP specialties. Under the updated law, appropriately certified psychiatric NPs are eligible to diagnose a student’s mental health (emotional) state. Current wording in COMAR does not allow NPs to validate emotional conditions requiring home and hospital services, only to validate physical conditions. The MD Code, Health Occupations, § 8-101, permits Psychiatric Mental Health Nurse Practitioners (PMHNP) to provide a mental health diagnosis. This diagnosis is at the core of the validation required for an attestation of an emotional condition that may require home and hospital teaching.

Repeated requests from the coordinators of home and hospital teaching programs in local educational agencies to allow PMHNPs to validate emotional conditions for home and hospital services have led to the realization that without their inclusion in COMAR, many students must wait months to see a psychiatrist, licensed psychologist, or licensed psychiatrist. In remote and lower socio-economic areas of the State, there are very few of these specialists and wait times may delay the delivery of home and hospital services.

Executive Summary

The proposed amendments update the requirements for COMAR 13A.03.05 Administration of Home and Hospital Teaching for Students to reflect the changes in the MD Code, Health Occupations, § 8-101, to remove certain language in COMAR 13A.03.05 and expand language that allows a PMHNP to validate emotional conditions requiring home and hospital services.

Action

Request that the State Board grant permission to publish proposed amendments to COMAR 13A.03.05 Administration of Home and Hospital Teaching for Students.

Attachments

Attachment: COMAR 13A.03.05 *Administration of Home and Hospital Teaching for Students.pdf*

Title 13A STATE BOARD OF EDUCATION

Subtitle 03 GENERAL INSTRUCTIONAL PROGRAMS

Chapter 05 Administration of Home and Hospital Teaching for Students

Authority: Education Article, §§2-205, 6-704, 7-101, 7-301, and 8-403, Annotated Code of Maryland

.01 Scope.

A. These regulations, which establish a minimum requirement, apply to the provision of instructional services to public school students who are unable to participate in their school of enrollment due to a physical or emotional condition.

B. In implementing these regulations, all school systems shall comply with the Individuals with Disabilities Education Act, Americans with Disabilities Act, and §504 of the Rehabilitation Act of 1973, as appropriate.

C. Concurrent delivery of instructional services and enrollment in a public school shall be provided for a student whose physical or emotional condition requires the student to be absent from school on an intermittent basis. These conditions include, but are not limited to, kidney failure, cancer, asthma, cystic fibrosis, sickle cell anemia, depression, and bipolar disorder.

D. Instructional services shall be provided to an identified student with disabilities in accordance with federal and State special education law and regulations, including COMAR 13A.05.01. The student and parents shall be involved in the process and are entitled to all rights and due process procedures included within these laws and regulations.

E. Excluded from these regulations are the home-based programs operated through the Office for Children and the Maryland Infants and Toddlers Program for the birth through 2-year-old disabled population and Home Instruction under COMAR 13A.10.01.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Local school system" means the public school system in which the student is enrolled, or for an identified student with disabilities, the public school system that has responsibility for the education of the student.

(2) "Therapeutic treatment center" means any day or residential facility, licensed by a unit of State government, providing treatment for medical, physical, or emotional conditions including drug or alcohol dependency, or both.

(3) "Nurse practitioner" means a nationally board certified, advance practice nurse with a master's or doctorate degree who by reason of certification under COMAR 10.27.07, may practice in Maryland as a nurse practitioner under the terms of that chapter; or if out-of-State, as a nurse practitioner in the state in which services are provided.

(4) "Psychiatric mental health nurse practitioner" means an advanced practice registered nurse, possessing a master's or doctorate degree, and who by reason of national certification under COMAR 10.27.12, is recognized as being trained and certified to diagnose and treat individuals who have mental health needs and substance abuse issues.

.03 Responsibility of Local School Systems.

A. Nature.

(1) Each local school system shall make instructional services available to students who are unable to participate in their school of enrollment for those reasons set forth in this chapter. In making instructional services available, local school systems shall consult *with any of the following as deemed necessary*: the parent, guardian, student, psychologist, physician, psychiatrist, and nurse practitioner *[, as appropriate]*.

(2) Instructional services, as outlined in this chapter, shall be available to all students during convalescence or treatment time in a medical institution, or therapeutic treatment center, and at the student's place of residence, or all of these.

B. Service Delivery.

(1) Each local school system shall:

(a) Determine the manner in which instructional services shall be delivered to a student;

(b) Develop safety procedures, including training, to ensure an appropriately supervised safe environment for teachers and students; and

(c) Develop a review process to resolve any disagreement that arises in the implementation of this chapter.

(2) Instructional services as outlined in this chapter shall be delivered by an individual possessing a minimum of a bachelor's degree from an institution of higher education as defined in COMAR 13A.12.01.02B. This requirement does not apply to an individual who has demonstrated satisfactory performance as a home and hospital teacher in a local school system before July 1, 2001.

C. Delivery Options. The local school system may:

(1) Provide directly instructional services to a student;

(2) Contract with private providers to deliver instructional services;

(3) Contract with other local school systems to provide instructional services; or

(4) Combine any of the delivery options described in §C(1)—(3) of this regulation.

D. Attendance and Time of Instruction.

(1) A local school system shall either maintain a student on the regular school roll and count the student as present, except when a student is not available for the scheduled instructional service, in which event the student is counted absent, or establish a school for record-keeping purposes called a home and hospital school with a local school number. In the latter event, a student

identified for home and hospital teaching shall be withdrawn from the roll of the school the student attends and transferred to the roll of the home and hospital school. The student shall be counted as present, except when the student is not available for the scheduled instructional service. In this instance, the student is counted absent.

(2) The length of instruction for students in a full-day program is a minimum of 6 hours a week.

(3) The length of instruction for students in half-day programs is a minimum of 3 hours a week.

(4) A local school system shall determine the need for service and begin instruction as soon as possible, but not later than 10 school calendar days following the:

(a) Notification to the local school system of the inability of the student to attend the school of enrollment; and

(b) Receipt of the verification of the need for services as provided in Regulation .04 of this chapter.

.04 Verification Procedures.

A. The local school system shall determine initial service need through verification of the physical condition, including drug and alcohol dependency, by a licensed physician or certified nurse practitioner, or verification of emotional condition by a certified school psychologist, licensed psychologist, [or] licensed psychiatrist, *or psychiatric mental health nurse practitioner.*

B. The student's parent or guardian shall submit a statement from a practitioner designated in §A of this regulation verifying that the current physical or emotional condition prevents the student from participating in the student's school of enrollment.

C. Continuation of Service Need.

(1) Continuation of service need is subject to review and determination by the local school system and requires reverification of the physical or emotional condition in the manner set forth in §§A and B of this regulation.

(2) Except as provided in §C(3) of this regulation, service need shall be reverified as follows:

(a) 60 calendar days after the initial determination of eligibility and every 60 days thereafter; or

(b) Sooner at the request of the parent, guardian, or local school system.

(3) Service need shall be reverified annually for students who receive concurrent delivery of instructional services pursuant to Regulation .01C of this chapter.

.05 Implementation.

By September 1, 1994, each local school system shall certify to the State Superintendent of Schools that written procedures are in place to implement this chapter.

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State Superintendent of Schools