

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 12 ADULT HEALTH

Chapter 04 Day Care for the Elderly and Adults with a Medical Disability

Authority: Health-General Article, §§2-104, 14-206, and 14-304, Annotated Code of Maryland

.01 Scope.

A. This chapter applies to day care centers for the elderly and adults with a medical disability as defined in Health-General Article, Title 14, Subtitles 2 and 3, Annotated Code of Maryland.

B. This chapter does not:

(1) Affect a relative who cares for an individual with a medical disability or a neighbor or friend who cares for an individual with a medical disability by mutual agreement; or

(2) Apply to nutrition sites, senior centers under the auspices of the Department of Aging, or social model programs that individuals may attend to participate in meals or diversional activities.

.02 Definitions.

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

B. Terms Defined.

(1) "Activities of daily living" means normal daily activities, including:

(a) Eating or being fed;

(b) Grooming, bathing, and oral hygiene;

(c) Mobility, transfer, ambulation, and use of environmental aids to assist the individual to achieve greater independence;

(d) Toileting; and

(e) Dressing.

(2) "Activity coordinator" means the individual assigned to develop and direct the activity program for the adult day care center.

(3) "Actual harm deficiency" means a condition existing in a center, or an action or inaction by the center staff that has caused physical or emotional injury or impairment to a participant.

(4) "Adult with a medical disability" has the same meaning as "medically handicapped adult" as stated in Health-General Article, §14-301(c), Annotated Code of Maryland.

(5) "Center" means any nonresidential program meeting the definition in Health-General Article, §§14-201(b) or 14-301(b), Annotated Code of Maryland.

(6) "Chemical restraint" means the administration of drugs, with the intent of significantly curtailing the normal mobility or normal physical activity of a participant in order to protect the participant from injuring the participant or others.

(7) "Cognitively intact" means a participant who has sufficient judgment, planning, organization, self-control, and the persistence needed to manage the normal demands of the participant's environment.

(8) "Communicable disease" means an acute illness or a chronic disease state of any of the agents causing these diseases:

(a) Acquired immunodeficiency syndrome;

(b) Amebiasis;

(c) Cholera;

(d) Conjunctivitis;

(e) Diphtheria;

(f) Hepatitis, viral (A, B, C, non-A, non-B, delta);

(g) Human immunodeficiency virus (HIV) infection;

(h) Salmonellosis;

(i) Shigellosis;

(j) Tuberculosis;

(k) Typhoid fever; or

(l) Evidence of any other condition as requested by the Secretary.

(9) "Day of care" means services delivered to participants present at the center a minimum of 4 hours per day.

(10) "Deficiency" means a condition existing in a center, or an action or inaction by the center staff that results in potential for more than minimal harm, actual harm, or serious and immediate threat to one or more participants.

(11) "Department" means the Department of Health and Mental Hygiene.

(12) "Developmental disability" means a severe chronic disability of an individual that:

(a) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairment;

(b) Is likely to continue indefinitely;

(c) Is manifested before the individual is 22 years old;

(d) Results in an inability to live independently without external support or continuing and regular assistance; and

(e) Reflects the need of a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(13) "Direct care" means day-to-day direct assistance to participants in accomplishing activities of daily living and in meeting health and psychosocial needs.

(14) "Employee" means a full-time or part-time staff individual who works regular hours for pay.

(15) "Existing center" means a center that is licensed by the Department, or has its plans approved by the Department at the time of adoption of the regulations of this chapter.

(16) "Footcandle" means a unit of luminance on a surface that is everywhere 1 foot from a uniform point source of light of one candle.

(17) "Full-time" means 40 hours per week or the standard workweek adopted by the center.

(18) "Governing body" means the person, partnership, agency, group, corporation, or other entity set up to assume full legal responsibility for the policy determination, management, operation, and financial liability of the center.

(19) "Individual plan" means a document that specifies assessments, services, supports, and training required by the individual as specified in COMAR 10.22.05.

(20) "Licensed or certified professional health care practitioner" means a registered nurse, nurse practitioner, licensed practical nurse, physician, physician assistant, or other practitioner licensed or certified under the Health Occupations Article, Annotated Code of Maryland.

(21) "Licensed social worker" means an individual who is licensed pursuant to Health Occupations Article, Title 19, Annotated Code of Maryland.

(22) Mental Illness.

(a) "Mental illness" means a mental disorder that is a behavioral or emotional illness that results from a psychiatric or neurological disorder.

(b) "Mental illness" includes a mental illness that so substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the individual or property of another.

(c) "Mental illness" does not include mental retardation.

- (23) "New center" means a center that does not have plans approved by the Department at the time of adoption of this chapter.
- (24) "Ongoing pattern" means the occurrence of any potential for more than minimal harm or greater deficiency on two consecutive on-site visits as a result of annual surveys, follow up visits, any unscheduled visits, or complaint investigations.
- (25) "Participant" means a health-impaired adult whose:
- (a) Illness or disability does not require 24-hour inpatient care; and
 - (b) Needs cannot be satisfactorily met in an episodic ambulatory care setting but require at least 1 day of care per week in a day care program.
- (26) "Part-time" means less than full-time.
- (27) "Physical restraint" means the use of a device or physical action to prevent, suppress, or control head, body or limb movement, that cannot be readily and easily removed by the participant knowingly and with intent.
- (28) "Physician" means an individual licensed to practice medicine in this State under Health Occupations Article, Title 14, Annotated Code of Maryland.
- (29) "Potential for more than minimal harm deficiency" means a condition existing in a center or an action or inaction by the center staff that has the potential to cause actual harm to the participant.
- (30) "Prelicensure visit" means an on-site survey to determine if a center is ready to begin operating in accordance with the requirements set forth in this chapter.
- (31) "Program assistant" means an individual assigned to perform activities, supportive functions, and direct participant care under appropriate supervision.
- (32) "Qualified personnel" means individuals holding official credentials of registration, certification, or licensure issued by the State.
- (33) "Registered nurse" means an individual who holds a license to practice as a registered nurse in this State under Health Occupations Article, Title 8, Annotated Code of Maryland.
- (34) "Restraint" means any chemical or physical restraint as defined in this regulation.
- (35) "Secretary" means the Secretary of Health and Mental Hygiene or the Secretary's designee.
- (36) "Self-administer" means the act of a participant taking medication at the correct time, by the correct route, and in the correct dosage, as prescribed by an authorized prescriber.
- (37) "Serious and immediate threat" means a situation in which immediate corrective action is necessary because a center's noncompliance with one or more State regulations has caused, or is likely to cause, serious injury, harm, impairment to, or death of a participant receiving care in the center.
- (38) "Sustained compliance" means a period of 30 days following the date of notice of corrective action with no deficiencies.

(39) Tuberculosis in a Communicable Form.

(a) "Tuberculosis in a communicable form" means that an individual is presumed to have active pulmonary or laryngeal tuberculosis as evidenced by positive X-ray findings with or without positive acid-fast bacilli (AFB) sputum smear or positive AFB sputum culture and that the individual has been receiving chemotherapy for less than 14 days.

(b) "Tuberculosis in a communicable form" does not include:

(i) When the individual with presumed or confirmed active disease has had three negative AFB smears at least 24 hours apart, shows clinical improvement, and has received chemotherapy for at least 14 days; or

(ii) Inactive scars, calcification, or a normal chest X-ray.

(40) "Written agreement" means a legally binding contract between two or more parties that sets forth terms and conditions and which has been reduced to writing and signed and dated by all parties.

.03 License Required.

A. A person may not establish, operate, or continue the operation of a center without first obtaining a license from the Secretary.

B. Separate License Required. Separate licenses are required for centers that are maintained on separate premises, even though the centers are operated under the same management.

C. Posting of License. A center shall post its license in a conspicuous place on the premises to which it applies.

.04 Licensing Procedure.

A. Application for License.

(1) A person desiring to obtain a license for an adult day care center shall obtain an application from the Department. The applicant shall return the completed, notarized application to the Department with all information required by the Department and photocopies of written approval from the appropriate authorities documenting compliance with zoning, building, health, and fire regulations and codes as required.

(2) License Fee.

(a) The 2-year license fee, based upon total licensed capacity of the center, shall be computed at a rate of \$200, plus \$12 times the licensed capacity of the center.

(b) The nonrefundable application fee shall be payable by certified check or money order to the Department.

(c) The application fee includes a maximum of two prelicensure site visits by the Department. When additional site visits are required before issuance of a license due to significant regulatory violations, the Department shall assess an additional fee of \$100 per site visit.

B. Investigation of Application. The Department's authorized representative shall interview the prospective licensee and inspect the proposed center.

C. Issuance of License. When the Department determines that the center has submitted a complete application, including the required fee, and that the center is in compliance with this chapter, the Department shall issue a license to operate the center.

D. Conditions and Limitations of License. The following conditions and limitations apply to a center's license:

- (1) A license shall be issued for a 2-year period;
- (2) The renewal procedure for this license shall include a reinspection and reevaluation of the center by the Department in accordance with current regulations;
- (3) The Department may perform a periodic reinspection of the center at any time;
- (4) A license is not transferable or assignable from place to place or person to person;
- (5) The licensee shall notify the Department of any change of ownership, and the new owner shall apply to the Department for a license; and
- (6) The number of participants cared for at any one time in a center may not exceed the licensed capacity of the center.

E. Transfer or Assignment of License Prohibited. If the sale, transfer, assignment, or lease of a center causes a change in the person or persons who control or operate the center, the Department shall consider the center to be a new center and the licensee shall conform to all regulations applicable at the time of transfer of operations.

F. Return of License. The current license shall become void immediately and the licensee shall return the license to the Secretary if the center:

- (1) Is sold or leased;
- (2) Ceases to operate;
- (3) Moves to a new permanent location; or
- (4) Has its license denied, suspended or revoked.

.05 Waiver of Provisions.

A. The Secretary may waive any provision of this chapter if a center experiences practical difficulties or unnecessary hardships in complying with the provisions of this chapter and can demonstrate that granting a waiver will not adversely affect the health and safety of its participants. The licensee shall submit a written request to the Department to obtain a waiver.

B. The Department shall provide written approval of any waiver granted to a center, and the approval letter shall specify the effective time frame for the waiver.

C. The Department shall review all waivers during the license renewal process.

D. The Secretary may revoke a waiver at any time if a center violates any condition of the waiver, or if it appears to the Secretary that an unreasonable risk to the continued health or safety of the participants exists.

.06 Inspection by the Department.

A. Center Open for Inspection. A licensed center and any premises proposed to be operated as a center shall be open at all reasonable times to announced or unannounced inspections by the Department and by any agency designated by the Department. Any part of the center, and any surrounding accessory buildings, are considered part of the center and are subject to inspection.

B. Records and Reports. A licensee shall maintain records and make reports as required by the Department. The records and reports shall be open to inspection by the Department or any agency designated by the Department. On request, a licensee shall immediately provide copies of records and reports, policies and procedures, including medical records of current participants, participants discharged within the last 6 months, personnel records of current staff, and those records and reports relating to quality assurance activities to the Department or any agency designated by the Department. All other records and reports may be stored off-site, but shall be available to the Department within 24 hours of request. If requested, the Department shall reimburse the licensee for the reasonable costs of copying the records and reports.

.07 Compliance Monitoring.

A. The Department shall monitor or inspect a center at least once every 2 years to ensure compliance with the requirements of this chapter.

B. The Department may conduct unannounced or announced licensure or complaint investigation visits as frequently as necessary to ensure compliance with this chapter or for the purpose of investigating a complaint.

C. In accordance with a written agreement, the Department may delegate certain aspects of its monitoring or inspection responsibilities to a local health department.

D. Notice of Violations. If a complaint investigation or survey inspection identifies a regulatory violation, the Secretary shall issue a notice:

(1) Citing the violation; and

(2) Requiring the center to submit an acceptable plan of correction, including the date by which the licensee shall make the correction.

.08 Administration.

A. Governing Body. The governing body shall establish and maintain sound operating procedures, including:

(1) Maintenance of an identifiable administrative unit, headed by a director who is responsible for the overall conduct of all center activities;

(2) Adoption of an annual budget; and

(3) Provision of staff capable of performing the center's program.

B. Goals. The center shall have documentation of its philosophy and goals and the services to be provided. The services to be provided by the center shall be reflective of the populations served.

C. Policies and Procedures. The governing body shall establish policies and procedures for the center, including:

- (1) Admissions;
- (2) Discharges;
- (3) Fees;
- (4) Health care;
- (5) Hours of operation;
- (6) Personnel;
- (7) Plans for emergencies, disasters, and epidemics;
- (8) Use of consultants;
- (9) Relationships with other agencies and care providers; and
- (10) Other policies as necessary.

D. The governing body shall review all policies annually and make revisions as necessary. A licensed or certified professional health care practitioner shall assist in the review process and in developing health policies and providing other services as indicated.

.09 Days and Hours of Operation.

A. The center shall be open to participants for at least 6 hours, but fewer than 24 hours per day and shall be open at least 5 days a week, exclusive of holidays and other planned closings. The center's hours of operation shall be posted in a prominent place accessible to and easily seen by participants and the public and participants shall be notified of planned closings.

B. Day of Care. Participants that participate in the Department's adult day care program shall be in attendance at the center, on-site, a minimum of 4 hours per day in order to meet the participant's therapeutic needs. This time may include outings and medical appointments that are supervised by the center staff. Other participants shall be provided hours of service as agreed upon between the center and the participant or the participant's representative.

.10 Preadmission Assessment.

A. Before admission, the center shall obtain a written assessment from the prospective participant's licensed or certified professional health care practitioner, who shall certify that the information provided reflects the individual's health status within 30 days of the individual's admission. Upon request and for good cause shown, the Department may grant an exception to all or part of the preadmission assessment.

B. Written Assessment. The practitioner's assessment shall include:

- (1) Recent medical history, including any acute medical condition or hospitalization;
- (2) Significant medical conditions affecting function, including the individual's ability for self-care, cognition, physical conditions, and behavioral and psychosocial status;
- (3) Other active and significant chronic or acute medical diagnoses;
- (4) Known allergies to medications, environment, and food;
- (5) Medical confirmation that the individual is free from communicable disease and other active reportable airborne diseases;
- (6) Current and other needed medications and treatments and the ability of the individual to self-medicate or self-treat;
- (7) Information on status of advanced directives for health care;
- (8) Current nutritional status including height, weight, risk factors, and deficits;
- (9) Diets ordered by the health care practitioner;
- (10) Medically necessary limitations or precautions; and
- (11) Monitoring or performance of tests after admission.

.11 Admission Criteria.

A. The center shall develop written criteria for admission. These criteria shall be specific so that the center does not accept individuals whose needs cannot be met by the center.

B. Admission Criteria. The admission criteria shall include at least the following:

- (1) The center may not discriminate against the intended beneficiary because of race, color, or national origin according to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000 or as otherwise provided by law;
- (2) The center may not deny admission to or involuntarily discharge an individual solely because the individual has a communicable disease;
- (3) A center that intends to accept an individual with a communicable disease shall notify the licensing authority before admitting the individual; and
- (4) The Secretary or designee may prohibit a center from accepting an individual with a communicable disease if it is determined that admitting the individual with a communicable disease could pose a risk to the health, safety, or welfare of any other individuals associated with the center.

.12 Participant Rights.

A. The adult day care center shall provide care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect, and in full recognition of the participant's individuality.

B. A participant of a center has the right to:

- (1) Be treated with consideration, respect, and full recognition of the participant's human dignity and individuality;
- (2) Receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State, local, and federal laws and regulations;
- (3) Privacy;
- (4) Be free from mental, verbal, sexual, and physical abuse and neglect, involuntary seclusion, and exploitation;
- (5) Be free from physical and chemical restraints except as permitted in Regulation .22 of this chapter;
- (6) Confidentiality;
- (7) Make suggestions, complaints, or present grievances on behalf of the participants or others, to the center director, government agencies, or other persons without threat or fear of retaliation;
- (8) Receive a prompt response, through an established complaint or grievance procedure, to any complaints, suggestions, or grievances the participant may have;
- (9) Have access to the procedures for making complaints to the:
 - (a) Local department of social services; and
 - (b) Office of Health Care Quality of the Department;
- (10) Participate in care planning and medical treatment; and
- (11) Refuse treatment after the possible consequences of refusing treatment is fully explained.

.13 Staff.

A. Staffing Pattern.

- (1) Staffing Ratio.
 - (a) The staff-to-participant ratio at each center shall be a minimum of one staff to seven participants (1:7) and staffing shall at all times be sufficient to meet the needs of the participants.
 - (b) The director, volunteers, consultants, or any staff who do not provide direct care to participants may not be included in the staffing ratio.
 - (c) The director may be included in the staffing ratio on an emergency basis if the director is only providing direct care and not performing administrative duties.
- (2) The center shall have experienced and competent relief personnel to operate during absences, vacations, or other periods necessitating substitute staff. Relief personnel shall be oriented to the operation of the center and be trained in emergency procedures.

B. Required Staff.

(1) Director.

- (a) The center shall have a director who is responsible for the overall conduct of the center and for compliance with applicable laws and regulations.
- (b) The director shall have a bachelor's degree, preferably in a health and human services field, from an accredited college or university, or the individual shall be a registered nurse.
- (c) The director's duties shall be limited to the administration and provision of services at the center.
- (d) If a center is part of another facility, the center shall have its own director and center staff.
- (e) A center with a licensed capacity of 35 or more participants shall have a full-time director.
- (f) A center with a licensed capacity of 34 or fewer participants may appoint a director who serves on less than a full-time basis.
- (g) A center operating two adult medical day care sites that are located within 50 miles of each other may utilize one on-site manager instead of a director at one of the sites if there are fewer than 50 participants at each site. The on-site manager shall have the appropriate background, education, and experience to oversee administration and provision of services at the center.

(2) Nursing Services.

- (a) A center shall have the services of a supervising registered nurse with at least 3 years experience in a health care setting.
- (b) The supervising registered nurse shall be on-site sufficient time to meet the needs of the participants, consistent with the Nurse Practice Act.
- (c) A licensed practical nurse or registered nurse shall be on-site at least 35 hours per week, and sufficient to meet resident nursing needs.
- (d) A center that is open less than 35 hours a week may request a waiver for the requirements of §B(2)(c) of this regulation.
- (e) The duties of the registered nurse shall include:
 - (i) Provision or supervision, or both, of required nursing services to each participant;
 - (ii) Supervision of other nursing care staff;
 - (iii) Coordination of the development and ongoing review of the participant's plan of care; and
 - (iv) Assisting, as necessary, in the delivery of other required services.
- (3) Licensed Practical Nurse. The center may utilize the services of a licensed practical nurse when the supervising registered nurse is unavailable.

(4) Full-time Activities Coordinator. The center shall have the services of a full-time activities coordinator who is a therapeutic recreation graduate or who shall have at least 3 years experience in activities coordination or therapeutic recreation for the aged, individuals with disabilities, or other special populations.

(5) Staff.

(a) Program assistants shall have a high school diploma or GED, or shall be enrolled currently in a program leading to a high school diploma or GED.

(b) The center shall employ sufficient staff to meet the participants' needs and to comply with the required staff-to-participant ratio of one staff individual to seven participants (1:7).

C. Personnel Policies.

(1) The center shall have written personnel policies, including at least the following:

(a) Annual leave;

(b) Pay practices;

(c) Employee benefits;

(d) Termination procedures;

(e) Hiring and firing responsibility;

(f) New employee orientation; and

(g) Use and duration of a probationary period.

(2) The center shall make a copy of its policies and procedures available to each employee.

(3) Before hiring, staff shall have a criminal background check as required in Health-General Article, §19-1901 et seq., Annotated Code of Maryland, and may not have criminal convictions or criminal history that indicates behavior that is potentially harmful to participants, as evidenced through a criminal history records check.

D. Position Description. There shall be a written position description for each job that specifies at least the qualifications for the job, a delineation of the tasks, and the supervisor of the employee.

E. Staff Training.

(1) The director shall ensure that:

(a) Staff and volunteers receive orientation and training; and

(b) An ongoing educational program is planned and conducted for the development and improvement of skills of all the center's personnel, including training related to problems and needs of the elderly, health impaired, and disabled.

(2) The center shall maintain records, with employee signatures, reflecting attendance and training content of orientation and in-service programs.

(3) The center shall provide a minimum of eight in-service training sessions annually, which shall include, at least:

(a) Prevention and control of infections;

(b) Fire prevention programs and participant-related safety procedures in emergency situations or conditions;

(c) Accident prevention;

(d) Training on care of individuals that is appropriate to the population served by the center, such as Alzheimer's disease, mental illness, and developmental disabilities;

(e) Recognition of, and duty to report, abuse, exploitation, neglect, and self-neglect; and

(f) Safe food handling and service.

F. Discrimination. The center may not discriminate against any employee because of race, color, creed, sex, age, sexual orientation, or national origin.

.14 Program Components—Required Services.

A. Health Services.

(1) Nursing Services. The center shall provide nursing services under the direction of a registered nurse. Services shall be provided whenever participants are present. The registered nurse may delegate nursing services, as appropriate, to other staff, if supervised by the registered nurse.

(2) Consultation with the Physician. The nurse or designee shall communicate with the participant's physician to report observed changes in the participant's health status, including reaction to medicine, and to obtain current medical orders regarding such items as diet, medications, and treatments. The center shall assist participants in locating a regular source of health care if a participant does not have a physician or other licensed or certified professional health care practitioner.

(3) Mental Health Services. For participants with mental health needs, the program shall provide, when needed, linkage, collaboration, and coordination with the participant's treating psychiatrist or other mental health professional.

(4) Observation. The nurse shall observe the health, functional status, and adherence to a prescribed medical regimen, and document his or her observations in the participant's medical record at least monthly.

(5) The center shall provide meals and snacks to participants in accordance with Regulation .19 of this chapter.

B. Emergency Services and Medical Plan.

(1) The center shall have a written emergency medical plan for linkage and access to:

(a) Emergency medical care including a physician on call in the event that a participant's primary care physician is unavailable;

(b) Hospitalization and emergency room care; and

(c) Transportation to the facility providing the emergency care.

(2) The center shall have an established procedure to be followed in an emergency that covers:

(a) Immediate care of the participants;

(b) Individuals to be notified; and

(c) Reports to be prepared.

C. Activities Programs.

(1) Activities Plan.

(a) There shall be a written planned program of daily activities that are age appropriate and culturally relevant for individuals served and designed to:

(i) Meet the participant's specific needs, preferences, and interests with the individual's cognitive and physical limitations being noted in the development of the activities; and

(ii) Stimulate interests, rekindle motivation, and provide opportunities for a variety of types and levels of involvement, including small and large group activities.

(b) Staff shall also plan a weekly or monthly calendar of activities that shall be posted in an area of the center where it is plainly visible and easily read by all participants.

(2) Each day's activities shall include:

(a) Physical exercise;

(b) Rest;

(c) Social interaction;

(d) Personal care, if needed; and

(e) Mental stimulation.

(3) The center shall permit participants to choose between group and individual activities during some part of the day.

(4) Participants shall have the choice of refusing to participate in any activity.

D. Activities of Daily Living (ADL). Staff shall provide the assistance needed by participants to complete activities of daily living.

E. Counseling. Staff shall provide counseling to maintain communication with the participants and their families to solve the day-to-day problems that confront the participants. If other community resources are needed, the staff shall assist with the linkage to these services.

Program Components.

A. Special Services.

(1) The center shall provide or make arrangements for the services listed in §A(2)—(8) of this regulation when the center admits participants that require these services.

(2) Diet Modifications. The center shall provide special diets and other diet modifications as ordered for a participant by a licensed or certified professional health care practitioner.

(3) Rehabilitative Services. Rehabilitative services may include:

(a) Physical therapy;

(b) Occupational therapy; and

(c) Speech pathology provided directly, or indirectly, through arrangements with qualified personnel.

(4) Social Services—Optional Service. A licensed social worker shall provide social work services to participants. If social and emotional needs are identified during the assessment that is required in Regulation .10 of this chapter, a licensed social worker shall be consulted before the establishment of goals to meet those needs.

(5) Mental Health Services. When mental health needs are identified, the program shall seek consultation from a mental health professional authorized under the Health Occupations Article, Annotated Code of Maryland.

(6) Services for the Developmentally Disabled. For individuals provided residential services through the Developmental Disabilities Administration, the center shall incorporate the individual plan (IP) in the development of the individual's plan of care and the activities plan.

(7) Medical Consultation. The center may use specialists on a part-time or consultant basis in:

(a) Psychiatry;

(b) Physiatrics;

(c) Orthopedics; or

(d) Other specialties according to the needs of the participants.

(8) Other Special Services. The center may provide the following services as needed:

(a) Alcoholism counseling;

(b) Podiatry;

- (c) Dentistry;
- (d) Nutrition counseling;
- (e) Health education; and
- (f) Other services depending upon need.

B. Consultants.

- (1) Except as otherwise provided, when regular employment status, full-time or part-time, is not justified by the needs of the participants, the center may use consultants to meet the service and training needs of the center.
- (2) When the center uses the services of a consultant, these services shall be specified in a written agreement that is signed and dated by the consultant and the center director.

.16 Medication Services and Policies.

A. Written policies for the center shall specify the individual who is authorized to procure, receive, control, and manage the administration of medications at the center.

B. Medicine or drugs shall be restricted to those prescribed for the participant by a licensed or certified professional health care practitioner. All medications shall be accurately and plainly labeled and kept in the original container issued by the prescriber or pharmacist except as provided in §F(3) of this regulation. Containers shall be labeled with the:

- (1) Participant's full name;
- (2) Physician's name;
- (3) Prescription number;
- (4) Name of the medication and dosage;
- (5) Date of issuance;
- (6) Expiration date;
- (7) Refill limits;
- (8) Directions for use; and
- (9) Name, address, and telephone number of the pharmacy issuing the drug.

C. Nurses may not package, repackage, bottle, or label, in whole or in part, any medication in any way by tampering or defacing any labeled medication, except that a nurse may take medications from pharmacy dispensed containers and place the medication in a pill box for the cognitively intact participant who lives independently to self-administer.

D. When the nurse observes an adverse reaction to a medication, the nurse shall immediately call the:

- (1) Participant's licensed or certified professional health care practitioner;
- (2) Designee of the participant's licensed or certified health care practitioner; or
- (3) Licensed or certified health care practitioner that is on call for the center.

E. Drug Administration and Recording.

- (1) The center shall maintain records of all Schedule II drugs.
- (2) Written Order.
 - (a) Except as provided in §E(2)(b) of this regulation, licensed or delegated certified medicine aides or medication technicians may not administer medication without a written order that has been signed by the licensed or certified professional health care practitioner.
 - (b) Medication may be given based upon a verbal order pending countersignature by the licensed or certified professional health care practitioner.
 - (3) Only a licensed or certified professional health care practitioner may give injectable medication.
 - (4) For those participants who are not capable of self-medicating, the individual assigned the responsibility of administering medications shall prepare the dosage, observe the participant swallowing the oral medication, and document that the participant has taken the medication.
 - (5) Staff members who are responsible for administering medications shall make a written record of the medications and treatments that are administered.
 - (6) Orders shall be reviewed and timely updated, consistent with prescribed standards, when there is a change in the participant's condition.

F. Drug Storage.

- (1) The center shall:
 - (a) Provide a safe, secure, locked place for medicines or drugs, and for making medications available to a participant according to the instructions of his or her licensed or certified professional health care practitioner;
 - (b) Store Schedule II drugs in a locked box within the medicine cabinet;
 - (c) Keep medications requiring refrigeration in a separate locked refrigerator or a locked box within the refrigerator; and
 - (d) Store medications and medical supplies in a manner that is secured and apart from participant activity areas, food storage areas, and chemical storage areas.
- (2) A licensed nurse shall inspect the drug storage conditions at least every 3 months and document his or her findings.
- (3) The center may keep over-the-counter type medications or supplements that can be purchased without prescription, such as aspirin or antacids, for administration as ordered by the participant's practitioner.

.17 Medication Orders.

A. Orders concerning medication, treatment, and diet shall be in effect for the specified number of days indicated by the licensed or certified professional health care practitioner. If not specified, the period may not exceed 6 months. The center shall include the original or faxed order in the participant's medical record within 10 calendar days of receiving the order at the center.

B. A licensed nurse shall take telephone medication orders from a licensed or certified professional health care practitioner. The nurse shall write orders into the participant's record, and sign and date the note. The original or faxed medication order shall be included in the medical record within 10 calendar days after the date of the telephone order.

.18 First-Aid and Cardiopulmonary Resuscitation.

A. At least one staff member who is trained in first aid and in cardiopulmonary resuscitation (CPR) shall be on-site at the center when participants are in attendance, during outings, or during transportation of participants.

B. First aid administered by staff shall be limited to that necessary to preserve life or to prevent further immediate danger.

C. Staff shall receive first aid and CPR training from a certified provider approved by the Department. Recertification shall be obtained according to the guidelines of the certified provider.

D. The center shall have adequate first aid supplies available for treating shock, burns, and small, medium, and large wounds, including but not limited to:

- (1) Triangular bandages;
- (2) Blunt-tipped scissors;
- (3) Tweezers; and
- (4) Sterile gauze dressing and bandages.

E. On a quarterly basis, staff shall inspect first aid supplies in the center and in the vehicle or vehicles used for transporting participants. Expiration dates of supplies and the maintenance of supplies at the required levels shall be included in the inspection. The findings of the inspection shall be documented at least quarterly.

F. The center shall conspicuously post a chart clearly describing first aid and emergency medical treatment techniques and the names and phone numbers of physicians, ambulances, and medical facilities.

.19 Nutrition.

A. The center shall ensure that each participant who is present for 4 or more hours is provided with a meal that meets $\frac{1}{3}$ of the recommended dietary allowance of the Food and Nutrition Board of the National Research Council.

B. The center shall provide snacks consisting of a nourishing food or beverage, or both, to participants.

C. The minimum number of meals and snacks shall be provided as follows:

Hours at Center	Minimum Meals and Snacks	Proportion of RDA
4—6 hours	1 meal and 1 snack	1/3 plus
7—8 hours	2 meals and 1 snack or 1 meal and 2 snacks	1/2
More than 8 hours	2 meals and 2 snacks	2/3

D. A center may prepare food on-site if the center meets the requirements of COMAR 10.15.03.

E. The center shall ensure that food prepared off-site from the center is prepared in a facility which meets the requirements of COMAR 10.15.03.

F. Therapeutic diets approved by a registered and licensed dietitian shall be served only as ordered by a licensed or certified professional health care practitioner.

G. Staff shall assist participants who may be unable to feed themselves. A reasonable period of time shall be allowed for the consumption of meals.

H. A licensed or certified professional health care practitioner shall perform a nutritional assessment for all participants with a potential, or an actual, nutritional deficit.

.20 Comprehensive Assessments.

A. The participant shall receive a quarterly comprehensive assessment that is designed to evaluate the participant's strengths and needs. A licensed or certified professional health care practitioner shall complete the initial assessment within 30 days of a participant's admission and quarterly thereafter as long as there is no change in the participant's condition. The assessment shall include:

- (1) Health status;
- (2) Functioning status;
- (3) Participation in activities;
- (4) Nutritional status;
- (5) Psychosocial status; and
- (6) Home management skills.

B. Regardless of the schedule in §A of this regulation, the licensed or certified professional health care practitioner shall complete a reassessment by the end of the participant's next day of attendance when any significant change in the participant's condition occurs. The practitioner shall perform a follow-up evaluation of any significant change, and document the evaluation in the participant's medical record.

C. A licensed or certified professional health care practitioner shall complete all assessments, and shall date and initial all assessments on the date of completion.

.21 Care Planning.

A. There shall be an individualized plan of care completed for each participant within 30 days following admission. The participant shall participate in the development of the plan of care unless the center documents the reasons why the participant is unable or unwilling to participate. The plan of care shall include a problem list. A licensed or certified professional health care practitioner shall update the plan of care within 7 calendar days of a participant's change in status, but not less than semiannually.

B. The participant's plan of care shall be based on the comprehensive assessment that is completed by a licensed or certified professional health care practitioner, as follows:

(1) The plan of care shall include:

(a) Orders by a licensed or certified professional health care practitioner;

(b) All pertinent diagnoses;

(c) Frequency and types of services required;

(d) Treatment goals for each type of service ordered;

(e) Rehabilitation, services, and prognosis;

(f) Functional and cognitive limitations;

(g) Level of activity permitted;

(h) Diet;

(i) Medication and treatment or treatments;

(j) Measurable goals for each problem or need that is identified;

(k) Goals that are realistic, practical, and tailored to the desired outcome for the participant; and

(l) Approaches to accomplishing each goal;

(2) The interdisciplinary team shall document all components of the participant's care plan in the participant's medical record;

(3) The center shall give family members, and others designated by the individual with proper consent or responsible parties, an opportunity to participate in the care plan meeting.

C. Service Contract. A written document signed and dated by the center representative and the participant, or his or her responsible party, shall be provided to each participant before admission specifying the:

(1) Number of days per week and type of services that are to be provided to the participant;

(2) Process by which goals are developed for the participant;

(3) Conditions under which the participant may be discharged; and

(4) Consent agreements as required for:

- (a) Transportation;
- (b) Treatment;
- (c) Medication administration;
- (d) Off-site activities;
- (e) Photographs for promotional use; and
- (f) Release of medical information.

D. Attendance and Unscheduled Absences.

(1) The center shall ensure that participant attendance at the center is planned and regular, not episodic. The number of days scheduled for each participant shall be determined by the time needed to complete the individual plan of care and the needs of the participant and the caretaker or caretakers.

(2) Staff shall maintain daily records on each participant's attended days of care. When a participant is absent on a scheduled day, staff shall investigate on the day of the occurrence to learn the reason for the absence and document the reason. The center shall have documentation that absences are reviewed on at least a 30-day basis and that appropriate action has been taken.

(3) Each participant's file shall contain contact information of a responsible party in case of an emergency.

.22 Use of Restraints.

A. Policy and Procedures. The center shall have a policy and procedure on the use of any device or medication for the specific purpose of restricting the participant's freedom of motion or movement within the center.

B. A physician or nurse practitioner shall provide a written order and a plan of care addressing the use of restraints, including at least the following information:

- (1) The maximum period of time that the device may be in use;
- (2) The need for the use of the device or medication;
- (3) The frequency of participant observations; and
- (4) A process for reviewing the necessity of the restraint.

C. An order for the use of restraints shall be for a medical reason and shall be implemented in the least restrictive manner possible and may not be written PRN (as often as necessary) or used for staff convenience.

.23 Discharge.

A. Before a center discharges a participant, the center shall formulate a discharge plan, including at least a 30-day written advance notice to the participant or the participant's responsible party, and shall assist the participant in obtaining the resources needed to implement the plan.

B. The 30-day written notice of discharge specified in §A of this regulation is not required when:

- (1) The health or safety of the participant or other individuals in the center would be endangered by the continued presence of the participant;
- (2) The participant has urgent medical needs; or
- (3) There is an emergency requiring less than 30 days notice, in which case the center shall notify the Department of the discharge and the circumstances.

C. In circumstances described in §B(1) or (2) of this regulation, the center shall provide written notice of discharge as soon as practicable before discharge.

D. The center shall document in the participant's discharge summary the reasons for discharge and the facility or location to which the participant was discharged.

.24 Reports and Actions Required in Unusual Occurrences.

A. The center shall immediately report an occurrence such as a communicable disease or food-borne outbreak, poisoning, death, fire, or other unusual incident that threatens the health or safety of any participant or staff member to:

- (1) The Office of Health Care Quality; and
- (2) The local health officer, as required by law.

B. The center shall document the incident in the participant's medical record or the staff member's personnel file, if applicable.

C. Staff shall report cases of abuse, neglect, self-neglect, or exploitation of participants to the:

- (1) Local police;
- (2) Department; and
- (3) Local department of social services.

D. If a participant becomes a danger to self or others the center shall, as appropriate, contact the local emergency system or immediately notify the participant's licensed or certified professional health care practitioner and the participant's family or caregiver.

.25 Relocation of Participants.

A. A center shall develop a written plan for the smooth and orderly transfer of participants if the center were to close due to emergencies, such as fire, power outage, loss of other building utilities, or for financial reasons.

B. The plan for evacuation or relocation shall include:

- (1) A description of how the center will notify participants, families, or guardians;

- (2) Sample letters and other documents that will be used during a closure;
- (3) Procedures for notifying:
 - (a) Medicaid and other payment sources; and
 - (b) The Office of Health Care Quality; and
- (4) A mechanism to ensure the safe and orderly transfer of participants that takes into account:
 - (a) Proper assessment and identification of any special needs;
 - (b) Transfer of medical information and records; and
 - (c) Transfer of personal property.

.26 Records.

A. Records. The center shall maintain records that are needed to operate the center, as required by the Department, and to document the progress of the participants.

B. Retention. The center shall maintain participants' records for at least 5 years from the date of discharge, except as provided in Health-General Article, §4-403, Annotated Code of Maryland.

C. Confidentiality. The center shall maintain records so that they are accessible only to the director, the staff, emergency personnel, and to funding and monitoring agencies. The center may not discuss or reveal the contents of the records with any persons other than those listed above without the participant's written permission.

D. Required Records.

- (1) Participant Records. The center shall maintain at least the following information for each participant:
 - (a) Name, age, sex, address, and telephone number;
 - (b) Name of the individual to be notified in case of emergency;
 - (c) Next of kin;
 - (d) Travel directions if transportation service is provided;
 - (e) Medicare, Medicaid, or private insurance member enrollment numbers related to health care benefits;
 - (f) Name and address of primary care provider, with changes noted and dated when change occurs;
 - (g) Functional assessment with original and revised versions noting participant progress;
 - (h) Assessment of the home environment at the time of intake and as needed, or at change of home address;
 - (i) Individual plan of care;

(j) Admission physical and subsequent additional information;

(k) Medications and adverse drug reactions; and

(l) Accidents.

(2) Personnel Records. The center shall maintain the following information for each staff member:

(a) Name, age, sex, address, and telephone number;

(b) Educational background;

(c) Employment history and notes on references;

(d) Initial and annual performance evaluations and attendance;

(e) Preemployment medical examination certifying ability to physically perform essential duties of the job;

(f) Individual to be notified in case of emergency;

(g) Preemployment medical confirmation that the individual is free from tuberculosis in a communicable form;

(h) Documentation of a criminal history records check in accordance with Health-General Article, §19-1901, Annotated Code of Maryland;

(i) The official driving record and a copy of a valid driver's license if driving is a condition of employment; and

(j) Copies of written agreements with consultants, including services to be provided.

(3) Administrative and Fiscal Records. The center shall maintain the following administrative and fiscal records:

(a) Expenditures with substantiating documentation;

(b) Current and projected annual operating budgets, including specific cost allocations and formula for determining projected expenditures, and including accurate per diem costs;

(c) Fee charged, and fee schedule, if appropriate;

(d) Records of in-service training offered by the center;

(e) A permanent registry of all participants admitted to the center, including date of admission to and discharge from the center;

(f) Current inspection reports from the health and fire departments;

(g) The daily schedule of activities;

(h) Daily menu of meals and snacks served for a 30-day period;

(i) Attendance records; and

(j) Audit reports.

.27 Transportation.

A. Transportation. The center shall provide or arrange transportation to enable participants to attend the center and to participate in activity outings, medical appointments, or other participant required services.

B. The center and its staff shall operate vehicles in accordance with all applicable federal, State, and local requirements, including but not limited to:

(1) COMAR 11.17.03.01;

(2) COMAR 11.17.03.02;

(3) COMAR 11.17.03.03;

(4) COMAR 11.17.03.04;

(5) COMAR 11.17.03.05;

(6) COMAR 11.17.05.07;

(7) COMAR 11.17.13.01; and

(8) COMAR 11.17.13.02.

C. A participant may not be in transit for more than 1 hour without an opportunity for a rest stop.

D. A participant may not be brought to or left at the center when staff is not present.

E. A participant may not be left in a vehicle when staff is not present, except when the driver is assisting participants to and from their residences and the driver is within eyesight of the vehicle.

F. Centers shall promote and manage vehicle safety, driver safety, accident control and reporting, and driver corrective action efforts.

G. A driver may not drop off a participant at home until the participant is met at home or enters the home.

H. Centers shall provide driver training to all employees who are expected to operate motor vehicles as part of their official responsibilities. The following topics shall be included in the driver training:

(1) Review of State vehicle law;

(2) Approaches for defensive driving; and

(3) Control of aggressive driver behavior.

.28 Physical Plant.

A. New Center.

(1) A new center shall be designed, constructed, and maintained according to applicable federal, State and local codes and regulations for building, zoning, fire, food, safety, health and other related codes or ordinances, or both. The center shall also comply with the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.

(2) Where possible, the center shall be located at street level. If a proposed center will not be located at street level, the licensee shall obtain prior approval from the Department before design work proceeds.

B. Existing Center. Any conversion, alteration, or addition that affects the center's functional structure or participant capacity, shall be constructed in accordance with this chapter, including the regulations that apply to new centers.

C. Multi-Use Facilities.

(1) When a center operates in a multi-use facility such as a hospital, nursing home, assisted living program, religious structure, or a school, the center shall have a written agreement regarding the cooperative use of facilities allowing the center adequate separate space during its hours of operation.

(2) Certain spaces may be shared with other groups, such as the kitchen and therapy rooms. Where spaces are to be shared, a written agreement shall govern the use of space.

D. Space.

(1) The center shall have sufficient space to accommodate the full range of program activities and services. The center shall be flexible and adaptable to accommodate a variety of group or individual activities and services, and to protect the privacy of participants receiving services. The Department may require more than the minimum square footage to ensure that there is space for the center to provide activities and services that meet the needs of the participants.

(2) The center shall have the following minimum square footage requirements for activity space:

(a) 100 square feet for each of the first five participants; and

(b) 60 square feet per participant thereafter.

(3) Usable Area. In determining required square footage, only those activity areas commonly used by participants are to be included. Fifty percent of the total usable square footage of kitchen areas shall qualify as activity space if participants use these areas as part of the center's activities programs.

(4) Non-Uusable Area. Administrative areas, reception areas, offices, closets, storage rooms, toilets and bathrooms, utility rooms, and passageways may not be included when calculating the qualifying usable square footage for activities. The actual footprint of finished space shall be what constitutes usable space. This excludes the space between partition walls, and the space between the finished interior wall and the outside of the exterior wall.

(5) The center shall provide the following:

(a) Private space to permit staff to work effectively and without interruption;

- (b) A large room or access to a large room where all participants can gather and rooms or divided areas for small group activities;
- (c) A designated rest or quiet area to provide visual privacy to isolate participants that become ill or disruptive or who may require rest;
- (d) A separate space where participants, family, caregivers, or staff may have private conversations; and
- (e) Adequate space that is located in or adjacent to activity areas or offices for storage of activity and operating supplies.

.29 Furniture, Furnishings, and Supplies.

A. Furniture.

- (1) The furniture in a center shall be:
 - (a) Appropriate for use by individuals with disabilities;
 - (b) Sturdy and secure so that it cannot easily tip when used for support while walking or seated;
 - (c) Designed so that it is used easily by individuals with limited agility, permitting feet to rest on the floor and having armrests; and
 - (d) Clean, safe, and in good repair.
- (2) The center shall have sufficient furniture for the entire participant population. Straight-backed chairs with armrests shall be available for use by participants during activities and meal times.
- (3) The center shall have at least:
 - (a) One chair for each participant and each staff member;
 - (b) Adequate table space for all participants;
 - (c) Reclining lounge chairs, the number to be determined by the needs and numbers of participants; and
 - (d) A bed for medical examinations and for temporary holdover for participants who become ill or upset.

B. Furnishings.

- (1) Floor Coverings. All rugs and floor coverings shall be secured to the floor to eliminate tripping hazards.
- (2) All equipment and furnishings shall be in good condition and safe for use by participants and staff.

C. Equipment and Supplies.

- (1) The center shall provide equipment to encourage active participation and group interaction. The materials shall reflect the interests and backgrounds of the participants.

participant's needs and the goals of the center.

.30 Work Stations.

A. The center shall provide at least one work station for use of nurses, social workers, program assistants, or other appropriate staff and consultants.

B. Work stations shall have sufficient storage space for records and to meet the needs of the center.

.31 Infection Control.

There shall be sufficient hand-washing facilities to ensure that employees maintain adequate infection control procedures.

.32 Food Service Area.

A. Food, whether prepared on-site or off-site, shall be prepared and served under sanitary conditions, and shall meet the requirements of COMAR 10.15.03.

B. The Department shall approve all plans for the construction and renovation of facilities and equipment in food service areas.

C. All food service areas shall include, at a minimum:

- (1) At least one hand-washing sink;
- (2) At least one three-compartment sink or one commercial grade dishwashing machine;
- (3) Surfaces, floors, walls, cabinets, and counters, that are easily cleanable;
- (4) Adequate and separate storage for dry food goods;
- (5) Adequate refrigerated storage for perishable and frozen foods;
- (6) Adequate and separate storage for cleaning products and chemical agents;
- (7) Adequate and separate facilities for housekeeping of the food service area or areas;
- (8) A minimum of one Class ABC fire extinguisher, in or adjacent to all food service area or areas;
- (9) A minimum of one telephone, with posted emergency telephone numbers, close to all food service area or areas; and
- (10) For new construction, a separate entrance for deliveries and removal of refuse, with exterior storage of refuse near the food service area or areas.

D. In centers where food service area or areas are used for activities, the center shall take precautions to prevent participant access to cleaning products and other potentially dangerous utensils or equipment.

.33 Bathrooms.

A. General Requirements.

- (1) Bathrooms shall be located not more than 30 feet from the primary activity areas.
 - (2) The center shall provide at least one toilet and one hand-washing sink for every 10 participants. Additional toilets and hand-washing sinks may be required based upon the toileting needs of the participants.
 - (3) Bathrooms shall be accessible to individuals in compliance with the requirements of the Americans with Disabilities Act of 1990.
 - (4) The center shall provide individual paper towels, a trash receptacle, soap, and toilet paper in bathrooms at all times and these supplies and equipment shall be accessible to participants at all times.
 - (5) Space and equipment shall be provided in bathrooms, to maintain privacy while cleaning or changing the clothing of participants.
- B. Change of Clothes. The center shall make arrangements with the family or residential caregiver to store a set of clothing at the center for use if a participant becomes incontinent during his or her stay at the center.
- C. Drinking water may not be obtained from a bathroom.

.34 Laundry Facilities.

- A. Laundry facilities shall be available on-site for use if a participant's clothing become soiled while he or she is at the center.
- B. The area or areas where laundry facilities are located shall be equipped with exhaust ventilation, secure chemical storage, and dryer lint exhaust and control.
- C. The center shall maintain laundry facilities in a safe and sanitary manner.

.35 Water Supply.

- A. Water Supply. A center shall be served by water from an approved public water supply. If an approved public water supply is not available, a private water supply may be used if the Department of the Environment approves the source in accordance with COMAR 26.04.02.
- B. Loss of Water Supply. The center shall establish written emergency procedures that enable the center to have water in all essential areas in the event of the loss of the normal water supply.
- C. Adequacy of Water Pressure. The water supply shall be adequate in quantity and be delivered under sufficient pressure to satisfactorily serve fixtures in the center. A minimum pressure of 15 pounds per square inch shall be maintained at top floor fixtures during peak demand period.
- D. Water Temperature. The water heating equipment shall supply adequate amounts of water as follows:
- (1) Washing, bathing, and other personal use, not more than 120°F or less than 100°F; and
 - (2) Food preparation, in conformance with COMAR 10.15.03.

.36 Plumbing and Sewage.

A. Plumbing. All plumbing in a center shall be installed and maintained according to all applicable federal, State, and local building codes and sanitation regulations.

B. Sewage. A center shall be served by an approved public sewage disposal system, if available. If no approved public sewerage system is available, a private sewage disposal system may be used if the Department of the Environment approves the system according to COMAR 26.04.02.

.37 Heating, Air Conditioning, and Ventilation.

A. Heating.

(1) The center shall have a properly maintained and operating central heating system that is capable of maintaining 75°F throughout the participants' section of the building.

(2) The heating system shall comply with NFPA 101, Life Safety Code, which is incorporated by reference in COMAR 29.06.01.06, and all applicable State and local codes.

(3) A center may not use space heaters or portable heaters unless approved by the State or local fire authority.

(4) The center shall ensure that all exposed heating pipes, hot water pipes, and radiators are covered or protected to prevent exposure to participants, staff, and visitors.

B. Air Conditioning. The center shall have a properly maintained and operating air conditioning system capable of maintaining a maximum temperature of 81°F throughout the participants' section of the building.

C. Ventilation.

(1) Existing Centers. The center shall ensure that all rooms and areas have sufficient ventilation to prevent excessive heat, steam, condensation, smoke, or other noxious odors. The center shall provide forced mechanical exhaust or an approved equivalent for:

(a) All bathing compartments;

(b) Toilet rooms;

(c) Designated smoking rooms, if applicable; and

(d) Other rooms, as determined by the Department.

(2) New Centers. In addition to the requirements in §C(1) of

.38 Lighting.

A. The center shall ensure that lighting levels in all areas are appropriate for the type of activity. Glare from windows exposed to direct sunlight shall be kept at a minimum by using window coverings and glare from lights shall be kept at a minimum by using shaded light fixtures.

B. Minimum Lighting Levels. The center shall provide the following minimum lighting levels:

Area	Minimum Lighting
Administrative areas	30 footcandles
Dining areas	30 footcandles
Recreation areas	100 footcandles
Participant quiet room	10 footcandles
Participant's reading lamps	30 footcandles
Nurses' station	20 footcandles
Medicine storage and preparation area	100 footcandles
Stairways	20 footcandles
Corridors	20 footcandles

.39 Sanitation.

A. The center shall have sufficient maintenance and housekeeping personnel to assure that the facility is clean, orderly, attractive, and safe at all times.

B. The center shall ensure that maintenance and housekeeping activities are completed on a regular basis and according to generally accepted sanitation standards. Maintenance and housekeeping functions may not interfere with the provision of care or the activities program of the center.

C. The center shall develop and implement a written plan for preventive maintenance and repair of the center.

D. Insects and Rodents.

(1) The center shall:

- (a) Be maintained free of insects and rodents;
- (b) Maintain control measures to prevent infestation by insects and vermin; and
- (c) Ensure that all control measures are conducted using approved methods.

(2) The use of pesticides shall be controlled so that participants, staff, and visitors are not exposed to fumes or residues. Application of pesticides shall be scheduled at a time when participants are not in the center.

E. Refuse.

(1) The center shall store refuse in water-tight containers with tight-fitting covers. Containers shall be emptied at frequent intervals and be thoroughly scoured and aired before reuse.

(2) The outside storage area for garbage shall be constructed of impervious materials.

F. Special Medical Waste. The center shall dispose of special medical waste in accordance with all federal, State, and local laws and regulations.

.40 Safety.

A. Fire Safety. The center shall comply with the provisions of:

- (1) COMAR 20.06.01;
- (2) NFPA 101 Life Safety Code, which is incorporated by reference in COMAR 29.06.01.06; and
- (3) All other applicable federal, State, and local fire codes and regulations.

B. A center that is located within a licensed nursing home or hospital shall meet the applicable requirements of NFPA 101 Life Safety Code, which is incorporated by reference in COMAR 29.06.01.06.

C. The center shall ensure that a floor plan with evacuation routes from the center is posted in each separate space, room, and corridor of the center.

D. The center shall have at least two well-identified exits. Stairs, ramps, and interior floors shall have nonslip surfaces. Handrails shall be installed on all interior and exterior stairs and ramps. Stairways and hallways shall be well lit and kept free of obstructions.

E. The center shall ensure that drugs, cleaning agents, chemicals, pesticides, and other poisonous products are secured for the safety of the participants, staff, and visitors.

.41 Smoking.

A. The center shall have a written policy that indicates whether or not the center permits smoking.

B. If smoking is permitted, the center shall establish and implement smoking policies and procedures that minimize the risk of fire.

C. The smoking policies and procedures shall include at least the following provisions:

- (1) The center shall prohibit smoking in any hazardous location and in any room or compartment where flammable liquids, combustible gases, or oxygen are stored;
- (2) The center shall designate smoking areas with ashtrays of noncombustible material and safe design;
- (3) Participants shall be supervised at all times while smoking;
- (4) The center shall ensure that indoor smoking areas comply with COMAR 09.12.23 including the ventilation requirements set forth in that regulation; and
- (5) If the center has an exterior designated smoking area, this area may not be located at the front entrance.

.42 Sanctions.

A. If the Department determines that a deficiency or deficiencies exist, the Secretary may impose sanctions against the licensee.

B. The Secretary may impose the following sanctions, as appropriate:

- (1) Direct the licensee to correct the deficiencies in a specific manner or within a specific time frame, or both;
- (2) Require the center to use the services of a management firm that is approved by the Department;
- (3) Mandate staffing patterns that specify the number of personnel or personnel qualifications, or both;
- (4) Appoint a state monitor;
- (5) Restrict the number of participants that a center may admit;
- (6) Impose a civil money penalty;
- (7) Impose emergency suspension of license; and
- (8) Deny or revoke a license.

C. If the Secretary determines that the licensee has violated a condition or requirement of an imposed sanction the Secretary may revoke the license.

D. A licensee that is aggrieved by the imposition of a sanction under §B(4)—(8) or C of this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .52 of this chapter. A licensee that is aggrieved by the imposition of a sanction under §B(2) and (3) of this regulation may request a show cause hearing before the Director of the Office of Health Care Quality to show cause why these remedies should not be enforced.

.43 State Monitor.

A. If the Department determines that a deficiency or deficiencies exist, the Department may appoint a State monitor who is qualified on the basis of education and experience to oversee correction of the deficiencies.

B. The duties of the State monitor shall be specified in a written agreement between the Department and the State monitor and shall include, but are not limited to:

- (1) Conducting periodic on-site inspections to assess the center's compliance with regulations of this chapter;
- (2) Making recommendations to achieve compliance with State regulations; and
- (3) Issuing written reports to the Department and the center detailing the findings of the on-site inspections and the status of recommended actions that the center shall complete to achieve compliance.

C. The State monitor shall function for a period of time specified by the Department. The center may request rescission or modification of the duration of the State monitor's appointment at intervals of not less than 120 days from the date of appointment.

D. The State monitor may not be an employee of the Department.

E. The State monitor's salary shall be:

- (1) Paid directly by the center; and

(2) At least equivalent to the prevailing salary paid by centers for an individual with similar education and experience.

.44 Mandated Staffing Pattern.

A. When the Department determines that a deficiency or deficiencies exist, the Department shall notify the center of the deficiency or deficiencies and may either:

(1) Mandate a staffing pattern that specifies the number of personnel or personnel qualifications, or both; or

(2) Permit the center the opportunity to correct the deficiencies by a specific date.

B. If the center does not correct the deficiency or deficiencies, the Department has the authority to specify the number of personnel or personnel qualifications, or both.

C. The center shall comply with the Department's mandated staffing pattern and notify the Department, in writing, when the staffing pattern has been implemented.

D. A mandated staffing pattern shall be in effect for the period of time specified by the Department. A center may request rescission or modification of the staffing pattern at intervals of not less than 60 days from the date of imposition of the staffing pattern.

.45 Admission Restriction.

A. If the Secretary determines that a serious health or fire safety deficiency exists in a center, the Secretary immediately may restrict new admissions to the center for not more than a 30-day period.

B. Within 7 days after a request by an aggrieved party, a show cause hearing shall be held before the Director of the Office of Health Care Quality to show cause why the admission restriction was not appropriately imposed.

C. Within 21 days after admissions are restricted, the center shall take steps to correct the deficiency.

D. Unless the Secretary lifts the admissions restriction, within 30 days after admissions are restricted, a hearing shall be held to determine whether the center has taken sufficient measures to correct the deficiency.

E. If the Secretary finds that the deficiency still exists, the Secretary may:

(1) Continue to restrict admissions for not more than three consecutive 30-day periods; or

(2) Revoke the license of the center.

.46 Civil Money Penalties.

A. The Secretary may impose a civil money penalty if a deficiency or an ongoing pattern of deficiencies exists in a center.

B. In determining whether a civil money penalty is to be imposed, the Secretary shall consider the following factors:

- (1) The number, nature, and seriousness of the deficiencies;
- (2) The extent to which the deficiency or deficiencies are part of an ongoing pattern during the preceding 24 months;
- (3) The degree of risk to the health, life, or safety of the participants of the center that is caused by the deficiency or deficiencies;
- (4) The efforts made by, and the ability of, the center to correct the deficiency or deficiencies; and
- (5) A center's prior history of compliance.

C. If the Department determines that a deficiency or an ongoing pattern of deficiencies exists, the Department shall notify the center of the deficiency or deficiencies and may:

- (1) Impose a per day civil money penalty until sustained compliance has been achieved;
- (2) Permit the center the opportunity to correct the deficiencies by a specific date; or
- (3) Impose a per instance civil money penalty for each instance of violation.

D. If the Department permits a center the opportunity to correct the deficiencies by a specific date, and the center fails to comply with this requirement, the Department may impose a per day civil money penalty for each day of violation until correction of the deficiency or deficiencies has been verified and sustained compliance has been maintained.

E. If the Department proposes to impose a civil money penalty, the Secretary shall issue an order which shall state the:

- (1) Deficiency or deficiencies on which the order is based;
- (2) Amount of civil money penalties to be imposed; and
- (3) Manner in which the amount of civil money penalties imposed was calculated.

F. An order issued pursuant to this regulation shall be void unless issued within 60 days of the inspection or reinspection at which the deficiency is identified.

.47 Amount of Civil Money Penalties.

A. A civil money penalty imposed under this chapter for potential for more than minimal harm deficiencies may not exceed:

- (1) \$3,000 per instance; or
- (2) \$300 per day for an ongoing pattern of deficiencies until the center is in compliance.

B. A civil money penalty imposed under this chapter for actual harm deficiencies may not exceed:

- (1) \$5,000 per instance; or

(2) \$1,000 per day for an ongoing pattern of deficiencies until the center is in compliance.

C. A civil money penalty imposed under this chapter for a serious and immediate threat may not exceed:

(1) \$10,000 per instance; or

(2) \$3,000 per day for an ongoing pattern of deficiencies until the center is in compliance.

D. In setting the amount of a civil money penalty under this chapter, the Secretary shall consider the following factors:

(1) The number, nature, and seriousness of the deficiencies;

(2) The degree of risk to the health, life, or safety of the participants of the center caused by the deficiency or deficiencies;

(3) The efforts made by the center to correct the deficiency or deficiencies;

(4) Whether the amount of the proposed civil money penalty will jeopardize the financial ability of the center to continue operating as a center; and

(5) Other factors as justice may require.

E. All civil money penalties collected under this chapter shall be paid into the general fund of the State.

.48 Civil Money Penalties—Hearings.

A. A hearing on the appeal shall be held in accordance with the State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

B. The Secretary shall have the burden of proof with respect to the imposition of the civil money penalties under this chapter.

.49 Civil Penalties—Unlicensed Center.

A. Imposition of Penalty. The Secretary may impose a civil money penalty on a person who manages or operates an unlicensed center as follows:

(1) A civil money penalty imposed on a person under this chapter may not exceed \$10,000 for each offense; and

(2) When a civil money penalty is imposed, the Secretary shall issue an order which includes the:

(a) Deficiency or deficiencies on which the order is based;

(b) Amount of civil money penalty to be imposed; and

(c) Manner in which the amount of civil money penalty was calculated.

B. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .52 of this chapter.

.50 Emergency Suspension.

A. The Secretary may immediately suspend a license on finding that the public health, safety, or welfare imperatively requires emergency action.

B. The Department shall deliver a written notice to the center:

- (1) Informing it of the emergency suspension;
- (2) Giving the reasons for the action and the regulation or regulations with which the licensee has failed to comply that forms the basis for the emergency suspension; and
- (3) Notifying the center of its right to request a hearing and to be represented by counsel.

C. The filing of a hearing request does not stay the emergency action.

D. When a license is suspended by emergency action:

- (1) The center shall immediately return the license to the Department;
- (2) The center shall stop providing adult day care services immediately; and
- (3) The licensee shall notify the participants or representatives of the participants of the suspension and make every reasonable effort to assist them in making other arrangements for adult day care services.

E. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .52 of this chapter.

F. Show Cause Hearing. In addition to the right to request a hearing in accordance with Regulation .52 of this chapter, a person aggrieved by the action of the Secretary under this regulation shall be provided with the opportunity for a hearing to show cause why the Department should lift the summary suspension.

G. If requested in writing, the show cause hearing shall be held promptly within a reasonable time after the effective date of the order of summary suspension. The time limit for filing an appeal with the Office of Administrative Hearings to obtain an evidentiary hearing shall be tolled by the filing of a request for a show cause hearing.

H. The show cause hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the summary suspension.

I. The show cause hearing shall be conducted before the Secretary or a designee of the Secretary, who:

- (1) Shall determine procedural issues;
- (2) May impose reasonable time limits on each party's oral argument; and
- (3) Shall make rulings reasonably necessary to facilitate the effective and efficient operation of the show cause hearing.

J. At the conclusion of the show cause hearing, the Secretary or the Secretary's designee may:

- (1) Affirm the order of summary suspension;
- (2) Rescind the order of summary suspension;
- (3) Enter into a consent order; or
- (4) Enter into an interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

K. After the show cause hearing, if the Secretary or the Secretary's designee decides to continue the summary suspension, the person aggrieved by the decision may request an evidentiary hearing before the Office of Administrative Hearings in accordance with Regulation .52 of this chapter.

L. The Office of Administrative Hearings shall conduct a hearing as provided in Regulation .52 of this chapter and issue a proposed decision within the time frames set forth in COMAR 28.02.01. Exceptions may be filed by an aggrieved person pursuant to COMAR 10.01.03. The Secretary shall make a final decision pursuant to COMAR 10.01.03.

M. If the Secretary's final decision does not uphold the emergency suspension, the center may resume operation.

.51 Denial or Revocation of License.

A. Denial or Revocation of License. The Secretary, for cause shown, shall notify the center of its decision to deny or revoke the center's license. The denial or revocation shall be stayed if a hearing is requested.

B. The Department shall notify the center in writing of the following:

- (1) The effective date of the denial or revocation;
- (2) The reason for the denial or revocation;
- (3) The regulations with which the licensee has failed to comply that form the basis for the denial or revocation;
- (4) That the center is entitled to a hearing if requested, and to be represented by counsel;
- (5) That the center shall stop providing services on the effective date of the denial or revocation if the center does not request a hearing;
- (6) That the denial or revocation shall be stayed if a hearing is requested; and
- (7) That the center is required to surrender its license to the Department if the denial or revocation is upheld.

C. The licensee shall notify the participants or participants' representatives of any final denial or revocation and make every reasonable effort to assist them in making other arrangements for adult day care.

D. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .52 of this chapter.

.52 Hearings.

- A. A request for a hearing shall be filed with the Office of Administrative Hearings, with a copy to the Office of Health Care Quality of the Department, not later than 30 days after receipt of notice of the Secretary's action. The request shall include a copy of the Secretary's action.
- B. A hearing requested under this chapter shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.01 and 10.01.03.
- C. The burden of proof is as provided in COMAR 10.01.03.28.
- D. Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in COMAR 28.02.01.
- E. The aggrieved person may file exceptions as provided in COMAR 10.01.03.35.
- F. A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35.

Administrative History

Effective date: January 12, 1979 (6:1 Md. R. 17)

Regulations .01; .02B, E; .03A, C, D; .04A—E; .05A, G, H, L, M, N; .06A; .07A, C; .08B; .09C; and .11B, K amended effective July 11, 1980 (7:14 Md. R. 1350)

Regulation .04F repealed effective July 11, 1980 (7:14 Md. R. 1350)

Chapter recodified from COMAR 10.26.01 to COMAR 10.12.04 and Regulations .01, .02A, .04—08, .09C, .10A, and .11A amended effective November 13, 1989 (16:22 Md. R. 2365)

Regulation .02E amended effective July 5, 1993 (20:13 Md. R. 1049)

Regulations .01—.12 repealed and new Regulations .01—.52 adopted effective November 23, 2006 (33:23 Md. R. 1795)