



Department of Human Resources
311 W. Saratoga St.
Baltimore, MD. 21201-3521

FIA ACTION TRANSMITTAL

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TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT
PURCHASE OF CARE ADMINISTRATORS
FAMILY INVESTMENT SUPERVISORS/ELIGIBILITY STAFF

FROM: LINDA HEISNER, EXECUTIVE DIRECTOR, CCA
KEVIN MAHON, EXECUTIVE DIRECTOR, FIA

RE: AMERICANS WITH DISABILITIES ACT AND PROVIDER PAYMENT
ADJUSTMENTS FOR CHILDREN WITH DISABLING CONDITIONS

PROGRAMS AFFECTED: PURCHASE OF CARE

ORIGINATING OFFICE: OPD / CHILD CARE ADMINISTRATION

SUMMARY: The Child Care Administration has in the past established a special subsidy rate for children with disabilities based on a market rate survey. This Action Transmittal addresses the impact of the Americans with Disabilities Act (Public Law 101-336), Sections 402 (g) & (I) of the Social Security Act, 28 CFR Part 36, on provider charges used to establish local market rates for child care for children with disabilities. To assure that the Department is not in violation of the ADA due to using costs reported by providers in market rate surveys that may have in the past included charges that are now disallowed, the Child Care Administration eliminated the special needs rate.

BACKGROUND: The Americans with Disabilities Act (ADA) was signed into law in 1990. Its public accommodation provisions, which are pertinent here because they clearly apply to family day care homes and child care centers, became fully effective in January 1993. Title III of the ADA prohibits discrimination on the basis of disability by private entities in places of public accommodation. It defines public accommodation as facilities whose operations effect commerce and fall within twelve specified categories, including social services center establishments. The implementing regulations specifically include "day care centers" as public accommodations and clarify that places of public accommodation located in a private residence are covered by the ADA. The ADA uses the term "day care centers" as a generic term for all categories of out of home child care providers. Federal regulation 28 CFR 36.301(c) states: "A public accommodation may not impose a surcharge on a particular individual with a disability . . . to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, reasonable modification in policies, practices and procedures, that are required to provide that

individual . . . with non-discriminatory treatment required by the Act . . .” Thus, the ADA and its implementing regulations allow providers to charge higher rates for special needs, provided those higher charges are for services beyond those required by the ADA and are not for the purposes of recouping the cost of measures required by the ADA.

Beginning August 1, 1997, the separate rate for children with disabilities within the Purchase of Child (POC) Care Program was eliminated. For current customers who received a special needs rate and who continue with the same provider after August 1, 1997, CCAMIS will assign the appropriate POC regional subsidy payment rate, if the POC rate exceeds the former special needs rate. If the POC rate is less than the former special needs rate then CCAMIS will continue to pay the higher special needs rate until the child leaves that provider’s care. For new customers and current customers who changed providers after August 1, 1997 CCAMIS will assign the appropriate regional subsidy payment rate.

ACTION REQUIRED: Local departments must inform the caretaker /parent of a child with a disability of the availability of a payment rate adjustment for child care services provided that are beyond reasonable accommodation. A provider, in conjunction with the caretaker/parent, may request up to 15% above the subsidy. Local departments should develop a process for providers to apply for, and local staff to review and approve, requests for higher payment.

PROCEDURES:

1. **Using the attached Request For A Special POC Rate For A Child with a Disability (DHR/CCA 1430) form, Sections I-V, customers should apply for rate adjustments for children with disabilities. The maximum adjustment may not exceed by more than 15% the subsidy paid by the State in the region based on household, income, and type of care for that child. The cost to the provider must be for service or specialized care that is beyond reasonable accommodations for a child with a disability. Reasonable accommodations must be determined on a case-by-case basis by applying factors to determine whether it would be an undue burden or fundamentally alter the nature of the program. (See Guidelines)**
2. **The existence of a disability alone is not justification for an approval of a request for a rate adjustment. The increase in the cost of care must be linked directly to care provided to a specific child and must be beyond those accommodations required by the ADA. Please refer to the attached Guidelines for Provider Reimbursement.**
3. **Local departments may not approve a rate adjustment that exceeds 15% of the maximum subsidy paid by the State in a region which is based on household size, income and type of care for a particular child.**
4. **Providers whose rate is lower than the maximum subsidy paid by the State (including informal providers) may also apply for rate adjustments. The local department may approve an adjustment up to 15% above the customer’s subsidy paid to the provider by**

the State.

5. Upon receipt of a request for a payment adjustment from a parent or provider, the POC case manager forwards the Request For A Special POC Rate For A Child with a Disability (DHR/CCA 1430) form to the parent with a cover letter outlining procedures. The parent has 30 days to have the form completed and to return it to the local department. The form is complete once:
 - (a) The parent completes and signs Sections I and III, and completes and signs Section V Part III in conjunction with a physician or a licensed psychologist or licensed social worker.
 - (b) The provider completes Section II, and completes and signs Sections III and IV A & B. **Section A is returned to the customer with the rest of the form while IV-B is completed by the provider and returned to the the department by the provider.**
 - (c) A physician or a licensed psychologist or licensed social worker completes and signs Sections V Parts I-IV (Parts III and IV must be signed).

6. A signed and dated statement from a physician, licensed psychologist or licensed social worker may as a part of the completed form package, is acceptable if it verifies:
 - a. The existence of a diagnosis of a mental or physical disability and a description of the condition.
 - b. Whether this is a permanent or temporary condition. If the condition is temporary or acute, the duration of the condition must be specified. In these instances, if the professional completing the form specifies a duration period less than 12 months, the case should be flagged and verification of the disability must be obtained at appropriate intervals. If the condition is permanent, the case manager should not request documentation of disability at each redetermination. The original proof of disability is sufficient and must be maintained in the current case record. **However, verification of continuing increased cost of care is required from the provider at each redetermination. The DHR/CCA 1430 is used to verify the continuation of increased service.**
 - c. That the disability causes the child to be incapable of self care, as appropriate for the child's age. The inability to provide self care must be significant enough to necessitate additional supervision or specialized care; and
 - d. The type of care or specialized care needed and an approximation of the number of hours required per day in order to provide the child with appropriate care.

7. The type of care and/or hours of supervision or specialized care identified on the medical form or statement must match the accommodations the provider is claiming. The professional completing the form must complete and sign Section V Part III and IV indicating that the additional supervision or specialized care listed by the provider are appropriate and necessary for the adequate and appropriate care of the child. Section V Parts I-IV contains medical information regarding the child, and may not be released to the provider by the local department without written consent from the parent or caretaker.
8. The local department must review the request to determine if the higher payment is warranted and is not based on recoupment of cost incurred to comply with the ADA regulations.
9. Requests for special rate adjustments that exceed 15% of the subsidy should be submitted in writing to Pamela Evans, Operations Supervisor, Office of Program Development, Child Care Administration, 311 W. Saratoga Street, Baltimore, Maryland 21201 from the local department. **The local department must first review the request from the provider or parent and deem that it warrants further consideration. A justification statement including a statement of support from the local department must be attached to the information submitted.**

10. **MANUAL CALCULATION PROCEDURES**

- a. The POC supervisor determines the total amount of the on-going expense and/or the one time only expense.
- b. The total expense is divided by the number of months the voucher is issued to get a dollar amount that will be entered into CCAMIS as an override.
- c. The dollar amount obtained may not exceed 15% of the subsidy level.
- d. To determine what is beyond 15% of the subsidy level multiply the subsidy by 115%.

11. **CCAMIS PROCEDURES**

- a. Case Management Supervisor (Once the override amount is determined) selects the Voucher Receipt Menu Option—either Formal or Informal voucher Receipt
- b. The dollar amount is entered in response to the data element “Special Monthly Rate”.

- c. Edits prevent the amount from being over 115% of the subsidy and from using this field to enter overrides for non-special needs vouchers.
- d. Payment (each month) will be adjusted to the provider for the altered voucher.

ACTION REQUIRED OF: All local departments administering Purchase of Care.

EFFECTIVE DATE: Immediately. Questions may be directed Pamela Evans at (410) 767-7845 of the Child Care Administration.

cc: CCA Management Staff
CCA Licensing Regions
FIA Management Staff
DHR Executive Staff
POC Administrators
Constituent Services

GUIDELINES FOR PROVIDER REIMBURSEMENT

Providers who receive child care subsidy payments from the Purchase of Care Program must provide auxiliary aids and services for assuring effective communication with children with disabilities unless it would create an undue burden or fundamental alteration to the program. An undue burden is a significant difficulty or expense.

I. FACTORS IN DETERMINING WHETHER THERE IS AN UNDUE BURDEN INCLUDE:

- A. The nature and cost of the action needed,
- B. The provider's overall financial resources,
- C. The number of persons the provider employs,
- D. The effect on the provider's resources and expenses,
- E. Legitimate safety requirements or the impact otherwise of the operation of the facility,
- F. Geographic separateness and the administrative and fiscal relationship of the site to a parent corporation or entity, and
- G. If applicable, the financial resources of the parent corporation or entity, its size, number of employees, type and location of its facilities.

II. EXAMPLES OF AUXILIARY AIDS ARE:

- A. Interpreters
- B. Listening devices
- C. Note takers
- D. Written materials for individuals with hearing impairments
- E. Qualified readers
- F. Taped texts
- G. Braille or large print materials for individuals with vision impairments
- H. Note books
- I. Audio recordings

III. EXAMPLES of SERVICE

	<u>Service</u>	<u>Explanation of when an adjustment request:</u>	
		<u>May be allowable:</u>	<u>May Not Be Allowable:</u>
1.	Diapering Service for a school age child	If the program does not offer diapering services to other children.	If the program includes infants and other children for whom the services is offered, or it is a customary and reasonable service
2.	Hiring extra staff for 1:1 Supervision	For a provider with limited resources.	For a provider with ample resources
3.	Installation of a special commode	For a provider with limited resources. (i.e. space)	For a provider with ample resources
4.	Barrier removal: -Installing ramps, accessible door hardware, offset hinges to widen doorways, grab bars in toilet stalls, raised toilet seat, or low density carpet	For a provider with limited resources.	For a provider with ample resources.
	-Rearranging toilet partitions to increase maneuvering space,	Same as above	Same as above
	-Rearranging tables, chairs and other furniture,	Depending on the level of difficulty, volume and resources of the provider (ie. a family provider may not have the resources to have a piano moved)	For a provider with ample resources regardless of volume, and difficulty
	-Repositioning shelves, paper towel dispenser	Depending on volume and provider's resources. Most providers regardless of size will probably have the resources to provide.	For a provider with ample resources.

III. EXAMPLES of SERVICE CONTINUED:

	<u>Service</u>	<u>Explanation of basis of an adjustment request:</u>	
		<u>May be allowable:</u>	<u>May Not Be Allowable:</u>
5.	Barrier removal -installing an accessible cup dispenser at an inaccessible water fountain	Depending on volume and provider's resources. Most providers regardless of size will probably have the resources to provide.	For a provider with adequate resources.

This list of services is a sample of possible services offered. Items 4, and 5 are also examples of one time only expenses. These expenses occur usually at the point of purchase or installation. For an example once a ramp is installed, the provider is reimbursed for the installation. The provider may not continue to charge an increased fee once the installation expense has been reimbursed.

Physical plant alteration or renovations to assure access to a program are reasonable accommodations where they are readily achievable. Readily achievable means they are easily accomplished without much difficulty or expense. The factors used to determine whether something is an undue burden can also be applied to determine whether something is readily achievable. Examples are included above.

When a provider can demonstrate that barrier removal is not readily achievable, the ADA requires the provider to try alternatives, if they are readily achievable. Some examples are: retrieving things from inaccessible shelves; or relocating activities to accessible locations. A facility that uses an alternative method may not charge an individual with a disability for costs associated with the alternative method.

**REQUEST FOR SPECIAL PURCHASE OF CHILD CARE RATE
FOR A CHILD WITH A DISABILITY**

Directions: The parent/ caretaker completes Sections I and III. The parent then takes the form to the provider. The provider completes Sections II, III and IV. The parent /caretaker is responsible for retrieving the form from the provider and having a doctor, licensed psychologist or licensed social complete Section V Parts I-IV (Parts III and IV must be signed). Once completed, the entire form is returned to the Purchase of Care case manager by the parent. Section V is confidential and may not be released by the local department once it is completed without written consent from the parent or caretaker.

SECTION I

Directions: To be completed by the parent/caretaker

CHILD'S NAME: _____ DOB: _____

PARENT NAME: _____ PHONE # _____

PARENT'S ADDRESS: _____

RELEASE OF INFORMATION

I HEREBY AUTHORIZE THE PURCHASE OF CARE PROGRAM TO VERIFY INFORMATION REGARDING MY APPLICATION AND TO SEEK AND OBTAIN OTHER DOCUMENTATION TO ESTABLISH MY ELIGIBILITY FOR A RATE ADJUSTMENT FOR SPECIAL ACCOMMODATIONS PROVIDED TO _____
(Child's Name)

I FURTHER AUTHORIZE RELEASE OF MEDICAL AND/OR MENTAL HEALTH INFORMATION FROM _____ TO THE PURCHASE OF CARE PROGRAM.
(Doctor, psychologist, social worker's name)

(SIGNATURE PARENT) (DATE)

SECTION II

PROVIDER'S NAME: _____ PHONE # _____

PROVIDER'S ADDRESS: _____

CHILD'S VOUCHER #: _____ CHILD'S CCAMIS #: _____

PROVIDER'S LICENSE NUMBER: _____ DATE: _____

SECTION III

FRAUD STATEMENT—DIRECTIONS: Read and sign.

This application gives us information about whether the parent is eligible for an increase in the payment received under the Purchase of Child Care Program. It also gives us information about special accommodations made by the provider to care for a child. The funds to pay for this increased cost are provided by public expense and the parent and provider must give true information. It may be verified with public and private agencies and businesses. If you knowingly give false information, you may be subject to the penalties listed below. Additionally, your signature below is an acknowledgment of understanding that the availability of the Purchase of Care Payment Adjustment for a child with a disability is subject to available funds and programmatic changes.

Article 27, 230A of the Annotated Code of Maryland states that:

- (a) Any person who fraudulently obtains, attempts to obtain, or aids another person in fraudulently obtaining or attempting to obtain money, property, food stamps, medical care, or other assistance to which he is not entitled, under a social, health, or nutritional program based on need, financed in whole or in part by the State of Maryland, and administered by the State or its political subdivisions is guilty of a misdemeanor. For purposes of this section, fraud shall include:
 - (1) willfully making a false statement or representation; or
 - (2) willfully failing to disclose a material change in household or financial condition; or
 - (3) impersonating another person.

- (b) Upon conviction, after notice and the opportunity to be heard as to the amount of payment and how the payment is to be made, the person shall make full restitution of the money, property, food stamps, medical care or other assistance unlawfully received, or the value thereof, and shall be fined not more than \$1,000 or imprisoned for not more than three years, or both fined and imprisoned.

(SIGNATURE OF PARENT/CARETAKER)

(DATE)

(SIGNATURE PROVIDER)

(DATE)

DHR/CCA 1430

SECTION IV

Directions: The provider must complete this section identifying the service provided that is beyond reasonable accommodations and specifying the cost for the service. This portion of Section IV must be shared with the parent/caretaker.

A. The Provider's justification for rate adjustment is based on the following extra cost:

<u>COLUMN I</u>	<u>COLUMN II</u>	<u>COLUMN III</u>	<u>COLUMN IV</u>
<u>Accommodation</u>	<u>OTO expenses</u>	<u>Cost Per Day</u>	<u>Cost Per Month</u>
1. ___ Equipment rental/purchase	_____	_____	_____
2. ___ Increased utility cost due to machinery.	_____	_____	_____
3. ___ Special Apparatus (Breathing, feeding, etc.)	_____	_____	_____
4. ___ Special transportation	_____	_____	_____
5. ___ Additional staff-individual attention including for physical activity	_____	_____	_____
6. ___ Environmental modification resulting in limiting capacity of the program.	_____	_____	_____
7. ___ Therapeutic material's	_____	_____	_____
8. ___ Other _____	_____	_____	_____
Total	_____	_____	_____

(SIGNATURE PROVIDER)

(DATE)

I have reviewed the above services supplied to my child by the providers named above. I understand that my child's provider is requesting additional payment because these services are being provided for my child.

(SIGNATURE OF PARENT/CARETAKER)

(DATE)

SECTION IV- (continued)

B. Supply the information listed below regarding your financial resources to help us determine if the services listed above would be an undue burden on your program without a rate adjustment. This portion of Section IV should be returned to the POC case manager by the provider. The information is confidential and may not be release to the parent/caretaker by the local department.

- 1. Number of children in your program _____.
- 2. Number of staff you employ _____.
- 3. Budget for staff salaries including all administrative staff (ie director)

4. Comments: Use this space to provide additional information if the services needed to accommodate _____ would result in an undue burden, or if the services are not readily achievable, or if the services would fundamentally change the nature of your program.

PLEASE BE ADVISED THAT THE LOCAL DEPARTMENT RESERVES THE RIGHT to require documentation of any information submitted.

DHR/CCA 1430

SECTION V
Disability Certification

Dear: Physician, Licensed/Certified Psychologist or Social Worker.

The Local Department is requesting your assistance in certifying the degree of disability for _____ in order to consider costs incurred by a child care provider in caring for the named child. Please complete Section V Parts I -IV based on your professional knowledge of the child above. Part III and IV must be signed by a physician, licensed/certified psychologist or social worker only.

PART I

Child's Name

Date of Birth

Address (Number, Street, City, State, Zip code)

Telephone #

City

County

State

Zip Code

PART II

1. **Diagnosis:** _____ **Prognosis:** _____

2. **Circle one:** This condition is considered a physical or mental disability.

 Circle one: The disability is Permanent or Temporary. If temporary indicate the duration in the space provide. From _____ to _____ in duration.

3. **Does the condition cause significant impairment of age appropriate self care skills?**

 Yes ___ No ___

4. **Does the degree of impairment to self care skills warrant special arrangements for supervision or specialized care? Yes ___ No ___**

DHR/CCA 1430

PART III

Directions: Please complete the following regarding the child's functional capabilities. Use the key below to complete the degree of assistance column for each daily living skill listed. The questions are related to the child's ability to perform age appropriate self care tasks as they are appropriate for the child's age. Next give an estimate of the number of hours the assistance is needed per day.

Key:

- 0 = Completely unable to perform alone
- 1. Some assistance needed
- 2. Completely independent.

	<u>Degree of Assistance</u>	<u>Estimated Hrs. Per Day</u>
<u>1. Toileting:</u>	_____	_____
<u>2. Physical Mobility:</u>		
a. Positioning	_____	_____
b. Walking	_____	_____
c. Wheelchair	_____	_____
<u>3. Meeting Basic Needs:</u>		
a. Assistance with eating	_____	_____
b. Assistance with playing	_____	_____
c. Assistance with washing hands	_____	_____
d. Dressing	_____	_____
<u>4. Mental</u>		
a. Able to make age appropriate judgement about safety.	_____	_____
b. Appropriate interaction with peers.	_____	_____
c. Ability to participate in age appropriate play.	_____	_____
d. Maintains awareness of time, place and person.	_____	_____
e. Ability to communicate needs.	_____	_____
f. Ability to remain on a task as appropriate for age.	_____	_____

PART III- CONTINUED

	<u>Degree of Assistance</u>	<u>Estimated Hrs. Per Day</u>
g. Reality testing	_____	_____
h. Other _____	_____	_____

I certify, based on the above assessment, that the child named above has a disability and requires the assistance as indicated in performing of essential activities of daily living, self-care, and mobility.

Signature: _____ Date: _____
(Physician, Psychologist, Social Worker)

I have read and assisted with this assessment of my child. I agree that it accurately describes the level of care my child needs at this time.

Signature: _____ Date: _____
(Parent)

PART IV

Directions: Please review the services listed and described in Section IV by the child care provider. Review and complete one of the statements below regarding the appropriateness and/or necessity of those services as they relate to the child's disability and degree of impairment.

1. ___ Yes, all of the services listed in Section IV are necessary to provide _____ with adequate and appropriate care and supervision. They are also consistent with the type and degree of disability for this child. Sign _____
(Physician, Psychologist, Social Worker)
2. ___ No, The services listed in Section IV are not necessary to provide _____ with adequate and appropriate care and supervision. They are not consistent with the type and degree of disability for this child. Sign _____
(Physician, Psychologist, Social Worker)
3. ___ Some, of the services listed in Section IV are necessary to provide _____ with adequate and appropriate care and supervision. They are also consistent with the type and degree of disability for this child. The services that are appropriate are item number(s) _____ Sign _____
(Physician, Psychologist, Social Worker)