

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-236)**

Overview and Legal and Fiscal Impact

The proposed action repeals an obsolete chapter relating to the coverage of rehabilitation and other mental health services under the Maryland Medical Assistance Program (Medicaid), and adopts a new chapter that governs the delivery of specialty mental health services under Medicaid.

The regulations present one legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Specialty Mental Health Services: COMAR 10.09.59.01-.14

Legal Analysis

Background

For the past several years, the department has been examining the issue of integrating mental health and substance abuse care. This process was prompted by observations that the current service delivery system for mental and substance abuse services was fragmented and suffered from a lack of connection (and coordination of benefits) with general medical services; had fragmented purchasing and financing systems with multiple, disparate public funding sources, purchasers, and payers; had uncoordinated care management including multiple service authorization entities; and had a lack of performance risk with payment for volume, not outcomes.

As a result of these deliberations, the department chose to move forward with a carve-out of behavioral health services from the managed care system with added performance risk. Specifically, all substance abuse/specialty mental health services will be carved out from managed care organizations (MCOs) and delivered as fee-for-service care through an administrative services organization (ASO) (the current Mental Hygiene Administration model). The ASO contract will include incentives/penalties for performance against set targets. In the fiscal 2015 budget approved by the General Assembly, funding for Medicaid-eligible specialty mental health and substance abuse services for Medicaid enrollees is located in the Medicaid program.

In a related action, Chapter 460 of 2014 merged the former Mental Hygiene Administration and Alcohol and Drug Abuse Administration into a new Behavioral Health Administration (BHA), effective July 1, 2014. BHA is led by a director, under the Deputy Secretary for Behavioral Health and Developmental Disabilities.

In accordance with a language in the fiscal 2015 budget bill, the department submitted a report to the General Assembly on June 20, 2014 that clarifies the following roles and responsibilities for BHA and Medicaid:

- For clinical oversight, BHA will manage evidence-based practices and promising clinical interventions for behavioral health services generally; BHA will establish, refine and monitor clinical standards for Medicaid-financed services to ensure that payment policies support clinical care; and BHA will ensure clinical criteria for grant-based services.
- For financial management, Medicaid will pay provider claims that are Medicaid-related while BHA will manage State fund only claims. ASO expenses will be administered by Medicaid with guidance from BHA.

On September 3, 2014, the Board of Public Works awarded a 5-year \$77.1 million contract to ValueOptions, Inc. to provide the ASO for the Public Behavioral Health System. ValueOptions has been providing the ASO for the specialty mental health system.

Summary of Regulations

The proposed action repeals an obsolete chapter relating to the coverage of rehabilitation and other mental health services under the Maryland Medical Assistance Program (Medicaid), and adopts a new chapter that governs the delivery of specialty mental health services under Medicaid. The regulations define terms and establish, among other things, requirements, and conditions for provider participation, eligibility and referral procedures, services covered, requirements for service authorization, and payment procedures. In adopting the provisions summarized below, the regulations generally retain the substance of provisions in current regulations that are being repealed.

Definitions

Among other terms, the regulations define “Administrative Services Organization (ASO)” as an entity that manages the public behavioral health system on behalf of the department. In addition, the “Public Behavioral Health System” is defined as the system that provides medically necessary behavioral health services for Medical Assistance participants and “certain other uninsured individuals.” “Specialty Mental Health Services” is defined to mean the services covered under regulations governing specialty mental health services.

Requirements and Conditions for Provider Participation

In addition to meeting licensure requirements specified in regulations, a provider must meet certain general conditions to participate in Medicaid. A provider must have clearly defined and written patient care policies, maintain adequate documentation of each contact with a participant as part of the medical record which includes certain minimum information (*e.g.*, date

of service with service start and end times), and meet other conditions for provider participation in specified regulations.

To participate in Medicaid as an individual practitioner of specialty mental health services, a provider must be licensed and legally authorized to practice independently by the appropriate board to practice in the state in which the service is rendered. A provider must also demonstrate, by training and experience, the competency to provide mental health services under a professional designation specified in the regulations, such as a licensed certified social worker-clinical, nurse psychotherapist (APRN-PHM), or a psychologist.

A community-based mental health program must be approved by the Office of Health Care Quality as one that is compliance with specified regulations as a psychiatric rehabilitation program, mobile treatment program, outpatient mental health clinic, or therapeutic nursery. Under the regulations, other types of providers must be approved as in compliance with specified regulations to participate as a specialty mental health provider, such as a targeted case management provider, residential treatment center, or traumatic brain injury provider.

Eligibility and Referral

Under the regulations, a participant may self-refer or be referred to the Public Behavioral Health System by a provider or by a family member or caregiver. The ASO must have a toll free telephone line to accept referrals and help participants find an appropriate specialty mental health provider.

The ASO must authorize medically necessary services according to certain guidelines. Specialty mental health services are services for which the participant's diagnosis and treatment provider meet the criteria specified under certain regulations. The regulations require the ASO to reimburse specialty mental health providers.

Services Covered and Limitations

The regulations require the ASO to reimburse, when authorized by the ASO, medically-necessary specialty mental health services delivered by certain providers, certain telemental health services, and specified laboratory services when ordered by a specialty mental health provider. The regulations also identify certain services that are not covered by Medicaid, such as specialty mental health visits solely for the purpose of prescribing or administering medication.

Authorization Requirements, Payment Procedures, and Other Regulations

The regulations establish authorization requirements and payment procedures for the ASO. Among other provisions, the regulations specify that preauthorization is not required before a provider renders services on an emergency basis. Regarding payment, a provider must bill Medicaid its usual and customary charge to the general public for similar services. The regulations also include provisions relating to payment of Medicare claims and items for which a provider may not bill Medicaid, such as completion of forms and reports. In addition, the regulations establish, by cross-reference to other existing regulations, procedures for the reimbursement of providers and recovery of overpayments by the department; grounds and procedures for the suspension or removal of providers and imposition of sanctions; appeal and grievance procedures for providers and participants; and interpretive regulatory requirements.

Legal Issue

Section 15-103(b)(21) of the Health –General Article requires the department to establish a delivery system for specialty mental health services for enrollees of managed care organizations. This provision then requires the Mental Hygiene Administration to design and monitor the delivery system and perform other functions relating to the delivery system. As noted above, however, Chapter 460 of 2014 merged the former Mental Hygiene Administration and Alcohol and Drug Abuse Administration into a new Behavioral Health Administration, effective July 1, 2014.

Although § 15-103(b)(21) supplies the department with legal authority to adopt regulations governing the ASO and its administration of specialty mental health services delivered to MCO enrollees, the provision should be amended to reflect the establishment of the new Behavioral Health Administration. Staff of the Department of Legislative Services has relayed this concern to the department.

Statutory Authority and Legislative Intent

The department cites §§ 2-104(b), 2-105(b), 15-103, and 15-105 of the Health-General Article as authority for the regulations. More specifically, § 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 15-103(a) gives the Secretary broad authority to regulate Medicaid and, as noted above, § 15-103(b)(21) requires the department to establish a delivery system for specialty mental health services for enrollees of MCOs. This provision also authorizes the department to contract with an MCO for delivery of specialty mental health services if the MCO meets certain performance standards. Section 15-105 requires the department to adopt regulations for the reimbursement of providers under Medicaid.

The authority cited by the department is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations repeal an obsolete chapter relating to the coverage of rehabilitation and other mental health services under the Maryland Medicaid program and adopt a new chapter that governs the delivery of specialty mental health services under Medicaid. Specialty mental health services are already managed by an administrative services organization. The department advises that, as the regulations clarify rather than change services offered and payment made for specialty mental health services, there is no fiscal impact. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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