

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 14-237)**

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**Overview and Legal and Fiscal Impact**

The proposed action repeals an obsolete chapter regarding the Specialty Mental Health System and adopts a new chapter that clarifies all of the Medicaid covered services for which Medicaid managed care organizations (MCOs) are not responsible. Separately-proposed regulations (COMAR 10.09.59) address the Specialty Mental Health System.

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: Maryland Medicaid Managed Care Program: Non-Capitated Covered Services: COMAR 10.09.70.01-.03

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**Legal Analysis**

**Background**

For the past several years, the Department of Health and Mental Hygiene has been examining the issue of integrating mental health and substance abuse care. The need to do this 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 long deliberations, the State 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 services are being carved out from the MCO capitated service package, combined with already-carved out specialty mental health services under the Mental Hygiene Administration, and reimbursed through fee for service payments by an administrative services organization (ASO). The ASO contract includes incentives and 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 regulations specify the behavioral health and non-behavioral health services for which an MCO may not be responsible for reimbursement. The behavioral health services include substance use disorder services, services billed by specialty mental health providers under a specialty mental health diagnosis, and behavioral health medications. The non-behavioral health services include the remaining days of a hospital admission for a new MCO enrollee; long-term care services; intermediate care facilities for individuals with intellectual disabilities or persons with related conditions (ICF/IID) services; personal care services; medical day care services; certain HIV/AIDS services; audiology services; cochlear impact devices; physical therapy, speech therapy, occupational therapy, and audiology services for children; augmentation communication devices; dental services for children and pregnant women; abortion under certain circumstances; emergency and other transportation services; and services providers to participants in the State's Health Home Program. An MCO continues to be responsible for reimbursing for mental health services delivered by a participant's primary care provider.

## **Legal Issue**

As discussed above, the regulations shift responsibility for payment for substance abuse services delivered to MCO enrollees from the MCOs to the Medicaid fee-for-service program, to be administered by an ASO under the oversight of the new Behavioral Health Administration. The shift of responsibility has been in the works for several years and has included periodic reporting to the General Assembly and ample discussion through legislative deliberations on the State budget. Nevertheless, the regulations do not fully comport with State law. Although Chapter 460 of 2014 established the Behavioral Health Administration, the law did not make

changes to Medicaid law that are needed to shift responsibility for payment for substance abuse services away from the MCOs.

Specifically, § 15-103(b)(2)(iii) of the Health – General Article requires each MCO participating in the Medicaid managed care program to provide or arrange for the provision of medically necessary and appropriate inpatient, intermediate care, and halfway house substance abuse treatment services for substance abusing enrollees 21 years of age or older who are recipients of temporary cash assistance under the Family Investment Program. Section 15-103(b)(9)(vi) requires each MCO to provide or assure alcohol and drug abuse treatment for substance abusing pregnant women and all other enrollees of MCOs who require these services. Section 15-103(b)(21) requires the department to establish a delivery system for specialty mental health services for enrollees of MCOs, under the Mental Hygiene Administration. Section 15-103(b)(21)(iv)2 requires the delivery system, for enrollees who are dually diagnosed, to coordinate the provision of substance abuse services provided by the MCOs of the enrollees.

The Department of Legislative Services (DLS) believes that these provisions need to be altered, in order for the regulations to comport with State law. DLS staff has relayed this concern to the department.

### **Statutory Authority and Legislative Intent**

The department cites §§ 2-104(b), 15-103, and 15-105 of the Health – General Article as authority for the regulations. Section 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 15-103(a) requires the Secretary to administer the Maryland Medical Assistance Program and requires the program to provide medical and other health care services for specified individuals, subject to the limitations of the State budget. Section 15-103(b) authorizes the Secretary to establish a program under which program recipients are required to enroll in MCOs. This section establishes numerous requirements for the department and the MCOs, with respect to the services provided under the MCO program. Section 15-105 requires the department to adopt rules and regulations for the reimbursement of providers under the program.

Except as noted above under “Legal Issue”, this statutory authority is correct and complete, and the regulations comply with the legislative intent.

### **Technical Corrections and Special Notes**

As discussed above, the regulations specify the behavioral health and non-behavioral health services for which an MCO may not be responsible for reimbursement. However, Regulation .01 provides that the scope of the regulations is to outline the non-capitated services that are covered for waiver eligible recipients under the fee-for-service Medicaid program. The stated scope is somewhat misleading, as other chapters of COMAR establish the services that are covered under the fee-for-service Medicaid program and do not make any reference to the proposed COMAR 10.09.70. DLS staff has discussed this concern with staff of the department and understands the department is making minor changes to the language that more clearly establish the intended scope.

## **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 specialty mental health services under the Maryland Medicaid program and adopt a new chapter that clarifies the behavioral health and non-behavioral health services that will now be paid by the department on a fee-for-service basis rather than by Medicaid MCOs. The regulations do not affect specialty mental health services. Instead, the regulations implement the Medicaid carve-out for behavioral health services by shifting responsibility for the payment for those services from MCOs to fee-for-service. The department advises that funds will be transferred from MCO rates to fund services on a fee-for-service basis; thus, 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.

## **Contact Information**

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