

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-285)**

Overview and Legal and Fiscal Impact

The proposal repeals regulations for Primary Adult Care Program eligibility, removes references to substance abuse services provided by Medicaid Managed Care Organizations (MCOs), and makes numerous other changes relating to Medicaid MCOs.

As stated in analyses of other recent regulatory proposals, actions that remove MCO responsibility for substance abuse services present a 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: Primary Adult Care Program Eligibility:

COMAR 10.09.60.01-.24

Maryland Medicaid Managed Care Program: Definitions: COMAR 10.09.62.01

Maryland Medicaid Managed Care Program: Eligibility and Enrollment:

COMAR 10.09.63.01-.03, .05, and .06

Maryland Medicaid Managed Care Program: MCO Application:

COMAR 10.09.64.05-.07, and .10

Maryland Medicaid Managed Care Program: Managed Care Organizations:

COMAR 10.09.65.01, .02, .04, .05, .08, .10, .11, .11-1, .11-2, .12, .14, .15, .19-5, .20, and .21

Maryland Medicaid Managed Care Program: Access:

COMAR 10.09.66.02, .04, .05, and .07

Maryland Medicaid Managed Care Program: Benefits:

COMAR 10.09.67.01, .04, .12, and .26-.28

Legal Analysis

Background

On January 1, 2014, the federal Patient Protection and Affordable Care Act made childless adults eligible for Medicaid. As a result, the Maryland Primary Adult Care Program serving these individuals was no longer needed, and it was terminated.

As part of its reorganization of behavioral health services delivered to Medicaid enrollees, the Department of Health and Mental Hygiene has carved out substance abuse services

from the MCO service package, effective on January 1, 2015. Substance abuse services, together with specialty mental health services, are to be offered through a behavioral health administrative services organization.

Summary of Regulations

The proposal primarily repeals regulations for Primary Adult Care Program eligibility and responsibility for MCOs to provide substance abuse treatment services. The proposal also makes numerous other changes relating to Medicaid MCOs, as described below.

The managed care program eligibility and enrollment regulations:

- repeal a requirement that the department provide to waiver-eligible individuals a narrative description of the clinical expertise and experience of the MCO's network for special needs populations;
- repeal a requirement for the department to complete the health service needs information for a recipient within 5 days, if it is not completed at the time of enrollment;
- repeal requirements, when the department cannot reach the recipient or the recipient is uncooperative: (1) for the department to notify the MCO of its failure to complete the health service needs information, and (2) for the MCO to provide expedited service pursuant to the health service needs information for the recipient;
- change the opportunity for a recipient to switch MCOs from annually, on the anniversary date of initial enrollment, to once every 12 months;
- alter the date for disenrolling an enrollee from an MCO due to Medicare eligibility from the last day of the month in which the enrollee turns 65 to the last day of the month *before the month* in which the enrollee turns 65; and
- alter the requirements on an MCO when a primary care provider terminates participation.

The MCO application regulations:

- alter the required documentation relating to access to primary care services that an MCO must include in its application, as follows: (1) add pharmacy as a primary care service; (2) require primary care services to be available within a 20-mile radius of the enrollee's residence, in suburban areas; and (3) repeal travel time as an access requirement; and require an MCO to include in its application written evidence of the capacity to provide disease management programs adequate to meet the individual needs of all enrollees.

The regulations for MCO participation:

- repeal a requirement that the identification card an MCO must provide to each enrollee be plastic;
- strike "nurse review monitoring" from the description of the Early and Periodic Screening, Diagnosis and Treatment program with which an MCO must ensure coordination for children with special health care needs;
- add an MCO's special needs coordinator to the possible representation from the special needs populations on the consumer advisory board;

- repeal the requirement for an MCO to submit to the department a monthly report detailing which primary care provider panels are accepting new patients;
- require an MCO to submit to the department quarterly: (1) a list of all pre-service denials or reduction of services or benefits issued by the MCO or MCO subcontractors during the quarter; and (2) amounts the MCO has cost-avoided and recovered and the number of cases the MCO has handled in each case area during the quarter; and
- require the department to calculate the MCO's annual loss ratio separately for the childless adult population.

The managed care program access regulations:

- require the handbook that an MCO must furnish to each enrollee to include information on how to access or obtain the MCO's provider directory;
- require an MCO to provide specified information regarding their provider networks; and
- require an MCO to make a good faith effort to keep the department's online provider directory accurate by submitting regular updates when its provider network status changes.

The managed care program benefits regulations:

- create an exception for specified non-capitated services from the benefits package that an MCO must provide to enrollees;
- for specialty drugs, as defined in the regulations: (1) repeal a prohibition on an MCO restricting its enrollees' access to pharmacy services by requiring enrollees to use mail order pharmacy providers; but (2) prohibit the MCO from limiting an enrollee to the use of a mail order pharmacy, if the enrollee subsequently requests to use a retail pharmacy for the specialty drugs;
- repeal a requirement that an MCO provide to enrollees all dosage forms of tobacco cessation products, if medically necessary;
- require an MCO to provide medically necessary habilitation services, at least in certain hospital settings for some services, to enrollees eligible under the federal Medicaid expansion; and
- repeal the list of specific benefits or services that an MCO is not required to provide and substitute a reference to a new chapter of COMAR.

Legal Issue

As discussed in the analysis of recent Medicaid proposed regulations (Department of Health and Mental Hygiene: Medical Care Programs: Maryland Medicaid Managed Care Program: Non-Capitated Covered Services: COMAR 10.09.70.01-.03), § 15-103(b) of the Health – General Article makes the Medicaid MCOs responsible for providing substance abuse services for enrollees. This section of law should be amended to comport with the regulatory action.

Statutory Authority and Legislative Intent

The department cites § 2-104 and Title 15, Subtitle 1 of the Health – General Article and §§ 15-112, 15-604, and 15-1008 of the Insurance 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. Title 15, Subtitle 1 governs the Medical Assistance Program (Program). More specifically, § 15-102 requires the department, subject to the limitations of the State budget, to provide preventive and home care services for indigent and medically indigent individuals and requires the Program to promote educational opportunities for recipients relating to health care and good health habits. Section 15-102.1(b)(10) requires the department, subject to the limitations of the State budget, to encourage the Program and Maryland’s health care regulatory system to work to cooperatively promote the development of an appropriate mix of health care providers, limit cost increases for the delivery of health care to Program recipients, and insure the delivery of quality health care to Program recipients. Section 15-102.3 makes certain provisions of the Insurance Article apply to MCOs in the same manner the provisions apply to insurance carriers. Section 15-103(a) specifies the services provided by the Program and groups that are eligible for the Program. Section 15-103(b) authorizes the Secretary to require Program recipients to enroll in MCOs and establishes requirements for the department and the MCOs relating to the managed care program.

Section 15-112 of the Insurance Article establishes requirements for insurance carrier provider panels and requires carriers to inform enrollees and prospective enrollees about the health care providers who participate on their provider panels. Section 15-605 requires carriers to submit an annual report, including the carrier’s loss ratio, to the Insurance Commissioner. The section also allows the Secretary, in consultation with the Commissioner, to adult capitation payments to an MCO if the loss ratio is less than 85%. Additionally, the section requires MCOs to submit certain financial reports to the Commissioner. Section 15-1008 establishes requirements for insurance carriers relating to retroactive denial of reimbursement.

Statutory authority for the Primary Adult Care Program under § 15-140 of the Health – General Article was repealed by Chapter 7 of the 2007 Special Session.

This statutory authority is correct and complete. The regulations comply with legislative intent.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations make numerous changes under the Maryland Medicaid program, including repealing a chapter relating to the Primary Adult Care Program, which terminated January 1, 2014. As the regulations predominately make administrative changes, clarify policy, and remove obsolete language, the department advises that the regulations have no impact on State or local governments. The Department of Legislative Service 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 Service concurs.

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