

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-316)**

Overview and Legal and Fiscal Impact

The proposed regulations establish a payment methodology for dental services performed in ambulatory surgical centers (ASC). The proposed regulations also update the reimbursement rates for ambulatory surgical center fees and updates references to federal and State law.

The proposed changes to the regulations present no potential legal issues of concern.

Medicaid expenditures will be impacted in fiscal 2015 due to establishment of a new rate for dental services provided in an ASC. Any such impact cannot be reliably estimated at this time but will likely be budget neutral or result in minimal savings.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Free-Standing Medicare-Certified Ambulatory Surgical Centers: COMAR 10.09.42.01-.06

Legal Analysis

Summary of Regulations

The proposed regulations alter or repeal certain definitions under COMAR 10.09.42, which regulates free-standing Medicare-certified ambulatory surgical centers.

In COMAR 10.09.42.01, subsection B(1), the definition of “ambulatory surgical center or ASC”, is repealed as the facilities under that definition would be included under the definition of “free-standing Ambulatory Surgical Center (ASC)” under subsection B(5). Definitions of “Dental Benefits Administrator (DBA)” and “dental services” are added as subsections B(2) and (3). References to federal law in the definition of “Medicare-certified facility” are updated in subsection B(9).

In COMAR 10.09.42.02 a reference to the Maryland Radiation Act is added as law that governs compliance with inspection and maintenance. An obsolete reference to COMAR 10.14.02 is repealed and replaced with a reference to COMAR 26.12.01 and .02, which regulate radiation management.

References to federal law are updated in COMAR 10.09.42.03, .04, and .05. Also, dental services that are pre-authorized are added as covered services under a new section D under Regulation .04.

Regulation .06 establishes the payment procedures for free-standing Medicare certified ambulatory surgical centers that provide a covered surgical procedure. A provision is added to section A indicating that services are covered in accordance with federal law (42 CFR § 416.166). Certain laboratory testing is added as a covered service under new subsection A(9). Under section B, the reimbursement rates are currently 98% of the 2007 Medicare approved rates. Those rates are updated to be 80% of the current Medicare approved rates. Sections C through D-1 are renumbered to be included under section B. A provision pertaining to payment for cancelled procedures is clarified. A new section C is added to Regulation .06 to provide reimbursement rates for dental services rendered in an ambulatory surgical center on or after October 1, 2014. The existing section G is repealed as obsolete. Under the existing section I, provisions are added clarifying the amount of coinsurance required for a Medicare crossover claim. A new provision is added under the existing section J prohibiting a provider from billing Medicaid for providing a copy of a recipient's medical record when requested by another provider on behalf of the recipient. Technical changes are also made to renumber the sections under Regulation .06.

Legal Issue

The proposed changes to the regulations present no potential legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-103, and 15-105 of the Health – General Article as legal authority for the regulations. Section 2-104(b) gives the Secretary of Health and Mental Hygiene authority to adopt rules and regulations to carry out the provisions of law with the jurisdiction of the Secretary. Section 15-103 establishes the Maryland Medical Assistance Program, and requires the Secretary to administer the program, including adopting regulations. Section 15-105(b) requires the department to adopt rules and regulations for the reimbursement of providers for services under the Medicaid program.

The statutory authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

Medicaid expenditures will be impacted in fiscal 2015 due to establishment of a new rate for dental services provided in an ASC. Any such impact cannot be reliably estimated at this time but will likely be budget neutral or result in minimal savings.

Agency Estimate of Projected Fiscal Impact

The regulations update payment procedures for ASCs participating in the Medicaid program and establish a new rate for dental services rendered in an ASC. As services are currently provided only in a hospital outpatient department (OPD) setting, the department

estimates a net savings to the Medicaid program. Specifically, the department advises that Medicaid expenditures to ASCs will increase by \$2,055,916 in fiscal 2015, while expenditures to OPDs (estimated at \$6,821,742) will be eliminated. The Department of Legislative Services disagrees. While the department may incur savings due to the lower rate paid to ASCs, services will continue to be provided in OPDs. Furthermore, utilization of dental services may increase as ASCs become a new option. The fiscal impact is more likely to be minimal or budget neutral.

Impact on Budget

Medicaid expenditures will be impacted in fiscal 2015 due to establishment of a new rate for dental services provided in an ASC. Any such impact cannot be reliably estimated at this time but will likely be budget neutral or result in minimal savings.

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.

Additional Information

In response to the 2013 *Joint Chairmen's Report*, the department submitted a response on pediatric restorative dental surgery and an analysis of rates for anesthesia services. One recommendation was to establish a facility rate to pay ASCs for dental cases in order to increase the number of sites where dentists can perform surgery and reduce pressure on hospitals. The response noted that the department would implement this recommendation in a budget neutral way by setting a lower ASC rate in order to offset an increase in utilization. The response further noted that most ASCs would need to purchase and install the necessary equipment for dental surgical procedures.

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