

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
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		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 6/26/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 75 01-.05

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

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Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.75 Maryland Medicaid Managed Care Program — Corrective Managed Care

Authority: Health-General Article, §15-102.1(b)(9) and 15-103, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to repeal in their entirety Regulations .01—.04 and adopt new Regulations .01—.05 under COMAR 10.09.75 Maryland Managed Care Program — Corrective Managed Care.

Statement of Purpose

The purpose of this action is to clarify the criteria and processes for the MCO's corrective managed care (CMC) programs and to require MCOs to implement a CMC program.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 27, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2016
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
Changes are to clarify policy and procedures.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
These regulations affect MCOs which are not small businesses.
- G. Small Business Worksheet:

Attached Document:

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10.09.75 Maryland Medicaid Managed Care Program — Corrective Managed Care

Authority: Health-General Article, §15-102.1(b)(9) and 15-103, Annotated Code of Maryland

.01 General.

A. An MCO shall establish a corrective managed care plan that, at minimum, provides for:

- (1) The identification of an enrollee that has abused MCO pharmacy benefits; and
- (2) The enrollment of an enrollee that has been determined to have abused MCO pharmacy benefits in the

MCO's corrective managed care plan.

B. Enrollee abuse exists when an enrollee:

- (1) Has engaged in behaviors identified in COMAR 10.09.24.14-1; or
- (2) Engages in Medicaid fraud as defined under COMAR 10.09.24.14.

.02 Corrective Managed Care Plan.

A. An MCO's corrective managed care plan:

- (1) Shall cover enrollee abuse of medical assistance pharmacy benefits; and
- (2) May cover enrollee abuse of non pharmacy medical assistance benefits.

B. For all benefit abuse covered by an MCO's corrective managed care plan, the plan shall:

- (1) Use the criteria as described in Regulation .01B of this regulation to determine if enrollees have abused benefits;
- (2) Provide for a medical review of the alleged abuse consistent with §C of this regulation;
- (3) Provide that an enrollee found to have abused benefits will be enrolled in the program for 24 months;
- (4) Provide that an enrollee who has completed a 24 month enrollment in the plan and is subsequently found to have abused MCO benefits shall be enrolled in the plan for an additional 36 months;
- (5) Provide for the MCO to select any participating provider in the MCO that meets the requirements of COMAR 10.09.66.05A to serve as the enrollee's primary care, specialty care, and pharmacy providers for enrollees in corrective managed care, as appropriate to the type of benefit the enrollee has been found to have abused;
- (6) Except for an emergency or pursuant to hospital inpatient treatment, require an enrollee to obtain prescribed drugs only from a single designated pharmacy provider, which may be any pharmacy or any single branch of a pharmacy chain that participates in the MCO and meets the requirements of COMAR 10.09.66.06B and .07C(2);
- (7) Provide enrollees determined to have abused benefits the ability to suggest primary care, specialty care, or pharmacy providers;
- (8) Require the MCO to accept the enrollee's suggestion referenced in §B(7) of this regulation unless the MCO determines that the recipient's choice of provider would not serve the enrollee's best interest in achieving appropriate use of the health care systems and benefits available through the MCO;
- (9) Provide an enrollee determined to have abused benefits 20 days to present additional documentation to explain the facts that serve as the basis for the MCO's determination of benefit abuse, consistent with §D of this regulation;
- (10) Provide for the designation of a new primary care, specialty care, or pharmacy provider if the enrollee moves out of the service area of the current primary care or pharmacy provider;
- (11) Provide for prompt reporting to the Department the name of any enrollee enrolled in the MCO's program, the duration of enrollment, or any change in the duration of enrollment; and
- (12) Be submitted to the Department for review and approval:
 - (a) Within 60 days of the effective date of this regulation; and
 - (b) Before the implementation of any modification.

C. The medical review required in §B(2) of this regulation shall:

- (1) Be performed by a medical reviewer who is a licensed health care professional;
- (2) Consider all information that is relevant and available to the MCO, including but not limited to MCO payment records and information secured from any interviews conducted; and
- (3) Where appropriate, consider records obtained from other sources, including:
 - (a) Providers of medical services;
 - (b) Statistical reports;
 - (c) Outside complaints;
 - (d) Referrals from other agencies; or
 - (e) Any other appropriate sources.

D. If an enrollee provides additional information pursuant to §B(9) of this regulation within 20 days:

- (1) The effective date of the enrollment provided in the notice shall be tolled pending the MCO's review of the additional information;
- (2) The MCO shall consider whether the additional information changes the MCO's determination regarding the appropriateness of the enrollee's enrollment in corrective managed care;
- (3) The MCO shall notify the enrollee of its decision whether the MCO is affirming or reversing its determination to enroll the enrollee in corrective managed care; and
- (4) If the MCO confirms its determination to enroll the enrollee in corrective managed care, the notice shall:
 - (a) Identify the effective date and duration of that enrollment; and
 - (b) Include an explanation of the enrollee's right to appeal the determination as described in Regulation .05 of this chapter.

E. An MCO's corrective managed care plan may include a process for re-considering, at any interval of time, a decision to enroll an enrollee in the MCO's corrective managed care plan, if the process entitles the enrollee to appeal the decision pursuant to Regulation .05 of this chapter at the same interval of time.

.03 Enrollee Notice.

The MCO shall provide an enrollee determined to have abused MCO benefits a written notice that includes the following:

- A. An explanation of the reason or reasons for the determination that the enrollee abused benefits;
- B. A statement that the enrollee has 20 days to provide:
 - (1) Additional information for the MCO to consider before enrollment will become effective; and
 - (2) The address where the additional information should be sent;

- C. If the enrollee does not provide additional information referenced in §B of this regulation, a statement that the enrollee will be enrolled in corrective managed care and the effective date and duration of that enrollment;*
- D. A statement that the enrollee may identify a preference for an assigned primary medical care provider, specialty care provider, or pharmacy; and*
- E. An explanation of the enrollee's right to appeal the MCO's determination as described in Regulation .05 of this chapter.*

.04 Effective Date of Enrollment.

- A. Except as provided in §B of this regulation, the effective date of enrollment shall be 20 days from the date of the notice described in Regulation .03A and B of this chapter, whichever is later.*
- B. If an enrollee determined to have abused benefits appeals the determination, the effective date of the enrollment shall be tolled pending the outcome of the appeal.*
- C. The duration of an enrollee's enrollment in a plan may not be altered because of changes in how the individual receives medical assistance, including but not limited to a change in the enrollee's MCO enrollment.*

.05 Enrollee Appeal.

- A. An enrollee shall have 20 days to appeal an MCO's determination of benefit abuse.*
- B. Except for the timeframe specified in §A of this regulation, an appeal shall be handled as specified in:
 - (1) COMAR 10.09.71.05; and*
 - (2) COMAR 10.09.72.05.**
- C. If the appeal results in a hearing, an MCO shall
 - (1) Attend the hearing; and*
 - (2) Provide justification for enrollment in the program.**

Van T. Mitchell

Secretary of Health and Mental Hygiene