

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 15-107)**

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**Overview and Legal and Fiscal Impact**

The regulations combine the Maryland Medicaid Telemedicine Program and the Maryland Medicaid Telemental Health Program under the same chapter, renamed as “Telehealth Services.”

The regulations present no 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: Telemedicine Services: COMAR 10.09.49.01-.12

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**Legal Analysis**

**Background**

Chapters 141 and 426 of 2014 specified that, to the extent authorized by federal law, coverage of and reimbursement for health care services delivered through telemedicine must apply to Medicaid and managed care organizations in the same manner they apply to health insurance carriers. Subject to the limitations of the State budget and to the extent authorized by federal law, the law authorized the Department of Health and Mental Hygiene to cover and reimburse for health care services that are delivered through store and forward technology or remote patient monitoring. The department may specify by regulation the types of health care providers eligible to receive reimbursement for health care services provided to Medicaid recipients.

Chapter 280 of 2013 required the Medicaid program to reimburse for telemedicine for a health care service that is medically necessary and is provided (1) for the treatment of cardiovascular disease or stroke; (2) in an emergency department setting; and (3) when an appropriate specialist is not available. Through regulations effective September 30, 2013 (COMAR 10.09.49.01 *et seq.*), Medicaid established two telemedicine pilot programs – the Cardiovascular Disease and Stroke Telemedicine Program (to implement Chapter 280) and the Rural Access Telemedicine Program. The programs were intended to improve (1) access to outpatient specialty care; (2) patient compliance with treatment plans, health outcomes through

timely disease detection, and treatment options; and (3) capacity and choice for outpatient ongoing treatment in underserved areas of the State.

Chapters 579 and 580 of 2012 required insurers, nonprofit health service plans, and health maintenance organizations to cover and reimburse for health care services appropriately delivered through “telemedicine.” Carriers may impose cost-sharing requirements for services delivered through telemedicine. Carriers may also undertake utilization review, including preauthorization, to determine the appropriateness of a health care service – whether delivered in person or through telemedicine – if the appropriateness of the service is determined in the same manner.

## **Summary of Regulations**

The regulations combine the Maryland Medicaid Telemedicine Program and the Maryland Medicaid Telemental Health Program under the same chapter, renamed as “Telehealth Services”. The existing Telemental Health Program regulations are under a separate chapter, (COMAR 10.21.30). According to the department, a future proposal will amend COMAR 10.21.30 to remove references to Medicaid-covered services and address only non-Medicaid populations and services.

The regulations replace the term “telemedicine” with “telehealth” to encompass both telemedicine and telemental health. “Telemedicine” is limited to somatic health services. Another change in definitions replaces the term “consulting provider” with “distant site provider.”

A new reimbursement regulation is added to the chapter. To receive reimbursement for telemedicine (i.e., somatic) services, the regulation requires providers to be actively enrolled with Maryland Medical Assistance. The regulation establishes two categories of fees that the Department must reimburse an approved telehealth provider, as applicable: an originating site transmission fee and, for both originating and distant site providers, a professional fee.

## **Legal Issue**

The regulations present no legal issue of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 2-104(b) of the Health – General Article and Chapter 280 of 2013 as authority for the regulations. Section 2-104(b) of the Health – General Article 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. As described under *Background* above, Chapter 280 of 2013 required the Medicaid program to reimburse for telemedicine for a health care service that is medically necessary and is provided (1) for the treatment of cardiovascular disease or stroke; (2) in an emergency department setting; and (3) when an appropriate specialist is not available.

The department also should have cited Chapters 141 and 426 of 2014 as authority for the regulations. As described under *Background* above, Chapters 141 and 426 broadened the scope

of Medicaid coverage for medically necessary health care services delivered via telemedicine. Notably, although the law authorized coverage for health care services delivered through store and forward technology or remote patient monitoring, the regulations continue to specifically exclude coverage for services delivered via store and forward technology and do not provide for coverage of services delivered via remote patient monitoring. The law only authorized, and did not require, coverage for these services. Chapter 280 of 2013 and Chapters 141 and 426 of 2014 enacted and amended § 15-105.2(b) of the Health-General Article, and this section is the proper citation for the regulations. The department has agreed to change the statutory citation.

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 combine the Maryland Telemedicine Program and the Maryland Medicaid Telemental Health Program under the same chapter, but they generally do not alter services or payment under the programs. Therefore, 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.

## **Contact Information**

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