

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	06/12/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/24/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 59 01-.09, .12 and .13

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

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6. Check applicable items:

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: April 3, 2015.

- Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes - No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by David Lapp, Assistant Attorney General, (telephone #410-767-5292) on May 8, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Van T. Mitchell

Title

Secretary

Telephone No.

410-767-6500

Date

June 12, 2015

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.59 Specialty Mental Health Services

Authority: Health-General Article, §§2-104(b), 2-105(b), 15-103, and 15-105,
Annotated Code of Maryland

Notice of Proposed Action

[]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—.04, .06—.09, .12, and .13, and repeal and adopt new Regulation .05 under COMAR 10.09.59 Specialty Mental Health Services.

Statement of Purpose

The purpose of this action is to clarify and update provider requirements and behavioral health services provided by specialty mental health providers within the Public Behavioral Health System.

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 August 24, 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:

The chapter clarifies behavioral health services delivered by specialty mental health providers. There are no changes to service delivery, reimbursement methodology, or enrollment levels that would result in an economic impact.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Clarifying services delivered by specialty mental health providers will not have an economic impact.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.59 Specialty Mental Health Services

Authority: Health-General Article, §§2-104(b), 2-105(b), 15-103, and 15-105, Annotated Code of Maryland

10.09.59 (4/3/2015)

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) "Administrative services organization (ASO)" means [an entity that manages the public behavioral health system on behalf of the Department] *the contactor procured by the State to provide the Department with administrative support services to operate the Maryland Public Behavioral Health System.*

(2) “Department” means the Department of Health and Mental Hygiene, [the State agency designated to administer the Maryland Medical Assistance Program under Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq] *as defined in COMAR 10.09.36.01, or its authorized agents acting on behalf of the Department.*

(3) (text unchanged)

(4) “*Medicaid Emergency Psychiatric Demonstration*” means the federal demonstration program established under Section 2707 of the Patient Protection and Affordable Care Act.

(5) “*Medical Assistance*” has the meaning stated in COMAR 10.09.24.02.

(6) “*Medically necessary*” has the meaning stated in COMAR 10.09.36.01.

[(4)] (7) (text unchanged)

[(5)] (8) “Office of Health Care Quality” means the office [under] *within* the Department [that oversees] responsible for the certification and inspection of programs.

[(6)] (9) (text unchanged)

[(7)] (10) “Program” [means the Maryland Medical Assistance Program, which administers comprehensive medical and health-related benefits to indigent and medically indigent individuals] *has the meaning stated in COMAR 10.09.36.01.*

[(8)] (11) (text unchanged)

[(9)] (12) “Public [behavioral health system] *Behavioral Health System*” [is] means the system that provides medically necessary behavioral health services, *including mental health and substance use disorder services*, for Medical Assistance participants and certain other uninsured individuals.

[(10)] (13) “Specialty mental health services” [means the services covered under this chapter] *means services for which a participant’s diagnosis and treatment provider meet the criteria specified in COMAR 10.09.70 and this chapter.*

.02 License Requirements.

To participate in the Program, a provider shall meet the [licensure] *license* requirements stated in COMAR 10.09.36.02.

.03 General Conditions for Provider Participation.

[In general, to] *To* participate in the Program, a provider shall:

A.—B. (text unchanged)

C. Maintain, *either manually or electronically*, adequate documentation of each contact with a participant as part of the medical record, which, at a minimum, [includes] *meets the following requirements*:

(1) [Date] *Includes the date* of service with service start and end times;

(2) [The] *Includes the* participant’s primary behavioral health complaint or reason for the visit;

(3) [A] *Includes a* brief description of the service provided, including progress notes; [and]

(4) [An] *Includes an* official e-Signature, or a legible signature, along with the printed or typed name of the individual providing care, with the appropriate title[.];

(5) *Is made available to the following as requested*:

(a) *The Department*;

(b) *The ASO*;

(c) *The Core Service Agency*;

(d) *The Office of Inspector General*; and

(e) *The Office of the Attorney General Medicaid Fraud Control Unit*; and

(6) *Is consistent with the medical records confidentiality and disclosure requirements of*:

(a) *Maryland Confidentiality of Medical Records Act, Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland*; and

(b) *Relevant federal statutes and regulations, including the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320D et seq., and implementing regulations at 45 CFR Parts 160 and 164.*

.04 Provider Requirements for Participation.

A. Individual Practitioner Providers. To participate in the Program as an individual practitioner of specialty mental health services, [a] *the* provider shall:

(1)—(2) (text unchanged)

B. Community Mental Health Program Providers. To participate *in the Program* as a community-based mental health program *provider*, [a] *the* provider shall be approved under COMAR 10.21.16 by the Office of Health Care Quality as:

(1) (text unchanged)

(2) A mobile treatment program in compliance with:

(a) (text unchanged)

(b) COMAR 10.21.19; *or*

(3) An outpatient mental health clinic in compliance with:

(a) (text unchanged)

(b) COMAR 10.21.20 [; *or*].

[(4) A therapeutic nursery in compliance with:

(a) COMAR 10.21.17; and

(b) COMAR 10.21.18.]

C. Federally Qualified Health Centers. To participate in the Program as a Federally Qualified Health Center, the provider shall be in compliance with COMAR 10.09.08.

[C.] *D. Other Licensed or Approved Mental Health Providers. To participate in the Program as a specialty mental health provider not defined in [§B] §§A—C of this regulation, a provider shall be approved pursuant to COMAR as a:*

(1)—(3) (text unchanged)

(4) Non-hospital-based [partial hospitalization] *mental health psychiatric day treatment* provider in compliance with:

(a)—(b) (text unchanged)

(5) 1915(i) [Community Options] *Intensive Behavioral Health Services* for Children, Youth, and Families Waiver provider in compliance with 10.09.89;

(6)—(8) (text unchanged)

.05 Eligibility.

A participant is eligible for specialty mental health services if:

A. The individual meets the Department's medical necessity criteria; and

B. The service is appropriate to the specific provider type or community-based mental health provider listed in Regulation .04 of this chapter.

.06 Covered Services.

The ASO shall reimburse the following specialty mental health services rendered to participants *when authorized by the ASO:*

A. Medically necessary specialty mental health services delivered by providers listed in Regulation .04 of this chapter [when these services are authorized by the ASO] *for which the primary diagnosis is listed in COMAR 10.09.70.02I or J;*

B. [Telemental health] *Telehealth* services as defined in COMAR [10.21.30 when these services are authorized by the ASO] *10.09.49; and*

C. Laboratory services listed as follows, when ordered by a specialty mental health provider, *with a behavioral health primary diagnosis listed in COMAR 10.09.70.02 I or J on the claim:*

[36415	Collection of Blood by Venipuncture
80002-89999	Lab Services
96372	Therapeutic Injection
0300	Laboratory — Clinical Diagnostic
0301	Laboratory — Clinical Diagnostic: Chemistry
0302	Laboratory — Clinical Diagnostic: Immunology
0304	Laboratory — Clinical Diagnostic: Non-routine dialysis
0305	Laboratory — Clinical Diagnostic: Hematology
0306	Laboratory — Clinical Diagnostic: Bacteriology/microbiology
0307	Laboratory — Clinical Diagnostic: Urology
0309	Laboratory — Clinical Diagnostic: Other laboratory
0310	Laboratory — Pathology
0311	Laboratory — Pathology: Cytology
0312	Laboratory — Pathology: Histology
0730	EKG/ECG general classification
0637	Self-Administered Drugs
00104	Anesthesia for ECT
90870	ECT Single Seizure with Monitoring]
<i>CPT Codes</i>	
36415	<i>Collection of Blood by Venipuncture</i>
96372	<i>Therapeutic Injection</i>

00104	<i>Anesthesia for ECT</i>
90870	<i>ECT Single Seizure with Monitoring</i>
80002—80299	<i>Lab Services</i>
80327—80357	<i>Lab Services</i>
80359—89999	<i>Lab Services</i>
<i>Revenue Codes</i>	
0300	<i>Laboratory — Clinical Diagnostic</i>
0301	<i>Laboratory — Clinical Diagnostic: Chemistry</i>
0302	<i>Laboratory — Clinical Diagnostic: Immunology</i>
0304	<i>Laboratory — Clinical Diagnostic: Non-routine dialysis</i>
0305	<i>Laboratory — Clinical Diagnostic: Hematology</i>
0306	<i>Laboratory — Clinical Diagnostic: Bacteriology/microbiology</i>
0307	<i>Laboratory — Clinical Diagnostic: Urology</i>
0309	<i>Laboratory — Clinical Diagnostic: Other laboratory</i>
0310	<i>Laboratory — Pathology</i>
0311	<i>Laboratory — Pathology: Cytology</i>
0312	<i>Laboratory — Pathology: Histology</i>
0730	<i>EKG/ECG general classification</i>
0637	<i>Self-Administered Drugs</i>
<i>HCPCS Codes</i>	
G0434	<i>Drug screen, other than chromatographic</i>
G0431	<i>Drug screen, qualitative</i>
G6040	<i>Alcohol; any specimen except breathe</i>
G6042	<i>Amphetamine or methamphetamine</i>
G6043	<i>Barbiturates, not otherwise specified</i>
G6031	<i>Benzodiazepines</i>
G6044	<i>Cocaine or metabolite</i>
G6053	<i>Methadone</i>
G6056	<i>Opiate(s), drug and metabolites, each procedure</i>

.07 Limitations.

The Program does not cover the following:

A.—C. (text unchanged)

D. [Non-emergency specialty] *Specialty* mental health services for participants in an institution for mental disease as defined in 42 CFR §435.1009 *unless the service is delivered through the Medicaid Emergency Psychiatric Demonstration*;

E. Specialty mental health visits solely for the purpose of:

(1) Prescribing medication; [or]

(2) (text unchanged)

(3) *Drug or supply pick-up*;

(4) *Collecting laboratory specimens*;

(5) *Interpreting laboratory tests or panels*; or

(6) *Administering injections, unless the following are documented in the participant's medical record:*

(a) *Medical necessity*; and

(b) *The participant's inability to take appropriate oral medications*;

F.—H. (text unchanged)

[I. Psychiatric rehabilitation program services other than those services that are specified in COMAR 10.21.21.05—.09 for adults and COMAR 10.21.29.05—.07 for minors;

- J. Mobile treatment program services other than those services that are specified in COMAR 10.21.19.05—.07;
- K. Outpatient mental health clinic services other than those services that are specified in COMAR 10.21.20.05—.09;]
- I. *Outpatient Mental Health Clinic services delivered to a participant with a primary diagnosis of substance use disorder, unless the claim reflects a secondary diagnosis of mental health;*
- [L.] J. An on-site psychiatric rehabilitation program visit by a [recipient] participant on the same day that the [recipient] participant receives medical day care services under COMAR 10.09.07;
- [M. Therapeutic nursery services other than those services that are specified in COMAR 10.21.18.05 and .06;
- N. Mental health case management services other than those services that are specified in COMAR 10.09.45.06 for adults and COMAR 10.09.90.11 for children and youth;
- O. Residential treatment center services other than those services that are specified in COMAR 10.09.29.04;
- P. Partial hospitalization services other than those services that are specified in COMAR 10.21.02.01;
- Q. 1915(i) Community Options for Children, Youth, and Families Waiver services other than those services that are specified in COMAR 10.09.89.09—.14;
- R. Therapeutic behavioral services other than those services that are specified in COMAR 10.09.34.03;]
- [S.] K. [Telemental health] *Telehealth* services other than those services that are specified in COMAR [10.21.30.09] 10.09.49;
- [T.] L. (text unchanged)
- [U.] M. Mental health services delivered by a primary care provider and reimbursed through Medicaid Fee for Service or the Maryland Medicaid Managed Care Program; [or]
- N. *Services delivered by Federally Qualified Health Centers other than those billed using the T-code, which may include the following, delivered by two separate but appropriately licensed providers:*
 - (1) *One T-code for mental health services per day; and*
 - (2) *One T-code for substance use disorder services per day;*
- O. *Supported employment services provided by a community-based psychiatric rehabilitation program, except in cases of clinic coordination;*
- P. *Residential crisis services;*
- Q. *Respite care services, other than those provided through the 1915(i) Intensive Behavioral Health Services program described in COMAR 10.09.89;*
- R. *Services provided to participants in a hospital inpatient setting, with the exception of services delivered by:*
 - (1) *Physicians; and*
 - (2) *Nurse Practitioners;*
- S. *Housing services;*
- T. *Services rendered but not appropriately documented; and*
- [V.] U. (text unchanged)

.08 Authorization Requirements.

- A. (text unchanged)
- [B. For services outlined in COMAR 10.21.25.05, the specialty mental health utilization review agent may authorize up to 12 visits per fiscal year.]
- [C.] B. The ASO shall authorize services that are:
 - (1)—(2) (text unchanged)
 - (3) Delivered in a manner consistent with [COMAR 10.21.17.03] *this chapter*.
- [D.] C. (text unchanged)
- [E.] D. Except as provided in Regulation [.07D] .08C of this chapter, no payment shall be rendered for services that have not been authorized.

.09 Payment Procedures.

- A. (text unchanged)
- B. *A provider shall deliver and document services in accordance with Department regulations in order to receive reimbursement.*
- [B.] C. Unless [otherwise stipulated] *the care is free to other patients*, a provider shall bill the Program its usual and customary charge to the general public [for similar services].
- [C.] D.—[D.] E. (text unchanged)
- [E.] F. A provider may not bill the Program for:
 - (1)—(2) (text unchanged)
 - (3) Professional services rendered by mail or telephone; *or*
 - [(4) Services which are provided at no charge to the general public, except as provided under Title V of the Social Security Act; or]
 - [(5)] (4) Services not authorized consistent with Regulation [.07E] .08 of this chapter.
- [F.] G.—[G.] H. (text unchanged)

.12 [Provider Complaints, Hearings, and Appeals.] *Appeal Procedures for Providers.*

Appeal procedures *for providers* are as set forth in COMAR 10.09.36.09.

.13 [Grievance Procedure and] Appeal Rights — Denial of Services.

[Grievance] *Appeal* procedures *for applicants and participants* are as set forth in COMAR 10.01.03 and 10.01.04.

VAN T. MITCHELL

Secretary of Health and Mental Hygiene