

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 15-259)**

Overview and Legal and Fiscal Impact

The regulation updates the timeframe for evaluating disposal of assets relating to applications for Medicaid (“look-back period”) to conform to federal law and to reflect the current policy and practice of the Department of Health and Mental Hygiene.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Medical Assistance Eligibility: COMAR 10.09.24.08-1

Legal Analysis

Background

An institutionalized individual applying for Medicaid must disclose all financial transactions that the individual was involved in for a set number of months prior to the date of application. This is referred to as the “look back period”. Certain transfers of assets during the look-back period can result in ineligibility for Medicaid coverage for a certain period of time.

Summary of Regulation

The regulation updates the timeframe for evaluating disposal of assets relating to applications for Medicaid (“look-back period”) to conform to federal law and to reflect the current policy and practice of the department. The regulation clarifies that the “look-back period” for evaluating disposals is 36 months for disposals earlier than February 6, 2006, and makes other conforming changes.

Legal Issues

The regulation presents no legal issues of concern. However, additional comments have been included Technical Corrections and Special Notes section below for the consideration of the Joint Committee on Administrative, Executive, and Legislative Review.

Statutory Authority and Legislative Intent

The department cites § 2-104(b) of the Health – General Article as statutory authority for the regulation. 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.

Although not cited by the department, §§ 15-103 and 15-105 of the Health – General Article provide statutory authority for the regulation. Section 15-103 establishes the Maryland Medical Assistance Program and requires the Secretary to administer the Medicaid program, including adopting regulations. Section 15-105(b) requires the department to adopt rules and regulations for the reimbursement of providers of services under the Medicaid program.

With the addition of §§ 15-103 and 15-105 of the Health – General Article, this authority is correct and complete. The regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

The regulation could be read to make the date of disposal the determinative factor as to whether there is a 36 or 60 month look back. This could lead to confusion as to whether any disposal in the past would trigger a look back. For example, if individual is both institutionalized and applies for Medicaid on July 1, 2015, but on January 1, 2005 made a less than fair market disposal, the regulation could be read to require a look back of 36 months from July 1, 2015 for a disposal that occurred in 2005. The federal standard only requires a look back of 60 months from July 1, 2015 for the individual in this example. The regulation could be read to require a look back of less than 60 months for a disposal that is not required to be examined under federal law.

While the regulation could be more clearly drafted, Maryland has administered the look-back period in conformity with federal law since the look-back period was expanded in 2006. The expectation is continued compliance, and therefore the regulation presents no legal issues of concern.

In addition, COMAR 10.09.24.08E and K make reference to a 30 month look-back period. The regulation does not include any amendments to conform COMAR 10.09.24.08E and K to the 60 month standard.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulation updates outdated language regarding the timeframe for evaluating disposal of assets relating to applications for Medicaid (“look-back period”). As the changes conform to current policy and practice, the department advises that the regulation has no impact on State or local governments. The Department of Legislative Services 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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Additional Comments

The federal Deficit Reduction Act of 2005 (DRA) lengthened the “look-back” period for assets transferred on or after February 8, 2006, from 36 months to 60 months. Thus, in determining eligibility for Medicaid, the department reviews any transfer of assets for less than fair market value that an applicant has made in the previous five years. A penalty (delay in eligibility of Medicaid) is imposed on any such transfer based on the amount of the transfer and the average monthly cost of care. DRA also altered the date when the penalty begins from the first day of the month in which the asset was transferred to the date on which the individual applies for Medicaid and is found eligible, is receiving institutional level of care, and is otherwise eligible, except for the transfer.

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