

MARYLAND REGISTER

## Proposed Action on Regulations

### Comparison to Federal Standards Submission and Response

**Name:** Michele Phinney  
**Agency:** Department of Health and Mental Hygiene  
**Address:** 201 W. Preston Street  
**State:** MD  
**Zip:** 21201  
**Phone:** 410-767-5623  
**Email:** michele.phinney@maryland.gov

In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

**COMAR Codification:** 10.09.24.08-1

**Corresponding Federal Standard:**

The Deficit Reduction Act of 2005, Section 6011(a); Public Law 109-71, amends section 1917(c)(1)(B)(i) of the Social Security Act.

**Discussion/Justification:**

The proposed action is not more restrictive or stringent than the corresponding federal standard because the proposal is consistent with current federal requirements.

### TO BE COMPLETED BY DBED

- Agree

-Disagree

**Comments:**

DBED does not have the subject matter expertise in this matter. However, DBED believes DHMH does and we trust their assertion that the regulation is not more stringent/restrictive than federal standards.

Name: Sandy Popp

Date: 9/24/2015

\_-Submit to Governor's Office  
**Governor's Office Response**

**Comments:**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b> 09/25/2015	<b>TO BE COMPLETE D BY DSD</b>  Date Filed with Division of State Documents  Document Number  Date of Publication in MD Register

**Title 10  
 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.24 Medical Assistance Eligibility**

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

**Notice of Proposed Action**

□

The Secretary of Health and Mental Hygiene proposes to amend Regulation .08-1 under COMAR 10.09.24 Medical Assistance Eligibility.

**Statement of Purpose**

The purpose of this action is to amend regulatory language regarding the time period for evaluation of disposals of assets (other than trusts) to make Regulation .08-1

**1. Desired date of publication in Maryland Register: 11/13/2015**

**2. COMAR Codification**

<b>Title</b>	<b>Subtitle</b>	<b>Chapter</b>	<b>Regulation</b>
10	09	24	08-1

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

<b>4. Name of Regulations Coordinator</b>	<b>Telephone Number</b>
Michele Phinney	410-767-5623

**Mailing Address**

201 W. Preston Street

<b>City</b>	<b>State</b>	<b>Zip Code</b>
Baltimore	MD	21201

**Email**  
michele.phinney@maryland.gov

**5. Name of Person to Call  
About this Document**  
Emma Calvet

**Telephone  
No.**  
410-767-  
0579

**Email Address**  
emma.calvet@maryland.gov

**6. Check applicable items:**

- New Regulations
- Amendments to Existing Regulations  
Date when existing text was downloaded  
from COMAR online: August 4, 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

consistent with current  
Medicaid eligibility policy  
and current federal  
requirements.

**Comparison to Federal  
Standards**

There is a corresponding  
federal standard to this  
proposed action, but the  
proposed action is not  
more restrictive or  
stringent.

**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

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 September 14, 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**

September 24, 2015

email to  
dhmh.regs@maryland.gov,  
or fax to 410-767-6483.

Comments will be accepted through December 14, 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:

These regulations have no economic impact because the proposed action is consistent with current

Medicaid eligibility 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.

The proposed regulations have no economic impact on small businesses since the amendments will be consistent with current policy.

G. Small Business Worksheet:

Attached Document:

---

## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### 10.09.24 Medical Assistance Eligibility

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

10.09.24.08-1 (8/4/15)

##### **.08-1 Disposal of Assets for Less Than Fair Market Value.**

A. (text unchanged)

B. Disposal of Assets.

(1) (text unchanged)

(2) Time Periods for Evaluating Disposals.

(a) For assets other than trusts, the time period for evaluating disposals is *the following*:

(i) *For disposals earlier than February 6, 2006, the 36-month period immediately before the date as of which the individual both is an institutionalized individual and has applied for Medical Assistance.*

(ii) *For disposals on or after February 6, 2006, the [36-month] 60-month period immediately before the date as of which the individual both is an institutionalized individual and has applied for Medical Assistance.*

(b) (text unchanged)

(3) The penalty period begins [on the] *with the later of*:

(a) *The first day of the month in which the asset was transferred; or [, if]*

(b) *The date on which the individual applies for Medical Assistance and is found eligible, is receiving institutional level of care, and is otherwise eligible, except for the transfer.*

(4) If the transfer occurs while the individual is in a penalty period for an earlier disposal, *the penalty period begins* on the first day of the first month following the end of the earlier penalty period.

[(4)] (5) (text unchanged)

[(5)] (6) *Asset Transfers For Less Than Average Monthly Cost of Care.*

(a)—(b) (text unchanged)

[(6)] (7) (text unchanged)

[(7)] (8) An institutionalized individual may not be determined ineligible for Medical Assistance under §B(1) of this regulation if the asset transferred was a home, and title to the home was transferred to:

(a) (text unchanged)

(b) The individual's child as defined under Regulation .02B of this chapter or who is blind or disabled as determined under [Regulation .05D and E] *Regulation .05-4* of this chapter;

(c) (text unchanged)

(d) A son or daughter of the individual other than the individual's child described under [§B(7)(b)] *§B(8)(b)* of this regulation, who:

(i)—(iii) (text unchanged)

[(8)] (9) An individual may not be determined ineligible for Medical Assistance by reason of the transfer of any asset, excluded or nonexcluded, if the asset was transferred under one of the following conditions:

(a)—(b) (text unchanged)

(c) The asset was transferred to, or to a trust established for the sole benefit of, the individual's son or daughter who is blind or disabled as defined under [Regulation .05D and E] *Regulation .05-4* of this chapter;

(d) The asset was transferred to a trust established for the sole benefit of a disabled individual, as defined under [Regulation .05E] *Regulation .05-4B* of this chapter, younger than 65 years old;

(e)—(g) (text unchanged)

[(9)] (10) (text unchanged)

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**