

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  
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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:** 10.09.36.03

**Corresponding Federal Standard:**

Section 6401(b) of the Affordable Care Act amended section 1902

**Discussion/Justification:**

The amendment updates language regarding fingerprint-based criminal background check to align with federal regulation.

**TO BE COMPLETED BY DBED**

- Agree

-Disagree

**Comments:**

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

Name: Sandy Popp

Date: 10/9/2015

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

**Comments:**

|  |                                       |   |
|--|---------------------------------------|---|
| <b>Transmittal Sheet</b><br><br><b>PROPOSED OR REPROPOSED</b><br><br><b>Actions on Regulations</b> | <b>Date Filed with AELR Committee</b> | <b>TO BE COMPLETED BY DSD</b>               |
|  | 10/09/2015                            | 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**

**10.09.36 General Medical Assistance Provider Participation Criteria**

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

**Notice of Proposed Action**

[]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .03 under COMAR 10.09.36 General Medical Assistance Provider Participation Criteria.

**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              | 36             | 03                |

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**  
Michele Phinney

**Telephone Number**  
410-767-5623

**Mailing Address**

201 W. Preston Street

**Statement of Purpose**

The purpose of this action is to update provider participation criteria to require high-risk providers (newly enrolling and re-enrolling DMS/ DME and Home Health providers) to undergo a fingerprint-based criminal background check prior to enrollment, a requisite of the enhanced provider screening requirements under the Affordable Care Act. This language aligns with recent federal policy

**City** Baltimore **State** MD **Zip Code** 21201

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**5. Name of Person to Call About this Document** **Telephone No.**  
Emma Calvet 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: June 23, 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

clarification on "Fingerprint-Based Criminal Background Checks."

**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**

**I. Summary of Economic Impact.**

Fingerprint-based criminal background checks will only be required of management and any person with 5 percent or greater ownership in the provider or entity. Affected providers include newly enrolling DME and Home Health Agency providers categorized as high-risk by the Affordable Care Act. The Department estimates a majority of these providers will already have had a background check upon enrolling with Medicare and will therefore not require an additional background check to enroll with Maryland Medicaid. Base on this assumption, many providers will not incur any additional costs. However, Due to this small fluctuating number, the Department believes the impact is indeterminate at this time.

Revenue  
(R+/R-)

**II. Types of Economic Impact.** Expenditure (E+/E-) Magnitude

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A. On issuing agency: NONE

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 September 29, 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**

October 9, 2015

B. On other State agencies: NONE

C. On local government: NONE

Benefit (+) Magnitude  
 Cost (-)

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D. On regulated industries or trade groups: (-) Indeterminable

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

D. Due to this small fluctuating number of providers, the Department believes the impact is indeterminate at this time.

**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](mailto: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:

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 amendment updates language regarding fingerprint-based criminal background checks to align with federal regulation. The Department estimates that a majority of these providers have already completed this requirement for Medicare. Therefore, this change will not have an impact on small businesses.

G. Small Business Worksheet:

Attached Document:

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## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 Medical Care Programs

#### 10.09.36 General Medical Assistance Provider Participation Criteria

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

*10.09.36.03 (6/23/2015)*

**.03 Conditions for Participation.**

A. To participate in the Program, the provider shall comply with the following criteria:

(1)—(3) (text unchanged)

(4) Allow the Department or its agents to conduct unannounced on-site inspections of any and all provider locations[.];

*(5) Allow the Department or its agents to require all providers to consent to criminal background checks, including fingerprinting;*

[(5)] (6)—[(18)] (19) (text unchanged)

B.—E. (text unchanged)

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**