

MARYLAND REGISTER

Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

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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: 10.09.01.06
COMAR Codification: 10.09.02.07
COMAR Codification: 10.09.04.07
COMAR Codification: 10.09.05.07
COMAR Codification: 10.09.08.07 and .10
COMAR Codification: 10.09.09.07
COMAR Codification: 10.09.12.07
COMAR Codification: 10.09.14.07
COMAR Codification: 10.09.15.07
COMAR Codification: 10.09.17.06
COMAR Codification: 10.09.18.07
COMAR Codification: 10.09.21.07
COMAR Codification: 10.09.22.07
COMAR Codification: 10.09.23.05
COMAR Codification: 10.09.27.06
COMAR Codification: 10.09.29.07
COMAR Codification: 10.09.34.04
COMAR Codification: 10.09.36.01 and .03
COMAR Codification: 10.09.39.06
COMAR Codification: 10.09.42.06
COMAR Codification: 10.09.51.07
COMAR Codification: 10.09.52.06
COMAR Codification: 10.09.54.22

COMAR Codification: 10.09.77.06
COMAR Codification: 10.09.81.40 and .41
COMAR Codification: 10.09.82.06
COMAR Codification: 10.09.87.07
COMAR Codification: 10.09.88.07
COMAR Codification: 10.09.89.15

Corresponding Federal Standard:

Departmental Appeals Board (DAB), in Decision No. 1924 (2004), reconsidered in Ruling 2005-1 (2005)

Discussion/Justification:

The amendments update language regarding free care policy to align with federal regulation.

TO BE COMPLETED BY DBED

-Agree
-Disagree

Comments:

Commerce does not have the subject matter expertise in this area. However, we believe the Department of Health and Mental Hygiene does and we trust the assertion that the regulation is not more restrictive/stringent than corresponding federal regulations.

Name: Jennifer Cox

Date: 3/9/2016

-Submit to Governor's Office

Governor's Office Response

Comments:

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/10/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/15/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 01 06

10	09	02	07
10	09	04	07
10	09	05	07
10	09	08	07 and .10
10	09	09	07
10	09	12	07
10	09	14	07
10	09	15	07
10	09	17	06
10	09	18	07
10	09	21	07
10	09	22	07
10	09	23	05
10	09	27	06
10	09	29	07
10	09	34	04
10	09	36	01 and .03
10	09	39	06
10	09	42	06
10	09	51	07
10	09	52	06
10	09	54	22
10	09	77	06
10	09	81	40 and .41
10	09	82	06
10	09	87	07
10	09	88	07
10	09	89	15

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator

Michele Phinney

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approval is on file at this agency.

Name of Authorized Officer

Van T. Mitchell

Title

Secretary

Telephone No.

410-767-6500

Date

March 8, 2016

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.01 Nurse Practitioner Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.02 Physicians' Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.04 Home Health Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.05 Dental Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.08 Freestanding Clinics

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.09 Medical Laboratories

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.12 Disposable Medical Supplies and Durable Medical Equipment

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.14 Vision Care Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.15 Podiatry Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.17 Physical Therapy Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.18 Oxygen and Related Respiratory Equipment Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.21 Nurse Midwife Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.22 Free-Standing Dialysis Facility Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.23 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.27 Home Care for Disabled Children Under a Model Waiver

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.29 Residential Treatment Center Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.34 Therapeutic Behavioral Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.36 General Medical Assistance Provider Participation Criteria

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.39 Nurse Anesthetist Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.42 Free-Standing Medicare-Certified Ambulatory Surgical Centers

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.51 Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Audiology Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.52 Service Coordination for Children with Disabilities

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.54 Home and Community-Based Options Waiver

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.77 Urgent Care Centers

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.81 Increased Community Services (ICS) Program

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.82 Provider-Based Outpatient Oncology Facilities

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.87 Free-Standing Independent Diagnostic Testing Facilities

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.88 Portable X-ray Providers

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.89 1915(i) Intensive Behavioral Health Services for Children, Youth, and Families

Authority: See proposal.

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulation .06 under COMAR 10.09.01 Nurse Practitioner Services;
- (2) Regulation .07 under COMAR 10.09.02 Physicians' Services;
- (3) Regulation .07 under COMAR 10.09.04 Home Health Services;
- (4) Regulation .07 under COMAR 10.09.05 Dental Services;
- (5) Regulations .07 and .10 under COMAR 10.09.08 Freestanding Clinics;
- (6) Regulation .07 under COMAR 10.09.09 Medical Laboratories;
- (7) Regulation .07 under COMAR 10.09.12 Disposable Medical Supplies and Durable Medical Equipment;
- (8) Regulation .07 under COMAR 10.09.14 Vision Care Services;
- (9) Regulation .07 under COMAR 10.09.15 Podiatry Services;
- (10) Regulation .06 under COMAR 10.09.17 Physical Therapy Services;
- (11) Regulation .07 under COMAR 10.09.18 Oxygen and Related Respiratory Equipment Services;
- (12) Regulation .07 under COMAR 10.09.21 Nurse Midwife Services;
- (13) Regulation .07 under COMAR 10.09.22 Free-Standing Dialysis Facility Services;
- (14) Regulation .05 under COMAR 10.09.23 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services;
- (15) Regulation .06 under COMAR 10.09.27 Home Care for Disabled Children Under a Model Waiver;
- (16) Regulation .07 under COMAR 10.09.29 Residential Treatment Center Services;
- (17) Regulation .04 under COMAR 10.09.34 Therapeutic Behavioral Services;
- (18) Regulations .01 and .03 under COMAR 10.09.36 General Medical Assistance Provider Participation Criteria;
- (19) Regulation .06 under COMAR 10.09.39 Nurse Anesthetist Services;
- (20) Regulation .06 under COMAR 10.09.42 Free-Standing Medicare-Certified Ambulatory Surgical Centers;
- (21) Regulation .07 under COMAR 10.09.51 Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Audiology Services;
- (22) Regulation .06 under COMAR 10.09.52 Service Coordination for Children with Disabilities;
- (23) Regulation .22 under COMAR 10.09.54 Home and Community-Based Options Waiver;

- (24) Regulation .06 under COMAR 10.09.77 Urgent Care Centers;
- (25) Regulations .40 and .41 under COMAR 10.09.81 Increased Community Services (ICS) Program;
- (26) Regulation .06 under COMAR 10.09.82 Provider-Based Outpatient Oncology Facilities;
- (27) Regulation .07 under COMAR 10.09.87 Free-Standing Independent Diagnostic Testing Facilities;
- (28) Regulation .07 under COMAR 10.09.88 Portable X-ray Providers; and
- (29) Regulation .15 under COMAR 10.09.89 1915(i) Intensive Behavioral Health Services for Children, Youth, and Families.

Statement of Purpose

The purpose of this action is to update language regarding the previous limitation prohibiting providers from billing Medicaid for services provided free of charge to other patients. This language aligns with a recent federal policy clarification on “Free Care Policy.”

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.

This amendment will allow DHMH to reimburse providers for services given at no charge to the general public. Previously, these services were not reimbursable.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-) Magnitude
A. On issuing agency:	(E+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
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.)

A. The fiscal impact is indeterminable, but the Department believes it will be minimal since few providers deliver free services.

D. See A.

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 May 16, 2016. 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?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:
General and federal mostly.

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 free care to align with federal regulation. DHMH will now reimburse providers for services given at no charge to the general public; these services were previously not reimbursed. The Department is not able to determine the exact fiscal impact, but believes it will be minimal since few providers deliver free services.

G. Small Business Worksheet:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.01 Nurse Practitioner Services

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

10.09.01.06 (12/01/15)

.06 Payment Procedures.

A.—B. (text unchanged)

C. [Certified nurse practitioners] *The provider* shall charge the Program [their usual and] *the provider's* customary charge to the general public for similar services and charge [their] *the provider's* acquisition cost for injectable drugs or dispensed medical supplies. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §D of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D. [The Department shall pay for applicable covered services the lower of the provider's customary fees or the maximum rates according to COMAR 10.09.02.07.] *The provider shall be paid the lesser of:*

(1) *The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid; or*

(2) *The maximum rates according to COMAR 10.09.02.07.*

E.—F. (text unchanged)

G. The provider may not bill the Program for:

(1) (text unchanged)

(2) Broken or missed appointments; or

(3) Professional services rendered by mail or telephone[; and].

[(4) Services which are provided to the general public at no charge.]

H.—K. (text unchanged)

10.09.02 Physicians' Services

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

10.09.02.07(12/01/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. [Physicians] The Provider shall charge the Program [their usual and] *the provider's* customary charge to the general public for similar services, except for injectable drugs, the provision of diagnostic or therapeutic radiopharmaceuticals, and dispensed medical supplies, in which case, [physicians] *the provider* shall charge the Program [their] *the provider's* acquisition cost. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §D of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D. (text unchanged)

E. The Department will pay for covered services at the [lower] *lesser* of:

(1) Physician's customary charge or acquisition cost *unless the service is free to individuals not covered by Medicaid; or*

(2) The Department's fee schedule.

F.—H. (text unchanged)

I. The provider may not bill the Department or the recipient 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; and]

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

J.—Q. (text unchanged)

10.09.04 Home Health Services

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

10.09.04.07(12/01/15)

.07 Payment Procedures.

A.—C. (text unchanged)

D. Payment Rates.

(1) [For services rendered on or after October 1, 2000, payments for home health services shall be paid at the lower of the provider's customary charge to the general public or the Department's fee schedule.] *The provider shall be paid the lesser of:*

(a) *The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid; or*

(b) *The rate in accordance with the Department's fee schedule.*

[(2) The Department may not pay for services rendered at no charge to the general public.]

[(3)] (2) (text unchanged)

[(4)] (3) The Department shall pay home health providers for medical and other supplies which are used during a covered home health visit as part of the treatment ordered by the recipient's attending physician at a rate that is the lesser of the:

(a) Provider's customary charge to the general public *unless the service is free to individuals not covered by Medicaid; or*

(b) (text unchanged)

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

E.—H. (text unchanged)

10.09.05 Dental Services

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

10.09.05.07(12/02/15)

.07 Payment Procedures.

A.—C. (text unchanged)

D. [A provider shall bill usual and customary charges which do not exceed that which is normally charged to the general public for similar services.] *The provider shall charge the Program the provider's customary charge to the general public for similar services. If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §E of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

E. (text unchanged)

F. [The Department shall pay for covered services at the lower of the] *The provider shall be paid the lesser of:*

(1) [Provider's] *The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid; or*

(2) *The rate in accordance with the Department's fee schedule.*

G. The provider may not bill the Department for:

(1) (text unchanged)

(2) Broken or missed appointments; or

(3) Professional services rendered by mail or telephone[; or].

[(4) Services which are provided at no charge to the general public.]

H.—N. (text unchanged)

10.09.08 Freestanding Clinics

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

10.09.08.07 (6/25/15)

.07 Freestanding Clinic Reimbursement Methodology.

A. Reimbursement for Family Planning Clinics. The Department shall pay the family planning clinic the [lower] *lesser* of the provider's [usual and] customary charge or the provider's acquisition cost, but no more than the maximum reimbursement allowed for similar procedures or services required in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, which is incorporated by reference in COMAR 10.09.02.07. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with the Provider Fee Manual; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

B. Reimbursement for Abortion Clinics. For dates of service on or after April 1, 2015, the Department shall pay the abortion [clinics] *clinic* the [lower] *lesser* of the provider's [usual and] customary charge, but no more than the

maximum reimbursement allowed for similar procedures or services required in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, which is incorporated by reference in COMAR 10.09.02.07. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with the Provider Fee Manual; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

C. (text unchanged)

D. The Department shall pay all other freestanding clinics at the [lower] *lesser* of the provider's [usual and] customary charge, or the provider's acquisition cost, but no more than the maximum reimbursement allowed for similar procedures or services required in the Maryland Medical Assistance Program Physicians' Services Provider Fee Manual, which is incorporated by reference in COMAR 10.09.02.07. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with the Provider Fee Manual; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

10.09.08.10 (12/10/15)

.10 Payment Procedures.

A.—B. (text unchanged)

C. [Unless the Program provides otherwise, a] *The provider shall bill the Program the provider's [usual and] customary charge to the general public for similar services. If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with the Provider Fee Manual; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D.—E. (text unchanged)

F. The provider may not bill the Program for:

(1)—(3) (text unchanged)

[(4) Services which are provided at no charge to the general public;]

[(5)] (4)—[(7)] (6) (text unchanged)

G.—I. (text unchanged)

10.09.09 Medical Laboratories

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

10.09.09.07 (12/26/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. [Medical laboratory providers] *Unless the service is free to individuals not covered by Medicaid, the provider shall charge the Program the [amount that is the lower of the following] lesser of:*

(1) [Provider's lowest] *The provider's customary charge to the general public; or*

(2) [Provider's lowest] *The provider's customary charge to other third-party payers.*

D.—G. (text unchanged)

H. The provider may not bill the Department for:

(1) (text unchanged)

(2) Broken or missed appointments; *or*

[(3) Services which are normally provided at no charge; and]

[(4)] (3) Services listed in Regulation .05 of this chapter.

I.—P. (text unchanged)

10.09.12 Disposable Medical Supplies and Durable Medical Equipment

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-129, Annotated Code of Maryland

10.09.12.07(1/26/15)

.07 Payment Procedures.

A. (text unchanged)

B. The provider's billed charges to the Program may not exceed the provider's customary charge. *If the item is free to individuals not covered by Medicaid:*

(1) *The provider:*

- (a) *May charge the Program; and*
- (b) *Shall be reimbursed in accordance with the provisions of this regulation; and*
- (2) *The provider's reimbursement is not limited to the provider's customary charge.*

C.—E. (text unchanged)

F. The Department shall reimburse providers for the purchase of covered services at the [lowest] *lesser* of the provider's customary charge *unless the service is free to individual not covered by Medicaid* or:

- (1)—(2) (text unchanged)

G.—H. (text unchanged)

I. The Department shall pay for repairs to purchased durable medical equipment according to the following:

- (1) (text unchanged)

(2) Labor costs [which] shall be billed in quarter hour increments using the appropriate procedure code and *shall* be reimbursed the lesser of:

(a) The supplier's [usual and] customary charge *unless the service is free to individual not covered by Medicaid; or*

- (b) (text unchanged)

J.—S. (text unchanged)

T. The provider may not bill the Department for:

- (1)—(2) (text unchanged)

(3) Professional services rendered by mail or telephone; *or*

[(4) Services which are provided to the general public at no charge;]

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

U. The methodology in §§F and G of this regulation shall be used to establish a list of approved items with the corresponding procedure code, maximum allowable reimbursement amount, useful life expectancy, and maximum number allowed. This list shall be made available to the providers for ease of administration of the Program. When the approved list of items contains a price for a procedure code, the Department shall reimburse providers the lesser of the price listed in the approved list or the provider's customary charge *unless the service is free to individuals not covered by Medicaid*.

V.—Y. (text unchanged)

10.09.14 Vision Care Services

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

10.09.14.07(12/02/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. [Providers] *The provider* shall charge the Program [their usual and] *the provider's* customary charge to the general public for similar professional services. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §F of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D. [Providers] *The provider* shall charge acquisition cost for eyeglass frames, eyeglass lenses, contact lenses, and other optical aids.

E. (text unchanged)

F. The Department will pay professional fees for covered services at the [lower] *lesser* of:

(1) The provider's customary charge to the general public *unless the service is free to individuals not covered by Medicaid; or*

- (2) (text unchanged)

G.—I. (text unchanged)

J. The provider may not bill the Department for:

- (1)—(2) (text unchanged)

(3) Broken or missed appointments; *or*

[(4) Services which are provided at no charge to the general public; and]

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

K.—N. (text unchanged)

10.09.15 Podiatry Services

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

10.09.15.07(12/02/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. [Podiatrists] *The provider* shall bill [their usual and] *the provider's* customary fees, but [they] may not bill a fee in excess of that charged the general public for similar services, except for injectable drugs and dispensed medical supplies, in which case [podiatrists] *the provider* shall charge the Program the [podiatrists'] *provider's* acquisition cost. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §D of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D. (text unchanged)

E. The Department will pay for covered services the lower of the following:

(1) Podiatrist's customary charge;

(2) Department's fee schedule.]

[F.] E.—[G.] F. (text unchanged)

[H.] G. The provider may not bill the Department or the recipient for:

(1)—(3) (text unchanged)

[(4) Services which are provided at no charge to the general public;]

[(5)] (4) Laboratory or X-ray services not performed by the provider or under the direct supervision of the provider; [and] *or*

[(6)] (5) (text unchanged)

[I.] H.—[K.] J. (text unchanged)

10.09.17 Physical Therapy Services

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

10.09.17.06 (12/02/15)

.06 Payment Procedures.

A.—C. (text unchanged)

D. A provider shall bill the Program [his usual and] *the provider's* customary charge. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with the rate provisions of §E of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

E. (text unchanged)

F. The Department will pay for covered services, the [lower] *lesser* of:

(1) The provider's customary charge to the general public *unless the service is free to individuals not covered by Medicaid; or*

(2) (text unchanged)

G.—H. (text unchanged)

I. The provider may not bill the Department for:

(1) (text unchanged)

(2) Completion of forms and reports; *or*

(3) Broken or missed appointments[.];

[(4) Services which are provided at no charge to the general public.]

J.—K. (text unchanged)

10.09.18 Oxygen and Related Respiratory Equipment Services

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-129, Annotated Code of Maryland

10.09.18.07(11/17/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. The provider shall charge the Program [his usual and] *the provider's* customary charge to the general public for similar items. *If the item is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §D of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D. (text unchanged)

E. The Department shall pay for repairs to purchased oxygen and respiratory equipment in accordance with the following:

(1) (text unchanged)

(2) Reasonable charges for labor, not to exceed the [usual and] customary charges for similar services in the provider's area *unless the service is free to individuals not covered by Medicaid*; or

(3) (text unchanged)

F.—L. (text unchanged)

M. [Providers] *The provider* may not bill the Program for:

(1) (text unchanged)

(2) Completion of forms or reports; *or*

(3) Broken or missed appointments[; and].

[(4) Services which are provided at no charge to the general public.]

N.—P. (text unchanged)

10.09.21 Nurse Midwife Services

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

10.09.21.07(12/02/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. [Nurse midwives] *The provider* shall charge the Program [their usual and] *the provider's* customary [charges] *charge* to the general public for similar services and charge [their] *the provider's* acquisition cost for injectable drugs or dispensed medical supplies. *If the service is free to individuals not covered by Medicaid*:

(1) *The provider*:

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §D of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D.—H. (text unchanged)

I. The provider may not bill the Program for:

(1) (text unchanged)

(2) Broken or missed appointments; *or*

(3) Professional services rendered by mail or telephone[; and].

[(4) Services which are provided to the general public at no charge.]

J.—L. (text unchanged)

10.09.22 Free-Standing Dialysis Facility Services

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

10.09.22.07(1/26/15)

.07 Payment Procedures.

A.—F. (text unchanged)

G. The 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; and]

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

H.—J. (text unchanged)

10.09.23 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services

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

10.09.23.05 (10/02/15)

.05 Limitations.

A.—D. (text unchanged)

E. [Providers] *The provider* covered by this chapter may not bill the Program for:

(1) Services that are:

(a)—(d) (text unchanged)

[(e) Provided at no charge to the general public;]

[(f)] (e)—[(h)] (g) (text unchanged)

(2)—(6) (text unchanged)

10.09.27 Home Care for Disabled Children Under a Model Waiver

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

10.09.27.06 (1/26/15)

.06 Payment Procedures.

A. Request for Payment.

(1)—(2) (text unchanged)

(3) [Nursing providers] *The nursing provider* shall bill the Program [their usual and] *the provider's* customary charge to the general public.

(4) (text unchanged)

(5) [Principal physician providers] *The principal physician provider* shall bill the Program [their usual and] *the provider's* customary charge to the general public.

(6) [Home health aide and certified nursing assistant providers] *The home health aide and certified nursing assistant provider* shall bill the Program [their usual and] *the provider's* customary charge to the general public.

(7) (text unchanged)

(8) *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with §C of this regulation; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

B. (text unchanged)

C. Payments.

(1)—(2) (text unchanged)

(3) Payments for nursing services shall be made:

(a) (text unchanged)

(b) [According to the fee schedule for nursing services provided under COMAR 10.09.53, or the provider's customary charge to the general public, whichever is lower.] *At the lesser of:*

(i) *The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid; or*

(ii) *The fee schedule for nursing services provided under COMAR 10.09.53.*

(4) Payments for participation by the principal physician in the plan of care meetings shall be:

(a)—(b) (text unchanged)

(c) [The lower of the provider's customary charge to the general public or the Department's fee schedule.] *At the lesser of:*

(i) *The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid; or*

(ii) *The Department's fee schedule.*

(5) Payments for home health aide and certified nursing assistant services shall be:

(a)—(b) (text unchanged)

(c) [The lower of the provider's customary charge to the general public or the Department's fee schedule.] *At the lesser of:*

(i) *The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid; or*

(ii) *The Department's fee schedule.*

(6) (text unchanged)

(7) Payments for medical day care services may not exceed the lesser of the:

(a) (text unchanged)

(b) Provider's customary charge to the general public *unless the service is free to individuals not covered by Medicaid.*

D. (text unchanged)

10.09.29 Residential Treatment Center Services

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

10.09.29.07 (12/02/15)

.07 Payment Procedures.

A. Reimbursement Principles.

(1) (text unchanged)

(2) The Department will pay the residential treatment center the [lower] *lesser* of the provider's [usual and] customary charge or the provider's per diem costs for covered services according to the principles established under Title XVIII of the Social Security Act, as required in 42 CFR 413, or on the basis of charges not to exceed \$270 per day. The average increase in the Department's reimbursement to the provider per inpatient day for each fiscal year over the cost-settled rate for the previous fiscal year may not exceed the rate of increase of the Hospital Wage and Price Index plus 1 percentage point, described in 42 CFR §413.40. The target rate percentage increase for each calendar year will equal the prospectively estimated increase in the Hospital Wage and Price Index (market basket index) for each calendar year, plus 1 percentage point. Since the cost reporting period spans portions of 2 calendar years, the Program

shall calculate an appropriate prorated percentage rate based on the published calendar year percentage rates. *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with the provisions of this regulation; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

[(3) For days occurring on or after November 1, 1995, the Department shall pay the residential treatment center, except after October 1, 2009 to an in-State children's residential treatment center, as described in §A(3) of this regulation, the lesser of:

(a) The provider's usual and customary charge;

(b) The provider's per diem costs for covered services established in accordance with Medicare principles of reasonable cost reimbursement as described in 42 CFR 413, unless otherwise specified in this chapter; or

(c) \$300 per day.]

[(4)] (3) An in-State children's residential treatment center shall be reimbursed the lesser of:

(a) The provider's [usual and] customary charge *to the general public unless the service is free to individuals not covered by Medicaid;*

(b)—(c) (text unchanged)

[(5)] (4)—[(7)] (6) (text unchanged)

B.—E. (text unchanged)

F. The provider may not bill the Department for:

(1) (text unchanged)

(2) Broken or missed appointments; *or*

(3) Professional services rendered by mail or telephone[;].

[(4) Services which are provided at no charge to the general public.]

G.—I. (text unchanged)

10.09.34 Therapeutic Behavioral Services

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

10.09.34.04 (1/26/15)

.04 Limitations.

A.—C. (text unchanged)

D. [Therapeutic] *A therapeutic behavioral service [providers] provider may not bill the Program for:*

(1) Services that are:

(a)—(g) (text unchanged)

[(h) Provided at no charge to the general public;]

[(i)] (h)—[(k)] (j) (text unchanged)

(2)—(7) (text unchanged)

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

10.09.36.01 (3/01/16)

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(3) (text unchanged)

(4) *"Customary charge" means the uniform amount that the provider charges in the majority of cases for a specific item or service, excluding token charges for charity patients and substandard charges for welfare and other low income patients.*

[(4)] (5)—[(16)] (17) (text unchanged)

10.09.36.03 (3/03/16)

.03 Conditions for Participation.

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

(1)—(6) (text unchanged)

(7) *Charge the Program the provider's customary charge to the general public for similar items or services. If the item or service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with the Department's rate provisions; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

[(7)] (8)—[(18)] (19) (text unchanged)

B.—E. (text unchanged)

10.09.39 Nurse Anesthetist Services

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

10.09.39.06 (12/03/15)

.06 Payment Procedures.

A.—B. (text unchanged)

C. [Providers] *The provider* shall charge the Program [their usual and] *the provider's* customary charge to the general public for similar services. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with the rate provisions in §D of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D. The Department will pay for applicable covered services the [lower of the provider's customary fees or the maximum rates paid to anesthesiologists according to COMAR 10.09.02.07.] *lesser of:*

(1) *The provider's customary fees unless the service is free to individuals not covered by Medicaid; or*

(2) *The maximum rates paid to anesthesiologists according to COMAR 10.09.02.07.*

E.—F. (text unchanged)

G. The provider may not bill the Program for:

(1) (text unchanged)

(2) Broken or missed appointments; *or*

(3) Professional services rendered by mail or telephone[; and].

[(4) Services which are provided to the general public at no charge.]

H.—J. (text unchanged)

10.09.42 Free-Standing Medicare-Certified Ambulatory Surgical Centers

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

10.09.42.06 (6/24/15)

.06 Payment Procedures.

A.—G. (text unchanged)

H. The 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; and]

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

I.—K. (text unchanged)

10.09.51 Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Audiology Services

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

10.09.51.07 (12/03/15)

.07 Payment Procedures.

A.—B. (text unchanged)

C. Audiologists, audiological centers, and hearing aid dispensers shall charge the Program [usual and] customary charges, not exceeding those charged to the general public for similar professional services. *If the service is free to individuals not covered by Medicaid:*

(1) *The provider:*

(a) *May charge the Program; and*

(b) *Shall be reimbursed in accordance with §B of this regulation; and*

(2) *The provider's reimbursement is not limited to the provider's customary charge.*

D.—F. (text unchanged)

G. The provider may not bill the Department for:

(1) (text unchanged)

(2) Broken or missed appointments; *or*

(3) Professional services rendered by mail or telephone[; and].

[(4) Services provided at no charge to the general public.]

H.—J. (text unchanged)

K. The Program shall reimburse for covered services at the [lower] *lesser of:*

(1) The provider's [usual and] customary charge to the general public *unless the service is free to individuals not covered by Medicaid*; or

(2)—(3) (text unchanged)

L.—O. (text unchanged)

10.09.52 Service Coordination for Children with Disabilities

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

10.09.52.06 (1/26/15)

.06 Payment Procedures.

A.—G. (text unchanged)

[H. Providers may not bill the program for services which are provided at no charge to the general public, except for service coordination related to an IEP or IFSP.]

[I.] H. (text unchanged)

10.09.54 Home and Community-Based Options Waiver

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-132, Annotated Code of Maryland

10.09.54.22 (12/03/15)

.22 Payment Procedures.

A.—B. (text unchanged)

C. Payments.

(1) (text unchanged)

(2) Providers shall be paid the lesser of:

(a) [Their usual and] *The provider's* customary charge to the general public *unless the service is free to individuals not covered by Medicaid*; or

(b) The rate established according to the fee schedule published by the Department.

D. (text unchanged)

10.09.77 Urgent Care Centers

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

10.09.77.06 (1/26/15)

.06 Payment Procedures.

A. Payment for free-standing urgent care centers is as follows:

(1) Urgent care centers are reimbursed a facility fee, which is determined by the Program; [and]

(2) In addition to the facility fee, the Program shall reimburse for services rendered by the physician during the visit at the free-standing urgent care center when performed by a physician, or by other authorized personnel under that physician's supervision[.]; *and*

(3) *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with the provisions of this regulation; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

B. (text unchanged)

C. The Department shall pay for covered services at the [lower] *lesser* of [the]:

(1) [Provider's]*The provider's* customary charge to the general public *unless the service is free to individuals not covered by Medicaid*; or

(2) (text unchanged)

D.—G. (text unchanged)

H. The provider may not bill the Program for:

(1) (text unchanged)

(2) Broken or missed appointments; *or*

(3) Professional services rendered by mail or telephone[; and].

[(4) Services which are provided at no charge to the general public.]

I.—J. (text unchanged)

10.09.81 Increased Community Services (ICS) Program

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

10.09.81.40 (1/26/15)

.40 Payment Procedures — General.

A.—B. (text unchanged)

C. Payments.

(1) (text unchanged)

(2) A provider shall be paid the lesser of:

(a) The provider's [usual and] customary charge to the general public *unless the service is free to individuals not covered by Medicaid*; or

(b) The rate established in Regulation .41 of this chapter.

(3) (text unchanged)

D. (text unchanged)

10.09.81.41 (1/26/15)

.41 Payment Procedures — Rates.

A.—C. (text unchanged)

D. Transition Services.

(1) A qualified provider shall bill the Department[:

(1) The] *the* lesser of the amount approved by the Department or [its usual and] *the provider's* customary charge to the general public for the service provided, including the cost of installation, if appropriate[; and].

(2) [In] *Payment shall be in* accordance with Regulation .39I of this chapter.

(3) *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with §D(1) and (2) of this regulation; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

E. Environmental Assessment.

(1) A qualified environmental assessment provider shall bill the Department the lesser of \$383.80 or [its usual and] *the provider's* customary charge to the general public for the services rendered, minus any payments by other third party payers such as Medicare.

(2) (text unchanged)

(3) *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with §E(1) and (2) of this regulation; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

F. Environmental Accessibility Adaptations.

(1) A qualified provider shall bill the Department

[(1) The] *the* lesser of the amount approved by the Department or [its] *the provider's* [usual and] customary charge to the general public for the service provided, including the cost of installation, if appropriate[;].

(2) [Not] *Payment may not be* more than \$6,500 during the participant's annual plan of service period, subject to the limitations and exceptions specified at Regulation .39B of this chapter[; and].

(3) [Submit] *The provider shall submit* documentation to the Department from the seller of the assistive technology as to the actual purchase price.

(4) *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

(ii) *Shall be reimbursed in accordance with §F(1)—(3) of this regulation; and*

(b) *The provider's reimbursement is not limited to the provider's customary charge.*

G.—O. (text unchanged)

P. Assisted Living Services.

(1) [Assisted] *The assisted* living services [providers] *provider* shall be paid for assisted living services the lesser of:

(a) The provider's [usual and] customary charge to the general public for the services covered under COMAR 10.07.14, excluding room and board; or

(b) (text unchanged)

(2) (text unchanged)

(3) The provider's payment may not include the following amounts which the provider is expected to collect from the participant:

(a) The provider's [usual and] customary charge for room and board, not to exceed \$420 per month; or

(b) (text unchanged)

(4) (text unchanged)

(5) *If the service is free to individuals not covered by Medicaid:*

(a) *The provider:*

(i) *May charge the Program; and*

- (ii) *Shall be reimbursed in accordance with §P(1)—(4) of this regulation; and*
(b) *The provider's reimbursement is not limited to the provider's customary charge.*

10.09.82 Provider-Based Outpatient Oncology Facilities

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

10.09.82.06 (1/26/15)

.06 Payment Procedures.

- A. (text unchanged)
B. Specific Payment Procedures for a Provider-Based Outpatient Oncology Facility.
(1)—(3) (text unchanged)
(4) The provider may not bill the [program] *Program* or the recipient for:
(a) (text unchanged)
(b) Broken or missed appointments; *or*
[(c) Services which are provided at no charge to the general public; or]
[(d)] (c) (text unchanged)
(5)—(6) (text unchanged)

10.09.87 Free-Standing Independent Diagnostic Testing Facilities

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

10.09.87.07 (1/26/15)

.07 Payment Procedures.

- A.—B. (text unchanged)
C. The Department shall reimburse the IDTF providers for covered services at the [lower] *lesser* of:
(1) The provider's [usual and] customary charge *unless the service is free to individuals not covered by Medicaid;*
or
(2) The Department's fee schedule.
D.—H. (text unchanged)
I. The provider may not bill the Program or recipient for:
(1)—(2) (text unchanged)
[(3) Services which are provided at no charge to the general public;]
[(4)] (3)—[(5)] (4) (text unchanged)

10.09.88 Portable X-ray Providers

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

10.09.88.07 (1/26/15)

.07 Payment Procedures.

- A.—B. (text unchanged)
C. The Department shall reimburse for covered services at the [lower] *lesser* of:
(1) The provider's [usual and] customary charge *unless the service is free to individuals not covered by Medicaid;*
or
(2) The Department's fee schedule.
D.—H. (text unchanged)
I. The provider may not bill the Program or recipient for:
(1)—(2) (text unchanged)
[(3) Services which are provided at no charge to the general public;]
[(4)] (3)—[(5)] (4) (text unchanged)

10.09.89 1915(i) Intensive Behavioral Health Services for Children, Youth, and Families

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

10.09.89.15 (1/26/15)

.15 Limitations.

- A. (text unchanged)
B. The Program may not reimburse for:
(1) Services that are:
(a)—(d) (text unchanged)
[(e) Provided at no charge to the general public;]
[(f)] (e)—[(h)] (g) (text unchanged)

(2)—(5) (text unchanged)
C.—I. (text unchanged)

VAN T. MITCHELL

Secretary of Health and Mental Hygiene