

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: 10.09.24.08-2

Corresponding Federal Standard:

Social Security Administration (SSA) Program Operations Manual System (POMS) SI 01120.199; SSA POMS SI 01120.201; SSA POMS SI 01120.203

Discussion/Justification:

The intent of the proposed action is to ensure consistency with federal policy expressed in SSA POMS SI 01120.199, SSA POMS SI 01120.201, and SSA POMS SI 01120.203.

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 nor more restrictive/stringent than corresponding federal regulations.

Name: Jennifer Cox

Date: 3/21/2016

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
	03/22/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/29/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

10 09 24 08-2

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: March 1, 2016.

Repeal of Existing Regulations

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.24 Medical Assistance Eligibility

Authority: Health General Article, §§2-104(b), 2-105(b), 15-121; Estates and Trusts §14.5-1002, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to amend Regulation .08-2 under COMAR 10.09.24 Medical Assistance Eligibility.

Statement of Purpose

The purpose of this action is to update the Special Needs Trust provision to clarify that it is no more restrictive than federal law, as required by Estates and Trusts Article, §14.5-1002, Annotated Code of Maryland. This proposal will make it easier to submit and process Medical Assistance long-term care (MALTC) applications.

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 an impact on individuals with disabilities as follows: Individuals with disabilities may be beneficiaries of Special Needs Trusts that do not count as assets for Medicaid eligibility. The proposed action will make it easier to submit and process MALTC applications.

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 30, 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?
- 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 proposed regulations have no economic impact under Part A because the proposed action provides clarity to existing policy and regulations.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
Small business may benefit from the effects of the amendment, but not to a measurable extent.
- 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), 2-105(b), 15-121; *Estates and Trusts §14.5-1002*, Annotated Code of Maryland

10.09.24.08-2 (3/1/16)

.08-2 Treatment of Trust Amounts.

A.—B. (text unchanged)

C. Special Needs Trust. The following criteria shall define a special needs trust:

(1) (text unchanged)

(2) The trust states that the beneficiary is disabled under [Regulation .05-4C] *Regulation .05-4B* of this chapter;

(3)—(5) (text unchanged)

(6) The trust provides that the Department shall receive all amounts remaining in the trust upon the death of the beneficiary, [or upon termination of the trust for any other reason,] up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary;

(7) *If the trust allows for the termination of the trust before the death of the beneficiary, the trust shall provide that:*

(a) The Department shall receive all amounts remaining in the trust at the time of termination up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary, after administrative expenses related to the termination of the trust;

(b) Other than amounts paid to the Department under §C(7)(a) of this regulation and payment of administrative expenses and reasonable compensation to the trustee for trust management, along with reasonable costs associated with investment, legal or other services, no entity other than the trust beneficiary may benefit from early termination of the trust; and

(c) The power to terminate shall be held by someone other than the trust beneficiary.

[(7)] (8) The trust does not permit distribution of trust assets upon termination of the trust that would hinder or delay reimbursement to the Department under §C(6) and (7) of this regulation;

[(8)] (9) (text unchanged)

[(9)] (10) The trust contains the following provisions:

(a)—(j) (text unchanged)

[(k)] Trust assets may not be used to compensate family members of the beneficiary for serving the beneficiary in any way, including caring for the beneficiary, accompanying the beneficiary on travel, providing companionship to the beneficiary, or serving as trustees or members of a trust advisory committee;]

[(l)] (k)—[(n)] (m) (text unchanged)

[(o)] (n) Trust assets may not be used to purchase an annuity on the life of the beneficiary unless [the annuity provides that:

(i) The final payment to the trust shall be made before the beneficiary is 65 years old; and

(ii) If the beneficiary dies before the final payments] *the trust provides that if the beneficiary dies before the final payments from the annuity have been made, the remaining payments shall be paid directly to the [State] Department until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;*

[(p)] (o)—[(u)] (t) (text unchanged)

[(v)] (u) The trust may not receive payments from *a structured settlement or an annuity [or a structured settlement that may provide lump sum or periodic payments] that was purchased by funds that are not part of the trust unless [the annuity or settlement provides that]:*

(i) [The final payment to the trust is received before the beneficiary is 65 years old;] *The right to receive payments from the annuity or structured settlement has been irrevocably assigned to the trust and the assignment was made when the trust beneficiary was younger than 65 years old; and*

(ii) [If the beneficiary dies before the annuity or settlement is fully paid, the balance] *The trust provides that if the beneficiary dies before the annuity or settlement is fully paid, the balance of the annuity or settlement shall be paid directly to the [State] Department until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;*

[(10)] If (11) *A copy of the trust shall be sent to the Maryland Medical Assistance Program, Division of Recoveries and Financial Services, and if any amendments are made to the trust, the amendments shall comply with this section and a copy of the amendments shall be sent to the Division of Recoveries and Financial Services;*

[(11)] (12) (text unchanged)

VAN T. MITCHELL

Secretary of Health and Mental Hygiene