

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	05/06/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 6/10/2016

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
10	09	62	01
10	09	63	01
10	09	65	03 and .20
10	09	66	02 and .05
10	09	67	26-3
10	09	70	02
10	09	72	06
10	09	75	02

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 14, 2016.

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 General Provisions Article, §3-302(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 April 28, 2016. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Van T. Mitchell

Title
Secretary
Date
May 6, 2016

Telephone No.
410-767-6500

- Title 10**
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.62 Maryland Medicaid Managed Care Program: Definitions**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.66 Maryland Medicaid Managed Care Program: Access**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.67 Maryland Medicaid Managed Care Program: Benefits**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.70 Maryland Medicaid Managed Care Program: Non Capitated Covered Services**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.72 Maryland Medicaid Managed Care Program: Departmental Dispute Resolution Procedures**
Subtitle 09 MEDICAL CARE PROGRAMS
- 10.09.75 Maryland Medicaid Managed Care Program: Corrective Managed Care**
Authority: See proposal.

Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to :

- (1) Amend Regulation .01 under COMAR 10.09.62 Maryland Medicaid Managed Care Program: Definitions;
- (2) Amend Regulation .01 under COMAR 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment;
- (3) Amend Regulations .03 and .20 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations;
- (4) Amend Regulations .02 and .05 under COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access;

- (5) Adopt new Regulation .26-3 and amend Regulation .27 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits;
- (6) Amend Regulation .02 under COMAR 10.09.70 Maryland Medicaid Managed Care Program: Non Capitated Covered Services;
- (7) Amend Regulation .06 under COMAR 10.09.72 Maryland Medicaid Managed Care Program: Departmental Dispute Resolution Procedures; and
- (8) Amend Regulation .02 under COMAR 10.09.75 Maryland Medicaid Managed Care Program: Corrective Managed Care.

Statement of Purpose

The purpose of this action is to :

- (1) Add definitions of definitive and presumptive drug screen tests;
- (2) Clarify that participants who are 64 ½ years old are only excluded from HealthChoice enrollment when they are newly eligible for Medicaid;
- (3) Remove the requirement that a full SPR review be conducted annually;
- (4) Require MCOs to pay the State's rate for administrative days;
- (5) Clarify the elements MCOs shall include in their provider directories;
- (6) Change the enrollee to PCP ratio to 200:1 for all PCPs;
- (7) Add language to require MCOs to cover medically necessary gender reassignment surgery;
- (8) Remove the specific procedure codes for laboratory drug screens that are covered by the BHO, and replace with language clarifying that all definitive and presumptive tests are covered;
- (9) Clarify that MCOs can appeal the denial of Hepatitis C payments and the amount of Value Based Purchasing incentives and disincentives; and
- (10) Add exception for specialty drugs under corrective managed care.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

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 email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through July 11, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2017
- 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: Changes are to clarify current policy.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet. These regulations affect MCOs which are not small businesses.
- G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.62 Maryland Medicaid Managed Care Program: Definitions

Authority: Health-General Article, §15-101, Annotated Code of Maryland

10.09.62.01 (03/14/16)

.01 Definitions.

- A. (text unchanged)
- B. Terms Defined.
 - (1)—(42) (text unchanged)
 - (42-1) “*Definitive drug test*” means drug screening tests that include:

(a) *The ability to identify individual drugs and distinguish between structural isomers, but not necessarily stereoisomers, using:*

(i) *Gas chromatography or mass spectrometry; and*

(ii) *Liquid chromatography or mass spectrometry;*

(b) *Qualitative or quantitative results;*

(c) *All source types for specimen selection;*

(d) *Specimen validity testing, per day, 1—22 or more drug classes including metabolites, if performed.*

(43)—(139) (text unchanged)

(139-1) *“Presumptive drug tests” means drug screening tests that include:*

(a) *Any number of drug classes;*

(b) *Any number of devices;*

(c) *Sample validation; and*

(d) *The use of:*

(i) *Direct optical observation;*

(ii) *Instrument assisted direct optical observation; or*

(iii) *Instrumented chemistry analyzers.*

(140)—(181) (text unchanged)

10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment

Authority: Health-General Article, §15-103(b)(3), (4), and (6), Annotated Code of Maryland

10.09.63.01 (3/14/16)

.01 Eligibility.

A. Criteria. Except as provided in §B of this regulation, a Program recipient shall be enrolled in the Maryland Medicaid Managed Care Program, described in this chapter, if the recipient is eligible for receipt of Medical Assistance benefits by qualifying:

(1) As categorically needy or medically needy under COMAR 10.09.24, unless the recipient is:

(a) [64-1/2] 65 years old or older;

(b) *Newly eligible and 64 1/2 years old or older;*

[(b)] (c)—[(d)] (e) (text unchanged)

(2)—(3) (text unchanged)

B. (text unchanged)

10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations

Authority: Health-General Article, §2-104, 15-102.3, and 15-103; Insurance Article, §15-112, 15-605, and 15-1008; Annotated Code of Maryland

10.09.65.03 (03/14/16)

.03 Quality Assessment and Improvement.

A. (text unchanged)

B. An MCO shall participate in all quality assessment activities required by the Department in order to determine if the MCO is providing medically necessary enrollee health care. These activities include, but are not limited to:

(1) [An annual] A Systems Performance Review (SPR) performed by an external quality review organization hired by the Department to assess an MCO’s structure and operations in order to determine its ability to provide health care to its enrollees as follows:

(a)—(d) (text unchanged)

(2)—(6) (text unchanged)

C. (text unchanged)

10.09.65.20 (3/16/16)

.20 MCO Payment for Self-Referred, Emergency, [and] Physician, and Hospital Administrative Days Services.

A.—D. (text unchanged)

E. *An MCO shall reimburse hospital administrative days at the Medicaid fee-for-service rate.*

10.09.66 Maryland Medicaid Managed Care Program: Access

Authority: Health-General Article, §15-102.1(b)(10) and 15-103(b) Annotated Code of Maryland

10.09.66.02 (3/16/16)

.02 Access Standards: Enrollee Handbook and Provider Directory.

A. (text unchanged)

B. An MCO shall, at the time of enrollment, and anytime upon request, furnish each enrollee with a copy of the MCO's enrollee handbook that includes the following current information:

(1) The enrollee's rights and responsibilities in the MCO as described in [42 CFR §438.100(a)(1)] *42 CFR §438.100(b)(1)*, as amended;

(2)—(14) (text unchanged)

(15) Advanced directives as set forth in [42 CFR §438.6(i)(2)] *42 CFR §438.3(j)(1)*, as amended;

(16)—(17) (text unchanged)

C. Provider Directory.

(1) An MCO shall provide enrollees with information regarding their provider networks including:

(a)—(c) (text unchanged)

(d) A listing of the individual practitioners who are the MCO's primary and specialty care providers in the enrollee's county, grouped by medical specialty, giving:

(i)—(iii) (text unchanged)

(iv) An indication of whether or not the provider is accepting new patients; [and]

(v) An indication of [whether or not access to the provider is otherwise limited, for example by age of patient or, number of enrollees the provider will serve.] *the age range of patients accepted or if there is no age limit; and*

(vi) *If applicable, how access to the provider is otherwise limited.*

(2) (text unchanged)

D.—E. (text unchanged)

10.09.66.05 (3/16/16)

.05 Access Standards: PCPs and MCO's Provider Network.

A. (text unchanged)

B. Adequacy of Provider Network.

(1)—(6) (text unchanged)

(7) Capacity.

(a) MCOs shall ensure adequate capacity and services, in compliance with [42 CFR §438.207(c)] *42 CFR §438.206(b)(1)(i)*, as amended.

(b) (text unchanged)

(c) Unless the MCO can establish to the Department's satisfaction the adequacy of a higher ratio, the Department shall determine the MCO's capacity with respect to any local access area by assuming that in-plan individual practitioners, based on full-time equivalency, will be assigned no more than the number of enrollees that is consistent with [the following] *a 200:1 ratio of enrollee-to-practitioner [ratio] in the local access area[:].*

(i) (text unchanged)

(ii) For advanced practice nursing specialties enumerated in §A(5)(f) and (g) of this regulation, 100:1.]

(d) The Department may not approve an enrollee-to-PCP ratio that is higher than[:] *2,000:1.*

(i) For physicians, with respect to adult enrollees, 2,000:1;

(ii) For physicians, with respect to enrollees who are younger than 21 years old, 1,500:1; and

(iii) For advanced practice nursing specialties enumerated in §A(5)(f) and (g) of this regulation, 1,000:1.]

(8) (text unchanged)

10.09.67 Maryland Medicaid Managed Care Program: Benefits

Authority: Health-General Article, Title 15, Subtitle 1, Annotated Code of Maryland

10.09.67.26-3

.26-3 Gender Transition Services.

An MCO shall provide medically necessary gender reassignment surgery and other somatic specialty care for members with gender identity disorder.

10.09.67.27 (3/16/16)

.27 Benefits — Limitations.

A. The benefits or services not required to be provided by an MCO are as follows:

(1)—(21) (text unchanged)

(22) The purchase, examination, or fitting of hearing aids and supplies, and tinnitus maskers for adults 21 years old or older; [and]

(23) Cochlear implant devices for adults 21 years old or older;

(24) *Cosmetic surgery when performed solely to maintain normal physical appearance or enhance beyond average level toward an aesthetic ideal; and*

(25) *Services to reverse gender reassignment procedures.*

B. (text unchanged)

10.09.70 Maryland Medicaid Managed Care Program: Non-Capitated Covered Services

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

10.09.70.02 (3/18/16)

.02 Behavioral Health Non-Capitated Covered Services.

A. (text unchanged)

B. An MCO is not responsible for reimbursing [lab] for the following services [with the following procedure codes] performed by free-standing laboratories, regardless of diagnosis:

[80348	Buprenorphine
G0431	Drug screen, qualitative
G6040	Alcohol; any specimen except breathe
G6042	Amphetamine or methamphetamine
G6043	Barbiturates, not otherwise specified
G6031	Benzodiazepines
G6044	Cocaine or metabolite
G6053	Methadone
G6056	Opiate(s), drug and metabolites, each procedure]

(1) Presumptive drug tests; and

(2) Definitive drug tests.

C. An MCO is not responsible for reimbursing [the G0434] for the laboratory [code] services described in §B of this regulation unless billed by a:

(1)—(2) (text unchanged)

D. An MCO is not responsible for reimbursing for the following substance use disorder services if the MCO is billed with a primary diagnosis listed in §I of this regulation:

(1) Services delivered by an inpatient hospital with the following revenue codes:

0114—0156	(text unchanged)
0762	Room and Board, Observation Room

(2)—(3) (text unchanged)

E. (text unchanged)

F. An MCO shall be responsible for reimbursing for somatic services related to gender identity disorder, including gender reassignment surgery.

[F.] G. An MCO is not responsible for services billed by specialty mental health providers listed in COMAR 10.09.59 when the bill includes the specialty behavioral health diagnoses listed in [§I or J] §J or K the primary diagnosis field.

[G.] H.—[I.] J. (text unchanged)

[J.] (K.) Table of mental health diagnoses:

(1) (text unchanged)

(2) For dates of service on or after October 1, 2015:

F200—O99345	(text unchanged)
Z046	Encounter for general psychiatric examination requested by the authority

[K.] L. (text unchanged)

10.09.72 Maryland Medicaid Managed Care Program: Departmental Dispute Resolution Procedures

Authority: Health-General Article, §15-103(b)(9)(i)4, Annotated Code of Maryland

10.09.72.06 (3/16/16)

.06 MCO Appeal.

A. From the decisions set forth in [§B(1)—(5)] §B(1)—(8) of this regulation, an MCO may exercise the appeal rights set forth in this regulation.

B. The following Department decisions are appealable by the MCO or MCO applicant:

- (1)—(4) (text unchanged)
- (5) Order that the MCO is impaired or in “hazardous financial condition”; [and]
- (6) An adverse decision by the IRO;
- (7) *The amount of a penalty or incentive as described in COMAR 10.09.65.03; and*
- (8) *The denial of a hepatitis C payment as described in 10.09.65.19.*

C.—H. (text unchanged)

10.09.75 Maryland Medicaid Managed Care Program: Corrective Managed Care

Authority: Health-General Article, §15-102.1(b)(9) and 15-103, Annotated Code of Maryland

10.09.75.02 (3/18/16)

.02 Corrective Managed Care Plan.

A. (text unchanged)

B. For all benefit abuse covered by an MCO’s corrective managed care plan, the plan shall:

(1)—(5) (text unchanged)

(6) [Except for an emergency, or pursuant to hospital inpatient treatment, require] *Require* an enrollee to obtain prescribed drugs only from a single designated pharmacy provider, which may be any pharmacy or any single branch of a pharmacy chain that participates in the MCO and meets the requirements of COMAR 10.09.66.06B and .07C(2);] *unless the prescription is:*

- (a) Pursuant to an emergency department visit;*
- (b) Pursuant to hospital inpatient treatment; or*
- (c) A specialty drug as defined in COMAR 10.09.67.04.*

(7)—(12) (text unchanged)

C.—E. (text unchanged)

VAN T. MITCHELL

Secretary of Health and Mental Hygiene