

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 16-107)**

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**Overview and Legal and Fiscal Impact**

The regulations make changes conforming to a federal policy clarification that allows Medicaid providers to bill for services that are provided free of charge to other patients.

The regulations present no legal issues of concern.

Medicaid expenditures (60% federal funds, 40% general funds) may increase by an indeterminate but likely minimal amount beginning in fiscal 2017.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Medical Care Programs: Home Health Services: COMAR 10.09.04.04

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services:  
COMAR 10.09.23.07

EPSDT School Health-Related Services or Health-Related Early Intervention Services:  
COMAR 10.09.50.07

Living at Home Waiver Program: COMAR 10.09.55.06

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**Legal Analysis**

**Background**

The Centers for Medicare and Medicaid Services (CMS) sent a letter dated December 15, 2014, to state Medicaid directors providing guidance regarding the application of a “free care” policy. The letter explained that the historic CMS guidance on free care generally prohibited Medicaid payment for a service that was available without charge to a beneficiary, with specified statutory and policy exceptions. In response to a challenge to the “free care” policy, the CMS Departmental Appeals Board concluded that the policy was not an “interpretation of either the Medicaid statute or existing regulations.” The letter explained that “the free care policy as previously applied effectively prevented the use of Medicaid funds to pay for covered services furnished to Medicaid eligible beneficiaries when the provider did not bill the beneficiary or any other individuals for the services.” According to CMS, the “goal of this new guidance is to facilitate and improve access to quality healthcare services and improve the health of communities.”

## **Summary of Regulations**

The regulations repeal COMAR 10.09.14.04C, which limits provider reimbursement for medical and other supplies used during a home health visit to the lesser of the provider's customary charge or the Medicaid rate.

The regulations amend COMAR 10.09.23.07 to allow for reimbursement for medically monitored intensive inpatient treatment services provided in an intermediate care facility if the provider's service is free to individuals not covered by Medicaid.

The regulations amend COMAR 10.09.50.07B to allow providers of school health-related services and early intervention services to bill Medicaid for services which are provided to the general public at no charge.

The regulations repeal the prohibition on physician assistants from billing Medicaid for services which are provided free to individuals not covered by Medicaid under COMAR 10.09.55.06. If a service is free to individuals not covered by Medicaid, the physician assistant is reimbursed at the rates under COMAR 10.09.02.07E.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-103, 15-105, and 15-124 of the Health – General Article as statutory authority for the regulations. Section 2-104(b) gives the Secretary of Health and Mental Hygiene authority to adopt rules and regulations to carry out the provisions of law within the jurisdiction of the Secretary. Section 15-103 establishes the Maryland Medical Assistance Program, and requires the Secretary to administer the program, including adopting regulations. Section 15-105(b) requires the department to adopt rules and regulations for the reimbursement of providers for services under the Medicaid program. Section 15-124 establishes the Maryland Pharmacy Assistance Program for low income individuals not eligible for Medicare.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

Medicaid expenditures (60% federal funds, 40% general funds) may increase by an indeterminate but likely minimal amount beginning in fiscal 2017.

## **Agency Estimate of Projected Fiscal Impact**

The regulations update language to reflect repeal of the previous prohibition against providers billing Medicaid for services provided free of charge to other patients. This conforms with a recent change in federal policy. The regulations allow Medicaid to reimburse providers for services given at no charge to the public – services that are not currently reimbursable. Similar changes were made to Medicaid regulations under Control No. 16-032. The department advises that Medicaid expenditures (60% federal funds, 40% general funds) may increase beginning in fiscal 2017. However, given that few providers deliver services at no charge, the impact is anticipated to be minimal. The Department of Legislative Services concurs.

## **Impact on Budget**

Medicaid expenditures (60% federal funds, 40% general funds) may increase by an indeterminate but likely minimal amount beginning in fiscal 2017.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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