

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: 10.09.04.04

COMAR Codification: 10.09.23.07

COMAR Codification: 10.09.50.07

COMAR Codification: 10.09.55.06

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 necessary subject matter expertise in this area. Commerce feels that the Department of Health and Mental Hygiene does have the necessary subject matter expertise and therefore trusts their assertion that the proposed regulation is not more restrictive/stringent than federal standards.

Name: Jennifer Cox

Date: 5/31/2016

-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
	05/31/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/8/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

10	09	04	04
10	09	23	07
10	09	50	07
10	09	55	06

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator
Michele Phinney

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201 W. Preston Street

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5. Name of Person to Call About this Document
Emma Calvet

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emma.calvet@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: May 4, 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 May 23, 2016. 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

May 26, 2016

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.04 Home Health Services

Subtitle 09 MEDICAL CARE PROGRAMS

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

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.55 Physician Assistants

Authority: See proposal.

Notice of Proposed Action

[]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulation .04 under COMAR 10.09.04 Home Health Services;
- (2) Regulation .07 under COMAR 10.09.23 Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services;
- (3) Regulation .07 under COMAR 10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services; and
- (4) Regulation .06 under COMAR 10.09.55 Physician Assistants.

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-)	Magnitude
	Expenditure (E+/E-)	
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. above.

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 August 8, 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?

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:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.04 Home Health Services

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

10.09.04.04 (5/4/16)

.04 Covered Services.

A.—B. (text unchanged)

[C. The Program covers 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:

- (1) Provider's customary charge to the general public; or
- (2) Medicaid rate for the supply or pharmaceutical under COMAR 10.09.12 and 10.09.03.]

[D.] C. (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

10.09.23.07 (5/4/16)

.07 Payment Procedures.

A.—C. (text unchanged)

D. Reimbursement of Medically Monitored Intensive Inpatient Treatment Services Provided in an Intermediate Care Facility.

(1) (text unchanged)

(2) The Department shall pay the intermediate care facility the [lower] *lesser* of [the]:

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

(b) *The provider's per diem costs for covered services according to the principles established under Title XVIII of the Social Security Act, up to a maximum of \$400 per day.*

(3) The [\$400 per day] maximum payment *in §D(2)(b) of this regulation* will be updated annually by the Centers for Medicare and Medicaid Service's published federal fiscal year market basket increase percentage relating to hospitals excluded from the prospective payment system.

[(3)] (4)—[(4)] (5) (text unchanged)

E.—F. (text unchanged)

10.09.50 EPSDT School Health-Related Services or Health-Related Early Intervention Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-124, Annotated Code of Maryland

10.09.50.07 (5/23/16)

.07 Payment Procedures.

A. (text unchanged)

B. Providers may not bill the Program for:

(1)—(2) (text unchanged)

(3) Broken or missed appointments; *or*

[(4) Services which are provided at no charge to the general public, except for IEP and IFSP related services; or]

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

C.—E. (text unchanged)

10.09.55 Physician Assistants

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

10.09.55.06 (5/4/16)

.06 Payment Procedures.

A.—B. (text unchanged)

C. [A physician assistant] *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 reimburse the physician assistant for covered services at the [lower] *lesser* of [their usual and]:

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

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

E. Payments on Medicare claims are authorized, if:

(1)—(5) (text unchanged)

[E.] F. (text unchanged)

[F.] G. The provider may not bill the Program for:

(1)—(2) (text unchanged)

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

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

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

[G.] *H.*—[I.] *J.* (text unchanged)

VAN T. MITCHELL

Secretary of Health and Mental Hygiene