

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 16-160)**

Overview and Legal and Fiscal Impact

The regulations alter conditions for participation, quality assessment and improvement requirements and measures, marketing and access standards, and coverage requirements for managed care organizations (MCOs) in the Maryland Medical Assistance (Medicaid) Program.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Maryland Medicaid Managed Care Program:

Managed Care Organizations: COMAR 10.09.65.02, .03, and .23

Maryland Medicaid Managed Care Program: Access: COMAR 10.09.66.01

Maryland Medicaid Managed Care Program: Benefits: COMAR 10.09.67.15

Legal Analysis

Background

Section 1557 of the Patient Protection and Affordable Care Act (ACA) prohibits discrimination on the basis of race, color, national origin, sex, or disability in certain health programs, including any health program or activity any part of which received funding from the U.S. Department of Health and Human Services (HHS) such as Medicaid. On May 13, 2016, the HHS Office for Civil Rights issued the final rule implementing Section 1557. The final rule prohibits the denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, or sex stereotyping, and requires covered health programs and activities to treat individuals consistent with their gender identity.

Summary of Regulations

The regulations modify conditions for participation, quality assessment and improvement requirements and measures, marketing and access standards, and coverage requirements for MCOs in the Medicaid Program.

Conditions for Participation

The regulations prohibit an MCO from discriminating against an enrollee on the basis of sexual orientation or gender identity and expressly require an MCO to meet the requirements of Section 1557 of the ACA. The regulations also require an MCO that exits the Medicaid Program during the calendar year to submit its exit transition plan to the Department of Health and Mental Hygiene 120 days before the effective date of the exit, unless the department approves a shorter time frame.

Quality Assessment and Improvement

Under current regulations, an MCO must participate in all quality assessment activities required by the department to determine if the MCO is providing medically necessary enrollee health care, including a Systems Performance Review (SPR) performed by an external review organization and an annual collection and evaluation of a set of performance measures with certain targets as determined by the department. The proposed regulations remove a requirement that a SPR be performed annually and modify a core performance measure for asthma by adopting as the measure for quality care received the asthma medication ratio (effective January 1, 2017).

Marketing and Access Standards

The regulations extend an existing prohibition on MCOs engaging in cold call marketing to include the use of email and texting for such a marketing activity. In addition, the regulations require an MCO to provide access to health care services and information in a manner that addresses the individualized needs of its enrollees, regardless of gender, sexual orientation, or gender identity.

Coverage of Podiatry Services

The regulations clarify that medically necessary podiatry services are covered for all members, regardless of age.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 2-104 and Title 15, Subtitle 1 of the Health – General Article as authority for the regulations. More specifically, § 2-104 authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out provisions of law that are within the jurisdiction of the Secretary. Section 15-102.1(b)(10) requires, subject to the limitations of the State budget, the department to encourage Medicaid and Maryland’s health care regulatory system to work to cooperatively promote the development of an appropriate mix of health care providers, limit cost increases for the delivery of health care to Medicaid recipients, and insure the delivery of quality health care to Medicaid recipients.

Section 15-103 of the Health – General Article gives the Secretary broad authority to regulate Medicaid and § 15-103(b), specifically, authorizes the Secretary to establish a program under which Medicaid recipients are required to enroll in MCOs. Section 15-103(b)(2) requires that the benefits provided through MCOs be adopted by regulation. In addition, § 15-103(b)(9) requires each MCO to have a quality assurance program in effect which is subject to the approval of the department and which meets certain criteria. Section 15-103(b)(9) also requires each MCO to submit certain data to the department, as well as utilization and outcome reports, such as the Health Plan Employer Data and Information Set, as directed by the department, and requires each MCO to promote timely access to a continuity of health care services for enrollees. Section 15-103(b)(15) prohibits an MCO from having face-to-face or telephone contact, or otherwise solicit with an individual who at the time is a Medicaid recipient before the Medicaid recipient enrolls in the MCO, unless authorized by the department or the Medicaid recipient initiates contact. The remaining cited authority is not relevant to these regulations.

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

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that, as the regulations clarify current Medicaid policies, there is no impact on State or local governments. The Department of Legislative Service concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

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 Service concurs.

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