

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	08/21/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 10/3/2014**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 09 59 01-.14

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**

Michele Phinney

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410-767-5623

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**5. Name of Person to Call About this Document**

Michael Cimmino

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**6. Check applicable items:**

- New Regulations

Amendments to Existing Regulations

    Date when existing text was downloaded from COMAR online: .

- 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 State Government Article, §10-506(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 August 12, 2014. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Joshua M. Sharfstein, M.D.

**Title**

Secretary

**Telephone No.**

410-767-6500

**Date**

August 21, 2014

**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitle 09**

**10.09.59**

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

**Notice of Proposed Action**

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The Secretary of Health and Mental Hygiene proposes to repeal in its entirety Regulations .01—.11 and adopt new Regulations .01—.13 under COMAR 10.09.59 Specialty Mental Health Services.

**Statement of Purpose**

The purpose of this action is to clarify details of Medicaid's specialty mental health system, including participant access, provider requirements, and services offered.

**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:800735-2258, or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through November 3, 2014. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2015
- 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:  
These revisions clarify, rather than change, services offered and payment made for specialty mental health services.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- See E. above
- G. Small Business Worksheet:

Attached Document:

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## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### 10.09.59 [Rehabilitation and Other] *Specialty* Mental Health Services

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

**.01 Definitions.**

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) "*Administrative Services Organization (ASO)*" means an entity that manages the public behavioral health system on behalf of the Department.

(2) "*Department*" means the Department of Health and Mental Hygiene, the State agency designated to administer the Maryland Medical Assistance Program under Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(3) "*Hospital*" means an institution which:

(a) Falls within the jurisdiction of Health-General Article, Title 19, Subtitle 3, Annotated Code of Maryland;  
and

(b) Is licensed under COMAR 10.07.01 or is licensed by the state in which the service is provided.

(4) "Medicare" means the insurance program administered by the federal government under Title XVIII of the Social Security Act, 42 U.S.C. §1395 et seq.

(5) "Office of Health Care Quality" means the office under the Department that oversees certification and inspection of programs.

(6) "Participant" means an individual who is certified as eligible for, and is receiving, Medical Assistance benefits.

(7) "Program" means the Maryland Medical Assistance Program, which administers comprehensive medical and health-related benefits to indigent and medically indigent individuals.

(8) "Provider" means an organization or an individual practitioner furnishing the services covered under this chapter which, through appropriate agreement with the Department, has been identified as a Program provider by the issuance of a provider account number.

(9) "Public Behavioral Health System" is the system that provides medically necessary behavioral health services for Medical Assistance participants and certain other uninsured individuals.

(10) "Specialty Mental Health Services" means the services covered under this chapter.

## **.02 License Requirements**

To participate in the Program, a provider shall meet the licensure requirements stated in COMAR 10.09.36.02.

## **.03 General Conditions for Provider Participation**

In general, to participate in the Program, a provider shall:

A. Meet the conditions for provider participation in the Medical Assistance Program as set forth in COMAR 10.09.36.03;

B. Have clearly defined and written patient care policies; and

C. Maintain adequate documentation of each contact with a participant as part of the medical record, which, at a minimum, includes:

(1) Date of service with service start and end times,

(2) The participant's primary mental health complaint or reason for the visit,

(3) A brief description of the service provided, including progress notes, and

(4) An official e-Signature, or a legible signature, along with the printed or typed name of the individual providing care, with the appropriate title.

## **.04 Provider Requirements for Participation.**

A. Individual Practitioner Providers. To participate in the Program as an individual practitioner of specialty mental health services, a provider shall:

(1) Be licensed and legally authorized to practice independently by the appropriate Board to practice in the state in which the service is rendered; and

(2) Demonstrate, by training and experience, the competency to provide mental health services as one of the following:

(a) A licensed certified social worker—clinical;

(b) A nurse psychotherapist (APRN-PHM);

(c) A nurse practitioner—psychiatric (CRNP—PMH);

(d) An occupational therapist;

(e) A physician who demonstrates the competency to provide specialty mental health services;

(f) A licensed certified counselor which includes:

(i) Licensed professional counselor;

(ii) Licensed marriage and family therapist, or

(iii) Licensed counselor—alcohol and drug;

(g) A psychiatrist certified by the American Board of Psychiatry and Neurology or possessing the minimum educational and training requirements to take the Board of Psychiatry and Neurology examination for certification in psychiatry; or

(h) A psychologist.

B. Community Mental Health Program Providers. To participate as a community-based mental health program, a provider shall be approved under COMAR 10.21.16 by the Office of Health Care Quality as a:

(1) Psychiatric rehabilitation program in compliance with:

(a) COMAR 10.21.17;

(b) If serving adults, COMAR 10.21.21; and

(c) If serving children, COMAR 10.21.29;

(2) Mobile treatment program in compliance with:

(a) COMAR 10.21.17; and

(b) COMAR 10.21.19;

(3) Outpatient mental health clinic in compliance with:

(a) COMAR 10.21.17; and

- (b) COMAR 10.21.20; or
- (4) Therapeutic Nursery in compliance with:
  - (a) COMAR 10.21.17; and
  - (b) COMAR 10.21.18.

C. Other Licensed or Approved Mental Health Providers. To participate in the Program as a specialty mental health provider not defined in §B of this regulation, a provider shall be approved pursuant to COMAR as a:

- (1) Targeted case management provider in compliance with:
  - (a) If serving children, COMAR 10.09.90; and
  - (b) If serving adults, COMAR 10.09.45;
- (2) Residential treatment center in compliance with:
  - (a) COMAR 10.07.04 and 10.09.29; or
  - (b) COMAR 10.21.06;
- (3) Hospital in compliance with COMAR 10.09.06;
- (4) Non-hospital-based partial hospitalization provider in compliance with:
  - (a) COMAR 10.21.17; and
  - (b) COMAR 10.21.02;
- (5) 1915(i) Community Options for Children, Youth and Families Waiver provider in compliance with 10.09.89;
- (6) Therapeutic behavioral service provider in compliance with COMAR 10.09.34;
- (7) Traumatic brain injury provider in compliance with COMAR 10.09.46; or
- (8) Medical Laboratory in compliance with COMAR 10.09.09.

**.05 Eligibility and Referral.**

A. A participant may self refer or be referred to the Public Behavioral Health System by a provider or by a family member or caregiver.

B. The ASO shall:

- (1) Have a toll free telephone line to accept referrals and help participants find an appropriate specialty mental health provider; and
- (2) Authorize medically necessary services according to guidelines:
  - (a) Established by the Department; and
  - (b) In accordance with Regulation .08 of this chapter.

C. Specialty Mental Health Services.

- (1) Specialty mental health services are services for which the participants' diagnosis and treatment provider meet the criteria specified in COMAR 10.09.70 and this chapter.
- (2) The ASO shall reimburse specialty mental health providers.

**.06 Covered Services.**

The ASO shall reimburse the following specialty mental health services rendered to participants when these services are authorized by the ASO:

A. Medically-necessary specialty mental health services delivered by providers listed in Regulation .04 of this chapter;

B. Telemental health services as defined in COMAR 10.21.30; and

C. Laboratory services listed as follows, when ordered by a specialty mental health provider:

36415	Collection of blood by Venipuncture
80002-89999	Lab Services
96372	Therapeutic Injection
0300	Laboratory - Clinical Diagnostic
0301	Laboratory - Clinical Diagnostic: Chemistry
0302	Laboratory - Clinical Diagnostic: Immunology
0304	Laboratory - Clinical Diagnostic: Non-routine dialysis
0305	Laboratory - Clinical Diagnostic: Hematology
0306	Laboratory - Clinical Diagnostic: Bacteriology/microbiology
0307	Laboratory - Clinical Diagnostic: Urology
0309	Laboratory - Clinical Diagnostic: Other laboratory
0310	Laboratory - Pathology
0311	Laboratory - Pathology: Cytology
0312	Laboratory - Pathology: Histology
0730	EKG/ECG general classification
0637	Self Administered Drugs
00104	Anesthesia for ECT
90870	ECT single seizure with monitoring

**.07 Limitations.**

*The Program does not cover the following:*

- A. Services not delivered in compliance with the COMAR references listed in Regulations .04 and .05 of this chapter;*
- B. Services not medically necessary;*
- C. Investigational or experimental drugs and procedures;*
- D. Specialty mental health services for participants in an institution for mental disease as defined in 42 CFR §435.1009;*
- E. Specialty mental health visits solely for the purpose of:
  - (1) Prescribing medication, or*
  - (2) Administering medication;**
- F. Separate reimbursement to an employee of a program for services that have been provided by and reimbursed directly to a program;*
- G. Vocational counseling, vocational training at a classroom or job site, and academic or remedial educational services;*
- H. Services provided to or for the primary benefit of individuals other than the participant;*
- I. Psychiatric rehabilitation program services other than those services that are specified in COMAR 10.21.21.05, .06A—E, .06-1B and C, .07 for adults and COMAR 10.21.29.05, .06A—D, and .07 for minors;*
- J. Mobile treatment program services other than those services that are specified in COMAR 10.21.19.05, .06A—E, .06-1B and C, and .07;*
- K. Outpatient mental health clinic services other than those services that are specified in COMAR 10.21.20.05, .06A—D, and .07—.09;*
- L. An on-site psychiatric rehabilitation program visit by a recipient on the same day that the recipient receives medical day care services under COMAR 10.09.07;*
- M. Therapeutic nursery services other than those services that are specified in COMAR 10.21.18.05 and .06;*
- N. Mental health case management services other than those services that are specified in COMAR 10.09.45.06 for adults and COMAR 10.09.90.11 for children and youth;*
- O. Residential treatment center services other than those services that are specified in COMAR 10.09.29.04;*
- P. Partial hospitalization services other than those services that are specified in COMAR 10.21.02.01;*
- Q. 1915(i) Community Options for Children, Youth and Families Waiver services other than those services that are specified in COMAR 10.09.89.09—.14;*
- R. Therapeutic behavioral services other than those services that are specified in COMAR 10.09.34.03;*
- S. Telemental health services other than those services that are specified in COMAR 10.21.30.09;*
- T. Non-emergency services not authorized by the ASO;*
- U. Mental health services delivered by a primary care provider and reimbursed through Medicaid Fee for Service or the Maryland Medicaid Managed Care Program; or*
- V. Services reimbursed by the ASO not included in this chapter.*

**.08 Authorization Requirements.**

- A. The ASO shall establish a process, through a utilization review system, for authorization of specialty mental health services.*
- B. For services outlined in COMAR 10.21.25.04 and .05A(1), the specialty mental health utilization review agent may authorize up to 12 visits per fiscal year.*
- C. The ASO shall authorize services that are:
  - (1) Medically necessary;*
  - (2) Of a type, frequency, and duration that are consistent with expected results and cost-effective; and*
  - (3) Delivered in a manner consistent with COMAR 10.21.17.03.**
- D. Preauthorization is not required before a provider renders services in an emergency department.*
- E. Except as provided in Regulation .07D of this chapter, no payment shall be rendered for services that have not been authorized.*

**.09 Payment Procedures.**

- A. Payment procedures shall be followed as specified in COMAR 10.09.36.04.*
- B. Unless otherwise stipulated, a provider shall bill the Program its usual and customary charge to the general public for similar services.*
- C. The Department shall authorize supplemental payment on Medicare claims only if:
  - (1) The provider accepts Medicare assignments;*
  - (2) Medicare makes direct payment to the provider;*
  - (3) Medicare has determined that the services are medically necessary;*
  - (4) The services are covered by the Program; and*
  - (5) Initial billing is made directly to Medicare according to Medicare guidelines.**
- D. The Department shall make payment on Medicare claims subject to the following provisions:*

(1) *Deductible and coinsurance shall be paid in full for services designated as mental health services by Medicare; and*

(2) *The Program shall reimburse services not covered by Medicare, but considered medically necessary by the Program, according to the limitations of this chapter.*

*E. A provider may not bill the Program for:*

(1) *Completion of forms and reports;*

(2) *Broken or missed appointments;*

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

(4) *Services which are provided at no charge to the general public, except as provided under Title V of the Social Security Act; or*

(5) *Services not authorized consistent with COMAR 10.09.59.07E of this chapter.*

*F. Billing time limitations for claims submitted under this chapter are set forth in COMAR 10.09.36.06.*

*G. The Department shall reimburse providers according to the fee schedule in COMAR 10.21.25.*

**.10 Recovery and Reimbursement.**

*Recovery and reimbursement are as set forth in COMAR 10.09.36.07.*

**.11 Cause for Suspension or Removal and Imposition of Sanctions.**

*Cause for suspension or removal and imposition of sanctions are as set forth in COMAR 10.09.36.08.*

**.12 Provider Complaints, Hearings, and Appeals.**

*Appeal procedures are as set forth in COMAR 10.09.36.09.*

**.13 Grievance Procedure and Appeal Right — Denial of Services**

*Grievance procedures are as set forth in COMAR 10.01.03 and 10.01.04.*

**.14 Interpretive Regulation.**

*State regulations are interpreted as set forth in COMAR 10.09.36.10.*

**JOSHUA M. SHARFSTEIN, M.D.**

**Secretary of Health and Mental Hygiene**