

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: 10.09.91.01-.09

Corresponding Federal Standard:

is The Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, as amended by the Three Percent Withholding Repeal and Job Creation Act.

Discussion/Justification:

The Centers for Medicare and Medicaid (CMS) recently approved Maryland's State Plan for hospital presumptive eligibility after a thorough review, including a determination that Maryland's proposal is not more restrictive than the corresponding federal standard.

TO BE COMPLETED BY DBED

Agree

Disagree

Comments:

I do not have the subject matter expertise to approve. However, since DHMH staff are the subject matter experts with the Affordable Care Act and Hospital presumptive eligibility I trust their assertion that the proposed State regulations do not exceed the Federal regulations in this matter.

Name: Sandy Popp

Date: 8/27/2014

Submit to Governor's Office

Governor's Office Response

Approve

_Disapprove

Comments:

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	08/28/2014	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 91 01-.09

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator Telephone Number
Michele Phinney 410-767-5623

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.91 Hospital Presumptive Eligibility

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

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.09 under a new chapter COMAR 10.09.91 Hospital Presumptive Eligibility.

Statement of Purpose

The purpose of this action is to adopt new regulations that comply with the provisions of the Affordable Care Act that relate to the presumptive eligibility by hospitals.

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.

Hospital presumptive eligibility (HPE) will enable many uninsured individuals to access Medical Assistance coverage for roughly 30 days, until determined eligible or ineligible for full coverage. Medical Assistance will now be responsible for health services that would previously have been paid by the uninsured individual or through the uncompensated care pool. The State anticipates a cost of \$50 Million for FFY 2015 and \$37.5 Million for State fiscal year 2015.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$37,500,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade	NONE	

groups:

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 State calculated the federal fiscal impact for Hospital Presumptive Eligibility (HPE) based on the following methodology. Currently, \$1 billion is allocated for paying hospitals for serving the State's uninsured. The State estimated that 5 percent of this cost (\$50 million total funds) would be transferred to the Medical Assistance Program with the implementation of HPE for federal fiscal year 2015. The fiscal impact would then be \$25 million in State funds and \$25 million in federal funds per year. However, the State will not implement until October 1, 2015 of State FY15. Thus reducing the State's predicted expenditures by 75 percent and producing a cost of \$18.75 million in State funds and \$18.75 million in federal funds for a total of \$37.5 million for the State FY15. This is a conservative estimate of fiscal impact due to the inability to validate any information for HPE applicants.

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 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?

No

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:

50% State funds, 50% federal funds.

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.

Generally, large hospitals will be the primary recipients of payment for services rendered to individuals with hospital presumptive eligibility. Smaller community providers may also bill for services during the presumptive eligibility period, but the impact will likely be minimal.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.91 Hospital Presumptive Eligibility

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

.01 Purpose and Scope.

This chapter establishes requirements for the determination of presumptive eligibility by qualified hospitals effective October 1, 2014.

.02 Definitions.

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

B. Terms Defined.

(1) "Applicant" means an individual who has applied for presumptive eligibility at a participating hospital.

(2) "Application" means the presumptive eligibility application.

(3) "Authorized representative" has the same meaning as set forth in COMAR 10.01.04.01.

(4) "Department" means the Department of Health and Mental Hygiene which is the single state agency designated to administer the Maryland Medical Assistance Program pursuant to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(5) "Determination" means a decision regarding an applicant's presumptive eligibility.

(6) "Federal poverty level" means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

(7) "Former foster care" means an individual who:

(a) Is younger than 26 years old;

(b) Is not eligible and enrolled for coverage under a mandatory Medical Assistance group other than childless adult; and

(c) Was formerly in a Maryland out-of-home placement, including categorical Medical Assistance:

(i) On attaining age 18 and leaving out-of-home placement, or

(ii) On attaining age 19-21 during extended out-of-home placement under COMAR 07.02.11.04B.

(8) "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 pursuant to COMAR 10.07.01 or other applicable standards established by the state in which the service is provided.

(9) "Income" means property or a service received by an individual in cash or in-kind, which can be applied directly, or by sale or conversion, to meet basic needs for food, shelter, and medical expenses.

(10) "Incarcerated inmate in a public institution" has the meaning stated in COMAR 10.09.24.05-5B.

(11) "Medical Assistance" means the program administered by the State under Title XLX of the Social Security Act, which provides comprehensive medical and other health-related care for eligible individuals.

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

(13) "Presumptive eligibility" means temporary eligibility for Medical Assistance as determined by participating hospitals in accordance with these regulations.

.03 Requirements.

A. A hospital eligible to make presumptive eligibility decisions shall:

(1) Participate as a Maryland Medical Assistance Program provider in good standing; and

(2) Sign an agreement prepared by the Department.

B. The agreement required under §A of this regulation shall require that the hospital:

(1) Comply with Departmental policies and procedures supplied by the Department at the time of application and training;

(2) Meet accuracy and timeliness standards established by the Department;

(3) Submit a list to the Department of hospital employees who will attend presumptive eligibility training developed by the Department;

(4) Prohibit employees who have not attended required trainings and passed a post-training test to make presumptive eligibility decisions; and

(5) Report all requested information on a form designated by the Department.

C. Before assisting an applicant in filing a presumptive eligibility application, the hospital employee shall:

(1) Check the Department's eligibility verification system to make sure the individual is not actively enrolled in the Maryland Medical Assistance Program;

(2) Provide information concerning the full Medical Assistance application process to the individual applying for presumptive eligibility and assist or refer the applicant to an individual who can assist the applicant in completing a full Medical Assistance application;

(3) Determine that the applicant has not:

(a) Had a prior presumptive eligibility period within the last 12 months for the individual other than pregnant women; or

(b) Had a prior presumptive eligibility period during the current pregnancy for a pregnant woman.

D. The hospital employee shall fill out the presumptive eligibility application based on information supplied by the applicant.

E. The hospital employee shall make a presumptive eligibility decision and sign the presumptive eligibility application based on the following information obtained pursuant to COMAR 10.09.91.05:

(1) Residency;

(2) Citizenship;

(3) Family size and composition; and

(4) Gross family income.

F. The hospital employee shall inform the individual in writing of the hospital's presumptive eligibility decision which includes an explanation of the presumptive eligibility period.

G. The hospital shall submit the presumptive eligibility application to the Department on the date of application completion to allow the individual to have temporary Medical Assistance coverage.

H. The hospital shall:

(1) Keep all written and signed presumptive eligibility applications on file for 6 years; and

(2) Make the file available to the Department upon request.

.04 Hospital or Hospital Staff Disqualifications.

A. A hospital qualified to make presumptive eligibility decisions shall:

(1) Make presumptive eligibility determinations in accordance with established Departmental policies and procedures; and

(2) Disqualify individual hospital employees who do not follow established Departmental regulations, policies and procedures.

B. Upon a finding that a qualified hospital has failed to meet the requirements of §A of this regulation, the Department shall provide the hospital with additional training or take other reasonable corrective action measures to address the noncompliance.

C. If the remedial measures taken pursuant to §B of this regulation fail to provide a satisfactory resolution, the Department shall disqualify the hospital from making presumptive eligibility determinations.

.05 Criteria.

A. An individual, the individual's guardian, or a representative of the individual with personal knowledge shall apply for presumptive eligibility through a participating hospital.

B. An individual, the individual's guardian, or a representative of the individual with personal knowledge who applies for presumptive eligibility shall attest to:

- (1) The citizenship requirements in COMAR 10.09.24.05;*
- (2) The residency requirements in COMAR 10.09.24.05-3;*
- (3) The individual's pregnancy status;*
- (4) The individual's family size; and*
- (5) The individual's household's gross monthly income.*

.06 Populations Eligible.

Presumptive eligibility may be established for the following eligibility groups:

- A. Parents and other caretaker relatives whose household income is equal to or less than 133 percent of the federal poverty level;*
- B. Pregnant women whose income is equal to or less than 250 percent of the federal poverty level;*
- C. Adults without dependent children who are older than 19 years old and younger than 65 years old, whose household income is equal to or less than 133 percent of the federal poverty level;*
- D. Children who are younger than 19 years old who are under 300 percent of the federal poverty level; or*
- E. Former foster care individuals who are younger than 26 years old.*

.07 Limitations.

An individual may not apply for presumptive eligibility in Maryland if the individual:

- A. Is currently enrolled in the Maryland Medical Assistance Program or Medicare;*
- B. Is an incarcerated inmate in a public institution as defined in COMAR 10.09.24.05-5B;*
- C. Had a prior presumptive eligibility period during the last 12 months with the exception of pregnant women;*
- D. Does not meet the residency requirements stated in COMAR 10.09.24.05-3; or*
- E. Does not meet the citizenship requirements stated in COMAR 10.09.24.05.*

.08 Certification Period.

- A. Presumptive eligibility begins on the day the hospital determines that the individual is presumptively eligible.*
- B. Presumptive eligibility ends on the earlier of:*
 - (1) The day in which the individual is determined eligible for Medical Assistance; or*
 - (2) The last day of the month following the month in which the hospital determined presumptive eligibility, if:*
 - (a) An individual is found ineligible for Medical Assistance; or*
 - (b) An individual failed to apply for Medical Assistance.*
- C. A non pregnant individual may be determined presumptively eligible once per a 12 month period.*
- D. A pregnant individual may be determined presumptively eligible once per pregnancy.*

.09 Presumptive Eligibility Appeal Rights.

An individual or an organization does not have appeal rights for presumptive eligibility determinations.

JOSHUA M. SHARFSTEIN, M.D.

Secretary of Health and Mental Hygiene