

## MARYLAND REGISTER

# Proposed Action on Regulations

<b>Transmittal Sheet</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
<b>PROPOSED OR REPROPOSED</b>	11/04/2016	Date Filed with Division of State Documents
<b>Actions on Regulations</b>		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 12/23/2016**

**2. COMAR Codification**

<b>Title</b>	<b>Subtitle</b>	<b>Chapter</b>	<b>Regulation</b>
10 09	62	01	
10 09	67	28	
10 09	68	01-03	
10 09	76	01-11	

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

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

**Mailing Address**

201 W. Preston Street

**City** Baltimore    **State** MD    **Zip Code** 21201

**Email**  
michele.phinney@maryland.gov

**5. Name of Person to Call About this Document** Alison Donley      **Telephone No.** 410-767-6541

**Email Address**  
alison.donley@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 7/27/16 and 10/21/16.

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 October 12, 2016. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Van T. Mitchell

**Title**

Secretary

**Date**

November 3, 2016

**Telephone No.**

410-767-6500

## Title 10

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE

#### Subtitle 09 MEDICAL CARE PROGRAMS

##### 10.09.62 Maryland Medicaid Managed Care Program: Definitions

#### Subtitle 09 MEDICAL CARE PROGRAMS

##### 10.09.67 Maryland Medicaid Managed Care Program: Benefits

#### Subtitle 09 MEDICAL CARE PROGRAMS

##### 10.09.68 Maryland Medicaid Managed Care Program: School-Based Health Centers

#### Subtitle 09 MEDICAL CARE PROGRAMS

##### 10.09.76 School Based Health Centers (SBHC)

Authority: See attached

### Notice of Proposed Action

[ ]

The Secretary of Health and Mental Hygiene proposes to :

- (1) Amend Regulation .01 under COMAR 10.09.62 Maryland Medicaid Managed Care Program: Definitions;
- (2) Amend Regulation .28 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits;
- (3) Repeal in their entirety Regulations .01 — .03 under COMAR 10.09.68 Maryland Medicaid Managed Care Program: School-Based Health Centers; and
- (4) Adopt new Regulations .01—.11 under a new chapter COMAR 10.09.76 School Based Health Centers.

### Statement of Purpose

The purpose of this action is to establish a single chapter of regulations for both fee-for-service and MCO School Based Health Center providers and to update references to the new chapter.

### 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 A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through January 23, 2017. 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?
- 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: This proposal involves no policy changes. Its purpose is simply to combine current regulations in a single chapter.
- 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**

#### **10.09.62 Maryland Medicaid Managed Care Program: Definitions**

Authority: Health-General Article, §15-101, Annotated Code of Maryland

**10.09.62.01 (10/21/16)**

## **.01 Definitions**

A. (text unchanged)

B. Terms Defined.

(1)—(157) (text unchanged)

(158) "School-based health center (SBHC)" means a provider located on school grounds that meets the requirements set forth in COMAR [10.09.68] 10.09.76.

(159)—(181) (text unchanged)

## **10.09.67 Maryland Medicaid Managed Care Program: Benefits**

Authority: Health-General Article, §15-103(b)(1), Annotated Code of Maryland

### **10.09.67.28 (7/27/16)**

#### **.28 Benefits — Self-Referral Services.**

A. An MCO shall be financially responsible for reimbursing, in accordance with COMAR 10.09.65.20, an out-of-plan provider chosen by the participant for the following services:

[A.] (1) (text unchanged)

[B.] (2) Services performed by school-based health centers (SBHC), as provided in COMAR [10.09.68] 10.09.76;

[C.] (3)—[I.] (9) (text unchanged)

*B. An MCO shall pay undisputed claims of the SBHC for services provided to its participants within 30 days of the MCO's receipt of the invoice.*

*C. An MCO shall provide SBHCs in its service area with the current information needed to facilitate communication between the SBHC, PCP, and the MCO regarding care provided to the MCO's participant, and to affect reimbursement by the MCO, including:*

*(1) Information concerning the MCO's policies and procedures regarding the provision of pharmacy and laboratory services;*

*(2) Instructions for submitting claims; and*

*(3) Contact information, including names and phone numbers of the following individuals:*

*(a) The MCO representative who serves as a SBHC's contact person for coordination of care; and*

*(b) The student-participant's PCP.*

## **10.09.76 School Based Health Centers (SBHC)**

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

## **.01 Definitions.**

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) "Department" means the Maryland 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.

(2) "Early and Periodic Screening, Diagnosis and Treatment (EPSDT)" means the provision of preventive health care, including medical and dental services under 42 CFR §441.50 et seq., in order to assess growth and development and to detect and treat health problems in Medical Assistance eligible individuals under 21 years old.

(3) "Federally Qualified Health Center (FQHC)" means an entity that has entered into an agreement with the Centers for Medicare and Medicaid Services (CMS) to meet Medicare requirements under 42 CFR §405.2464 and in accordance with 42 CFR §405.2401(b).

(4) "Managed care organization (MCO)" has the meaning stated in Health-General Article, §15-101, Annotated Code of Maryland.

(5) "Medically necessary" means that the service or benefit is:

(a) Directly related to diagnostic, preventive, curative, palliative, or ameliorative treatment of an illness, injury, disability, or health condition;

(b) Consistent with currently accepted standards of good medical practice, dental practice, or both;

(c) The most cost efficient that can be provided without sacrificing effectiveness or access to care; and

(d) Not primarily for the convenience of the participant, family, or provider.

(6) "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.

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

(8) "Primary care provider (PCP)" means a practitioner who is the primary coordinator of care for the participant, and whose responsibility it is to provide accessible, continuous, comprehensive, and coordinated health care services covering the full range of benefits required by the Maryland Medical Assistance Program.

(9) "Primary health services" means a basic level of health care including diagnostic, treatment, consultative, referral, and preventive health services, generally rendered by:

- (a) General practitioners;
- (b) Family practitioners;
- (c) Internists;
- (d) Obstetricians;
- (e) Gynecologists;
- (f) Pediatricians; and
- (g) Midlevel practitioners, such as physician assistants and nurse practitioners.

(10) "Program" means the Maryland Medical Assistance Program.

(11) "Provider" means a school based health center which has been approved by the Department.

(12) "School-Based Health Center (SBHC)" means a health center that:

- (a) Is located on school grounds;
- (b) Provides on-site primary and preventive health, referrals and follow-up services;
- (c) Could provide on-site dental care or behavioral health care, referrals and follow-up services; and
- (d) Has been approved by the Maryland State Department of Education (MSDE).

(14) "Specialty behavioral health" means services specified in COMAR 10.09.59.06 and 10.09.80.05.

**.02 License Requirements.**

- A. The provider shall meet all license requirements as set forth in COMAR 10.09.36.02.
- B. A physician, nurse practitioner, or physician assistant providing services in a SBHC shall be licensed and legally authorized to practice medicine in the state in which the service is provided.
- C. A dentist or dental hygienist providing services in a SBHC shall be licensed and legally authorized to practice in the state in which the service is provided.

**.03 Conditions for Participation.**

- A. General requirements for participation in the Program are that a provider shall meet the:
  - (1) Conditions for participation as set forth in COMAR 10.09.36.03; and
  - (2) General requirements for participation as a free-standing clinic as set forth in COMAR 10.09.08.03B.
- B. Specific requirements for participation in the Program as a SBHC are that a provider shall:
  - (1) Be approved by the Maryland State Department of Education (MSDE) as a SBHC;
  - (2) Have a written agreement with one of the following enrolled sponsoring agencies:
    - (a) Local Health Department as defined in 45 CFR §164.501 (Public Health);
    - (b) Federally Qualified Health Center as defined in 42 CFR § 405.2400(b); or
    - (c) General Clinic as defined in 42 CFR §440.90;
  - (3) Provide somatic health care services through health professionals who:
    - (a) Are trained and experienced in community health and providing health care services to school-aged children;
    - (b) Have knowledge of health promotion and illness prevention strategies for children and adolescents; and
    - (c) Are EPSDT certified;
  - (4) Ensure staff is assigned responsibilities consistent with the staff's education, experience, and within the staff's scope of practice;
    - (5) Designate an individual to be responsible for overall management of the SBHC;
    - (6) Whenever comprehensive primary health services are being delivered, maintain a staffing pattern that includes at least one of the following on site:
      - (a) A physician;
      - (b) A nurse practitioner; or
      - (c) A physician assistant;
    - (7) Maintain policies and procedures that ensure confidentiality of services and records which are practiced consistently, in accordance with Health-General Article, §4-301, Annotated Code of Maryland;
    - (8) Maintain data collection and storage capabilities adequate to maintain medical records and standard demographic data;
    - (9) Require any physician assistant employed by the provider to have a delegation agreement with the supervising physician in accordance with COMAR 10.09.55.02 and .03; and
    - (10) Transmit a health visit report:
      - (a) To the student's MCO and PCP within three business days of the health visit, as designated by the Department, for inclusion in the student-participant's medical record; and
      - (b) If follow-up care with the PCP within 1 week of the health visit is required and the health visit report is mailed, to the student's MCO and PCP by telephone, email, or fax on the day of the SBHC visit.
  - C. Specific requirements for participation in the Program as a dentist or dental hygienist in a SBHC are that a provider shall meet the conditions for participation as set forth in COMAR 10.09.05.03A—E.

**.04 Covered Services.**

- A SBHC, designated by the Department as meeting the criteria specified in Regulation .03 of this chapter, is eligible for reimbursement by the Program for the following services:

- A. Comprehensive well-child care, including the administration of vaccines in accordance with the Maryland Healthy Kids Preventive Health Schedule, when:
  - (1) Performed by EPSDT certified providers; and
  - (2) Rendered according to EPSDT standards set forth in COMAR 10.09.23.03;
- B. Follow-up of positive or abnormal EPSDT screening components without approval of the PCP, except when referral for specialty care is indicated;
- C. Comprehensive preventive and primary health services;
- D. Family planning services as described in COMAR 10.09.58.05;
- E. Covered dental services in accordance with COMAR 10.09.05.04A(1)—(3), (5), (7), (9) and C(1)(e) and (2); and
- F. Specialty behavioral health in accordance with COMAR 10.09.59.06 and 10.09.80.05.

**.05 Limitations.**

The Program does not cover the following:

- A. Services not specified in Regulation .04 of this chapter;
- B. Services not medically necessary;
- C. Investigational and experimental drugs and procedures;
- D. Basic school health services as defined in COMAR 13A.05.05.05—.15;
- E. Services to individuals who are not enrolled in the school system;
- F. Nursing or other health services provided as part of an participant's Individualized Educational Program (IEP) as defined in COMAR 10.09.50.01B or Individualized Family Service Plan (IFSP) as defined in COMAR 10.09.50.01B.
- G. Skilled nursing services provided to enable a participant to be safely maintained in the school setting such as:
  - (1) Nasogastric tube feedings;
  - (2) Catheterization;
  - (3) Oral, nasotracheal, or tracheal suctioning; and
  - (4) Nebulizer treatments;
- H. School health services which are required in all school settings such as:
  - (1) Hearing and vision screening unless completed as part of an EPSDT well child check-up;
  - (2) Routine assessment of minor injuries;
  - (3) First aid;
  - (4) Administration of medications including supervision of self-administered medications;
  - (5) General health promotion counseling; and
  - (6) Review of health records;
- I. Routine sports physicals;
- J. Vaccines supplied by Vaccines for Children (VFC);
- K. Visits for the sole purpose of:
  - (1) Administering medication;
  - (2) Checking blood pressure;
  - (3) Measuring weight;
  - (4) Interpreting lab results; or
  - (5) Group or individual health education; and
- L. Services provided outside of the physical location of the approved SBHC.

**.06 Reimbursement Methodology.**

- A. The provider shall charge the Program the provider's customary charge to the general public for similar services and charge the provider's acquisition cost for injectable drugs or dispensed medical supplies.
- B. 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 §B of this regulation; and
  - (2) The provider's reimbursement is not limited to the provider's customary charge.
- B. Local health department clinics or general clinics shall be paid the lesser of:
  - (1) The provider's customary charge to the general public unless the service is free to individuals not covered by Medicaid;
  - (2) The maximum rates according to COMAR 10.09.02.07; or
  - (3) In the case of specialty behavioral health services, in accordance with COMAR 10.21.25.
- C. The Department shall reimburse a SBHC, sponsored by an FQHC, for somatic services in accordance with COMAR 10.09.08.08.
- D. The Department shall reimburse a SBHC, sponsored by an FQHC, for dental services at an all-inclusive, per-visit cost-based rate that has been established in accordance with COMAR 10.09.08.08.
- E. The Department shall reimburse a SBHC, sponsored by a LHD, for dental services in accordance COMAR 10.09.05.07.

**.07 Payment Procedures.**

- A. *The provider shall submit a completed request for payment in the format designated by the Department or HealthChoice MCO, including required documentation.*
- B. *The dental provider shall submit a request for payment in the format designated by the Department and in accordance with COMAR 10.09.05.07.*
- C. *The Program reserves the right to return to the provider, before payment, all invoices not properly completed.*
- D. *Unless the service is free to individuals not covered by Medicaid, a provider shall bill the Program the provider's customary charge to the general public for similar services.*
- E. *The Department shall authorize payment on Medicare cross-over claims only if:*
  - (1) *The provider accepts Medicare assignments;*
  - (2) *Medicare makes a direct payment to the provider;*
  - (3) *Medicare determines 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.*
- F. *The Department shall make supplemental payment on Medicare cross-over claims subject to the following provisions:*
  - (1) *A deductible shall be paid in full;*
  - (2) *Coinurance shall be paid at the lesser of:*
    - (a) *100 percent of the coinsurance amount; or*
    - (b) *The balance remaining after the Medicare payment is subtracted from the Medicaid rate; and*
  - (3) *Services not covered by Medicare, but considered medically necessary by the Program, shall be paid according to the limitations of this chapter.*
  - (4) *Coinurance shall be paid in full to FQHC providers.*
- G. *A SBHC providing self-referred services as described in COMAR 10.09.67.28 to an MCO participant shall:*
  - (1) *Verify eligibility and MCO assignment through EVS on the day of service;*
  - (2) *Submit claims within 180 days of performing the service;*
  - (3) *Submit claims using the CMS 1500 for paper processing and the HIPAA compliant 837P for electronic processing; and*
  - (4) *Bill third party insurers before billing the MCO with the exception of well-child care and immunizations.*
- H. *The provider may not bill the Program for:*
  - (1) *Completion of forms and reports;*
  - (2) *Broken or missed appointments;*
  - (3) *More than one visit to complete an EPSDT screen; and*
  - (4) *Providing a copy of a participant's medical record when requested by another licensed provider on behalf of the participant.*
- I. *The Program may not make direct payment to participants.*
- J. *The Program may not make a separate direct payment to any individual employed by or under contract to any SBHC for services provided in a SBHC.*
- K. *Billing time limitations for claims submitted pursuant to this chapter are set forth in COMAR 10.09.36.*

**.08 Recovery and Reimbursement.**

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

**.09 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.*

**.10 Appeal Procedures.**

*Providers filing appeals from administrative decisions made in connection with this chapter shall do so according to COMAR 10.09.36.09.*

**.11 Interpretive Regulation.**

*State regulations shall be interpreted in conformity with COMAR 10.09.36.10.*

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**