



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

MARYLAND MEDICAL ASSISTANCE PROGRAM
Managed Care Organization Transmittal No. 89
Hospital Transmittal No. 217
February 1, 2012

TO: Managed Care Organizations
Hospital Providers

From: Susan Tucker, Executive Director
Office of Health Services

NOTE: Please ensure that appropriate staff members in your organization are informed of contents of this transmittal.

RE: Preauthorization requirements for recipients with Third Party Insurance Coverage

This transmittal clarifies the requirements recently adopted under COMAR 10.09.65.18, Third Party Liability which is effective February 6, 2012. A copy of this regulation is attached.

For recipients who are known or are perceived to have third party insurance coverage as well as enrollment in a Medicaid Managed Care Organization (MCO), hospital providers are now required to request preauthorization from the other insurance carrier and the MCO. Failure to request preauthorization from the other insurance carrier and the MCO may result in denial of the claim by the MCO if the MCO is ultimately responsible.

Additionally, MCOs are now required to keep detailed records of all requests for preauthorization, even if there is a perception that the enrollee has other insurance coverage, and MCOs are also required to make these records available to the Department upon request. The records should include:

- Date of request;
- Name of requesting hospital;
- Name of hospital staff person making the request;
- Member name and MA number;
- Service requested; and
- Authorization number or reason for denial.

Following the procedures above should allow hospitals to be paid for all medically necessary service regardless of the payor. If you have any questions, please feel free to contact Pamela Williams of the Division of HealthChoice Management and Quality Assurance at 410-767-1482.

FINAL

Maryland Register

Issue Date: January 27, 2012

Volume 39 • Issue 2 • Pages 141

Title 10
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Final Action

[11-300-F]

On January 17, 2012, the Secretary of Health and Mental Hygiene adopted amendments to:

- (1) Regulation .06 under 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment;
- (2) Regulations .03, .13, .17, .18, and .28 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations;
- (3) Regulations .05, .06, and .07 under COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access; and
- (4) Regulations .04 and .28 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits.

This action, which was proposed for adoption in 38:22 Md. R. 1354—1356 (October 21, 2011), has been adopted as proposed.

Effective Date: February 6, 2012.

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene

PROPOSAL

Maryland Register

Issue Date: October 21, 2011

Volume 38 • Issue 22 • Pages 1254-1356

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Proposed Action

[11-300-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulation .06 under 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment;
- (2) Regulations .03, .13, .17, .18, and .28 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations;
- (3) Regulations .05, .06, and .07 under COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access; and
- (4) Regulations .04 and .28 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits.

Statement of Purpose

The purpose of this action is to:

- (1) Allow long-term care facilities to submit documentation to have enrollees removed from MCOs after 30 days;
- (2) Require that initial exams of children in State-supervised care be performed by EPSDT-certified providers;
- (3) Add language to ensure that MCOs do not burden providers administratively when members have other third-party insurance;
- (4) Remove obsolete value-based purchasing language and add a new maximum disincentive amount for FY 2012;

(5) Add language allowing for sanctions if an MCO's Drug Management Program fails to meet the standards established by the Department;

(6) Require MCOs to include in their drug formulary each drug classification listed in the current American Hospital Formulary Service (AHFS); and

(7) Remove obsolete dental references and update incorrect references.

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 W. Preston St., Room 512, Baltimore, Maryland 21201, or call 410-767-6499, (TTY 800-735-2258), or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through November 21, 2011. A public hearing has not been scheduled.

10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment

Authority: Health-General Article, §15-103(b)(3), and (23), Annotated Code of Maryland.

.06 Disenrollment.

A. (text unchanged)

B. Department-Initiated Disenrollment. The Department shall disenroll from an MCO an enrollee:

(1) Subject to the MCO or long-term care facility obtaining the Department's determination that the enrollee's institutionalization has been medically necessary, who has been continuously institutionalized for a period of more than 30 successive days in a long-term care facility;

(2)—(10) (text unchanged)

C.—G. (text unchanged)

10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations

Authority: Insurance Article, §15-112, 15-605, and 15-1008; Health-General Article, §2-104, 15-102.3, and 15-103; Annotated Code of Maryland

.03 Quality Assessment and Improvement.

A. (text unchanged)

B. An MCO shall participate in all quality assessment activities required by the Department in order to determine if the MCO is providing medically necessary enrollee health care. These activities include, but are not limited to:

(1)—(2) (text unchanged)

(3) The annual collection and evaluation of a set of performance measures with targets as determined by the Department as follows:

(a)—(c) (text unchanged)

(d) Starting with the 2006 audit, the Department shall notify MCOs of its core set of performance measures and targets at least 3 months before the calendar year for which the MCOs will be held accountable for compliance with the performance measures;

(e) Effective January 1, 2006, the performance measures will be the 10 measures as stated in §B(3)(a) of this regulation;

(f) Starting with the 2007 performance measures, the Department shall implement the following methodology for imposing penalties and incentives:

(i) There shall be three levels of performance;

(ii) Performance shall be evaluated separately for each measure, and each measure shall have equal weight;

(iii) For any of the measures in §B(3)(a)(i)—(ix) of this regulation that the MCO does not meet the minimum target, as determined by the Department, a penalty of 1/9 of 1/2 percent of the total capitation amount paid to the MCO during that calendar year shall be collected;

(iv) For any of the measures in §B(3)(a)(i)—(ix) of this regulation that the MCO exceeds the incentive target, as determined by the Department, the MCO shall be paid an incentive payment of up to 1/9 of ½ percent of the total capitation paid to the MCO during that calendar year;

(v) The total amount of the incentive payments as described in §B(3)(g)(iv) of this regulation paid to the MCOs each year may not exceed the total amount of the penalties as described in §B(3)(g)(iii) of this regulation collected from the MCOs in that same year plus 25 percent of the funds estimated by the Department for the Statewide Supplemental Payment for the same year; and

(vi) Any funds remaining after the payment of the incentives due under §B(3)(g)(iv) of this regulation shall be distributed to the MCOs receiving the four highest normalized scores for Value Based Purchasing for all nine performance measures at a rate of 40 percent, 30 percent, 20 percent and 10 percent respectively;]

[(g)] (d) (text unchanged)

[(h)] (e) Starting with the 2009 performance measures, the Department shall implement the following methodology for imposing penalties and incentives:

(i)—(ii) (text unchanged)

(iii) On any of the measures in [§B(3)(g)] §B(3)(d) of this regulation for which the MCO does not meet the minimum target, as determined by the Department, a penalty of 1/10 of 1 percent of the total capitation amount paid to the MCO during the measurement year shall be collected;

(iv) The total amount of the penalties as described in [§B(3)(h)(iii)] §B(3)(e)(iii) of this regulation may not exceed 1/2 of 1 percent of the total capitation amount paid to the MCO during the same measurement year;

(v) On any of the measures in [§B(3)(g)] §B(3)(d) of this regulation for which the MCO meets or exceeds the incentive target, as determined by the Department, the MCO shall be paid an incentive payment of up to 1/10 of 1 percent of the total capitation paid to the MCO during that measurement year;

(vi) The total amount of the incentive payments as described in [§B(3)(h)(v)] §B(3)(e)(v) of this regulation paid to the MCOs each year may not exceed the total amount of the penalties as described in [§B(3)(h)(iii)] §B(3)(e)(iii) of this regulation collected from the MCOs in that same year, plus any additional funds allocated to the Department for a quality initiative; and

(vii) Any funds remaining after the payment of the incentives due under [§B(3)(h)(v)] §B(3)(e)(v) of this regulation shall be distributed to the MCOs receiving the four highest normalized scores for Value Based Purchasing for all ten performance measures at a rate calculated by multiplying each MCO's adjusted enrollment as of December 31 of the measurement year by a per enrollee amount;

[(i)] (f) The adjusted enrollment amount in [§B(3)(h)(vii)] §B(3)(e)(vii) of this regulation shall be calculated by:

(i)—(iv) (text unchanged)

[(j)] (g) The per enrollee amount in [§B(3)(h)(vii)] §B(3)(e)(vii) of this regulation shall be calculated by dividing the sum of the calculations in [§B(3)(i)(i)—(iv)] §B(3)(f)(i)—(iv) of this regulation into the funds remaining as described in [§B(3)(h)(vii)] §B(3)(e)(vii) of this regulation; [and]

(h) Starting with the 2012 performance measures, the Department shall use the same methodology as described §B(3)(e)(i)—(iii) and (v)—(vii) of this regulation for imposing penalties and incentives, except that the total amount of the penalties as described in §B(3)(e)(iii) of this regulation may not exceed 1 percent of the total capitation amount paid to the MCO during the same measurement year;

[(k)] (i) (text unchanged)

(4)—(6) (text unchanged)

C. (text unchanged)

.13 Children in State-Supervised Care.

A.—E. (text unchanged)

F. Enrollee Self-Referral. An MCO shall permit the self-referral of a child in State-supervised care to an *EPSDT certified provider* for an initial examination, including a mental health screen, and shall pay for all portions of the examination except for the mental health screen, which shall be paid for by the Specialty Mental Health System.

G. (text unchanged)

.17 Subcontractual Relationships.

A. Subcontracting Permitted.

(1)—(4) (text unchanged)

(5) An MCO shall use subcontracts that are in writing, comply with 42 CFR §§438.214 and 455.105, as amended, and include at least the following:

(a)—(k) (text unchanged)

(6)—(7) (text unchanged)

B.—E. (text unchanged)

.18 Third-Party Liability.

A.—H. (text unchanged)

I. An MCO may not deny a provider's request for a preauthorization solely because a recipient has, or is thought to have, third-party insurance.

J. The requirement in §I of this regulation may not apply if an MCO has a process in place to ensure that a claim will not be denied for lack of preauthorization if the claim ultimately becomes the MCO's responsibility for one of the following reasons:

- (1) The recipient does not have third-party insurance; or
- (2) The service received is a noncovered service under the third-party insurance.

.28 Conflict of Interest Safeguards.

An MCO may not contract with the State unless safeguards at least equal to federal safeguards under 41 U.S.C., §423.27] §423, as amended, are in place.

10.09.66 Maryland Medicaid Managed Care Program: Access

Authority: Health-General Article, §§15-102.1(b)(10) and 15-103(b), Annotated Code of Maryland

.05 Access Standards: PCPs and MCO's Provider Network.

A. (text unchanged)

B. Adequacy of Provider Network.

(1) An MCO shall develop and maintain a complete network of adult and pediatric primary care, specialty care, ancillary service, [dental services for children,] vision, pharmacy, home health, and any other providers adequate to deliver the full scope of benefits as required by this chapter and COMAR 10.09.67.

(2)—(8) (text unchanged)

.06 Geographical Access.

A. (text unchanged)

B. Except as provided in §D of this regulation, to meet the geographical access standard established by this regulation, an MCO shall provide the services listed in §A(1) and [(3)—(5)] (3)—(4) of this regulation:

(1)—(2) (text unchanged).

C.—E. (text unchanged)

.07 Access Standards: Clinical and Pharmacy Access.

A. Appointments.

(1)—(2) (text unchanged)

(3) Appointment Guidelines.

(a) (text unchanged)

(b) An MCO shall effect procedures that result in an interval between the enrollee's request for an appointment and the actual appointment time being consistent with the following standards:

(i)—(vii) (text unchanged)

(viii) Requests for regular [dental,] optometry, lab, and X-ray appointments shall be scheduled to be performed within 30 days of the request, and within 48 hours of the request for urgent care.

B.—E. (text unchanged)

10.09.67 Maryland Medicaid Managed Care Program: Benefits

Authority: Health-General Article, Title 15, Subtitle 1, Annotated Code of Maryland

.04 Benefits — Pharmacy Services.

A.—C. (text unchanged)

D. Drug Formulary.

(1) An MCO shall establish and maintain a drug formulary that is at least equivalent to the standard therapies of the Maryland Medical Assistance Program [on the implementation date of the Maryland Medicaid Managed Care Program].

(2)—(4) (text unchanged)

(5) To ensure that its formulary drugs are medically necessary, safe, and efficacious, an MCO shall:

(a) Subject its formulary to a [drug utilization] review [program] process that is:

(i) Established and conducted by the [MCO] MCO's Pharmacy and Therapeutics Committee;

(ii) (text unchanged)

(iii) Coordinated with the [drug utilization] formulary review [program] process of the Specialty Mental Health Services delivery system; and

(b) (text unchanged)

(6) Unless approved by the Department, an MCO may not require or utilize prior authorization or step therapy criteria for coverage of formulary drugs if such prior authorization or step therapy requires a recipient to use a drug that is included in the SMHS formulary as described in COMAR 10.09.70.02E.

E.—F. (text unchanged)

G. *The Department shall:*

(1) *Review each MCO's drug use management program annually; and*

(2) *Notify an MCO annually if any of the standards established in §F(2) of this regulation have not been met.*

H. *For any performance standard identified in §G(2) of this regulation, MCOs shall acknowledge any deficiencies within 30 days and correct any deficiencies within 90 days or be subject to sanctions listed in COMAR 10.09.73.01A and B.*

.28 Benefits — Self-Referral Services.

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

A.—C. (text unchanged)

D. *Initial medical examination for children in State custody when performed by an EPSDT certified provider;*

E.—J. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.
Secretary of Health and Mental Hygiene