**PROPOSAL**

**Maryland Register**

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**Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Notice of Proposed Action**

[19-154-P]

The Secretary of Health proposes to amend:

(1) Regulations **.03**, **.05**, **.06**, **.09**, and **.10** under **COMAR 10.01.04****Fair Hearing Appeals Under the Maryland State Medical Assistance Program**;

(2) Regulation **.06** under **COMAR****10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment**; and

(3) Regulation **.04** under **COMAR 10.09.71 Maryland Medicaid Managed Care Program: MCO Dispute Resolution Procedures**.

**Statement of Purpose**

The purpose of this action is to clarify MCO responsibilities and procedures when a fair hearing concerns MCO services, in order to align with federal requirements. Additionally, this action corrects an error in the current language regarding a HealthChoice enrollee’s disenrollment effective date.

**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**

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 Jake Whitaker, Acting Director, Office of Regulation and Policy Coordination, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through September 3, 2019. A public hearing has not been scheduled.

**Subtitle 01 PROCEDURES**

**10.01.04 Fair Hearing Appeals Under the Maryland State Medical Assistance Program**

Authority: Health-General Article, §2-104, Annotated Code of Maryland

**.03 Notification of Right to Request a Fair Hearing.**

A. (text unchanged)

B. The notification specified in §A of this regulation shall:

(1) Be provided by the Program*, the MCO,* or the delegate agency when:

(a) (text unchanged)

(b) Any Program*, MCO,* or delegate agency action affects the individual’s claim to Program benefits;

(c)—(d) (text unchanged)

(2) Include a statement of the action the Program, *MCO,*skilled nursing facility, or nursing facility intends to take;

(3)—(8) (text unchanged)

(9) Specify that the appellant or the appellant’s authorized representative may generally examine the appellant’s records upon reasonable notice to the Program*, MCO,* or delegate agency; and

(10) (text unchanged)

C. (text unchanged)

**.05 Pre-Hearing Procedures.**

A. (text unchanged)

B. The appellant and the Department *or MCO*may request the names of all witnesses that the other party intends to call at the fair hearing.

**.06 Hearing Procedures.**

A. The appellant, the Program, *the MCO,*and the delegate agency shall have the opportunity to:

(1)—(5) (text unchanged)

B. All parties that wish to call a witness at the hearing shall subpoena the witness in accordance with Office of Administrative Hearings procedures in COMAR 28.02.01.11. The appellant or authorized representative may subpoena any employees of the Department*, MCO,* or delegate agency whose action is being contested by the appellant or whose testimony may be relevant to the issues under consideration as determined by the administrative law judge.

C. Right to Review Record.

(1) If the Program*, MCO,* or delegate agency introduces as evidence documents from the case record, special investigation file, or other sources, the appellant shall have the opportunity to examine the:

(a)—(b) (text unchanged)

(2) Except as specified in Regulation .05A of this chapter, in addition to the rights specified in §C(1) of this regulation and for purposes of defining reasonable notice under Regulation .03B(9) of this chapter, the appellant or the appellant’s authorized representative shall have the opportunity to examine the appellant’s case record or investigation file upon reasonable notice to the Program*, the MCO,* or the delegate agency as specified in COMAR 07.01.02.04.

(3) (text unchanged)

D.—E. (text unchanged)

F. Appeal for an Individual Enrolled in an MCO.

*(1) The parties to the appeal for an individual enrolled in an MCO include the MCO, the enrollee, and the enrollee’s representative or the personal representative of a deceased enrollee’s estate.*

**[**(1)**]***(2)* If the appeal concerns the medical necessity of a denied, reduced, suspended, or terminated benefit or service to an MCO enrollee, and if the fair hearing meets the Department-established criteria for an expedited hearing as provided in Regulation .04A(3)(b)(ii) of this chapter, the Office of Administrative Hearings shall:

(a) (text unchanged)

(b) Issue a follow-up written decision within 30 days of rendering the bench decision if the Office of Administrative Hearings, the appellant or **[**his**]** *the appellant’s*authorized representative, and the **[**Program**]** *MCO* agree that a written decision is necessary.

**[**(2)**]** *(3)* All other appeals from MCO decisions shall be:

(a) (text unchanged)

(b) Otherwise governed by COMAR **[**10.09.72.05**]***10.09.71.05*.

**.09 Confidentiality.**

A.—B. (text unchanged)

C. The administrative law judge may exclude from the hearing individuals who have not given the Department *or MCO*advance notice of their intention to attend if the size of the hearing room is too small to accommodate them.

**.10 Benefits During Appeals Process.**

A. Benefits Pending Outcome of the Hearing.

(1)—(3) (text unchanged)

*(4) The MCO shall continue benefits pending the outcome of the State fair hearing as described in COMAR 10.09.71.05F.*

B. (text unchanged)

**Subtitle 09 MEDICAL CARE PROGRAM**

**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.—D. (text unchanged)

E. Effective Date of Disenrollment.

(1) (text unchanged)

(2) An enrollee's disenrollment shall take effect:

(a) (text unchanged)

(b) From the first day of the month **[**the Department receives notice**]** *following the month* that the enrollee lost Medicaid eligibility;

(c)—(d) (text unchanged)

(3)—(6) (text unchanged)

F.—H. (text unchanged)

**10.09.71 Maryland Medicaid Managed Care Program: MCO Dispute Resolution Procedures**

Authority: Health-General Article, §15-103(b)(9)(i)(4), Annotated Code of Maryland

**.04 MCO Actions and Decisions.**

A. For certain services to enrollees that require preauthorization the following conditions apply:

(1) (text unchanged)

(2) For expedited authorization decisions, the MCO shall make a determination and provide notice no later than 72 hours after receipt of the request for service if the provider indicates or the MCO determines that the standard time frame stated in §A(1) of this regulation could jeopardize:

(a)—(b) (text unchanged)

(c) The enrollee’s ability to attain, maintain, or regain maximum function; **[**and**]**

(3) For all covered outpatient drug authorization decisions, the MCO shall provide notice by telephone or other telecommunication device within 24 hours of a preauthorization request in accordance with section 1927(d)(5)(A) of the Social Security Act**[**.**]***;*

*(4) Standard and expedited authorization decisions may be extended up to 14 calendar days, if the following conditions are met:*

*(a) The enrollee or the provider requests an extension; or*

*(b) The MCO justifies to the Department, upon request, a need for additional information and how the extension is in the enrollee’s interest; and*

*(5) If the MCO successfully justifies extending the standard service authorization decision time frame, the MCO shall:*

*(a) Give the enrollee written notice of the reason for the decision to extend the time frame;*

*(b) Inform the enrollee of the right to file a grievance if he or she disagrees with the extension decision; and*

*(c) Issue and carry out the MCO’s determination as expeditiously as the enrollee’s health condition requires but not later than the date the extension expires.*

B.—C. (text unchanged)

D. Notices of a decision to deny **[**an**]** *a standard* authorization shall be provided to the enrollee and the requesting provider **[**within the following time frames:**]** *within 72 hours from the date of determination.*

**[**(1) For standard authorization decisions, within 72 hours from the date of the determination;

(2) For expedited authorization decisions, within 24 hours from the date of determination;

(3) Standard and expedited authorization decisions may be extended up to 14 calendar days, if the following conditions are met:

(a) The enrollee or the provider requests an extension; or

(b) The MCO justifies to the Department, upon request, a need for additional information and how the extension is in the enrollee’s interest;

(4) If the MCO successfully justifies extending the standard service authorization decision time frame, the MCO shall:

(a) Give the enrollee written notice of the reason for the decision to extend the time frame;

(b) Inform the enrollee of the right to file a grievance if he or she disagrees with the extension decision; and

(c) Issue and carry out the MCO’s determination as expeditiously as the enrollee’s health condition requires but not later than the date the extension expires.**]**

E.—G. (text unchanged)

ROBERT R. NEALL
Secretary of Health