

## **FINAL AND PROPOSAL**

### **Maryland Register**

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## **Title 10**

# **MARYLAND DEPARTMENT OF HEALTH**

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **10.09.05 Dental Services**

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

#### **IMPORTANT CORRECTION COMAR 10.09.05**

The Notice of Final Action docketed as 21-090-F-I in 48:22 Md. R. 938 (October 22, 2021) was filed in error with the Division of State Documents. The Notice of Proposed Action docketed as 21-090-P-I in 48:15 Md. R. 603—605 (July 16, 2021) is being finalized in this issue instead. The new Notice of Final Action appears below.

#### **Notice of Final Action**

[21-090-F-I]

On October 14, 2021, the Secretary of Health adopted amendments to Regulations **.01** and **.03—.07** under **COMAR 10.09.05 Dental Services**. This action, which was proposed for adoption in 48:15 Md. R. 603—605 (July 16, 2021), has been adopted with the nonsubstantive changes shown below.

**Effective Date: November 15, 2021.**

#### **Attorney General's Certification**

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .01B(8): The Department is amending the definition of “covered services” by replacing language describing the specific postpartum time frame and effective date with an evergreen reference to COMAR 10.09.24.02, where the term “postpartum period” is defined. This is to ensure continued alignment with Medicaid policy and eligibility regulations under COMAR 10.09.24.

Regulation .01B(19): The Department is amending the definition of “Maryland Healthy Smiles Program” by replacing language describing the specific postpartum time frame with an evergreen reference to COMAR 10.09.24.02, where the term “postpartum period” is defined. This is to ensure continued alignment with Medicaid policy and eligibility regulations under COMAR 10.09.24.

Regulation .04B: The Department is replacing language describing the specific postpartum time frame with an evergreen reference to COMAR 10.09.24.02, where the term “postpartum period” is defined. This is to ensure continued alignment with Medicaid policy and eligibility regulations under COMAR 10.09.24.

Regulation .06F(2): The Department is changing the term “monthly adjustments” to “periodic adjustments” to coincide with the published CDT procedure code.

Regulation .71(1): The Department is clarifying language regarding reimbursement for orthodontic treatment to maintain consistency of terminology throughout the chapter and Maryland Medicaid Dental Services Fee Schedule and Procedure Codes CDT. Specifically, this final action amendment changes the term “treatment months” to “periodic” and deletes the phrase “per monthly”.

#### **.01 Definitions.**

A. (proposed text unchanged)

B. Terms Defined.

(1)—(7) (proposed text unchanged)

(8) “Covered services” means:

(a)—(d) (proposed text unchanged)

(e) *[[Effective January 1, 2021, certain medical]] Certain medically necessary services for postpartum women [[until the end of the second month following the end of their pregnancy]] through the end of the postpartum period as defined in COMAR 10.09.24.02.*

(9)—(18) (proposed text unchanged)

- (19) "Maryland Healthy Smiles Dental Program" means the Maryland Medicaid dental program that provides coverage for:
- (a)—(c) (proposed text unchanged)
  - (d) Eligible former foster care participants younger than 26 years old; **[[and]]**
  - (e) Eligible participants who are:
    - (i) (proposed text unchanged)
    - (ii) 21 through 64 years old**[[.]]**; and
  - (f) Postpartum women through the end of the postpartum period as defined in COMAR 10.09.24.02.
- (20)—(33) (proposed text unchanged)

**.04 Covered Services.**

- A. (proposed text unchanged)
- B. The Program covers the following medically necessary dental services for pregnant *and postpartum* participants, through the end of the postpartum period as defined in COMAR 10.09.24.02. and REM participants 21 years old or older:
  - (1)—(20) (proposed text unchanged)
- C.—D. (proposed text unchanged)

**.06 Preauthorization Requirements.**

- A.—E. (proposed text unchanged)
- F. *Preauthorization for Orthodontic Treatment.*
  - (1) (proposed text unchanged)
  - (2) *Preauthorization for **[[monthly]]** periodic orthodontic treatment is valid for:*
    - (a)—(b) (proposed text unchanged)

**.07 Payment Procedures.**

- A.—H. (proposed text unchanged)
- I. Reimbursement for Traditional *Comprehensive* Orthodontic Treatment.
  - (1) The Program shall reimburse for orthodontic treatment for a maximum of 24 **[[treatment months]]** periodic visits at an established **[[per monthly]]** rate, provided the treatment meets the standards established in COMAR 10.09.05.06F.
  - (2) (proposed text unchanged)
- J.—O. (proposed text unchanged)

DENNIS R. SCHRADER  
Secretary of Health

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## **Title 10**

# **MARYLAND DEPARTMENT OF HEALTH**

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **10.09.05 Dental Services**

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

#### **Notice of Final Action**

[21-090-F-I]

On September 9, 2021, the Secretary of Health adopted amendments to Regulations **.01** and **.03—.07** under **COMAR 10.09.05 Dental Services**. This action, which was proposed for adoption in 48:15 Md. R. 603—605 (July 16, 2021), has been adopted as proposed.

**Effective Date: November 1, 2021.**

DENNIS R. SCHRADER  
Secretary of Health

**Title 10**  
**MARYLAND DEPARTMENT OF HEALTH**  
**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.05 Dental Services**

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

**Notice of Proposed Action**

[21-090-P-I]

The Secretary of Health proposes to amend Regulations .01 and .03—.07 under **COMAR 10.09.05 Dental Services**.

**Statement of Purpose**

The purpose of this action is to:

- (1) Clarify definitions, provider qualifications, and preauthorization requirements related to mobile dental units and orthodontic treatment coverage to align with current practices;
- (2) Add coverage for medically necessary dental services for postpartum women, in accordance with the Governor's FY 2021 supplemental budget;
- (3) Update the dental prophylaxis coverage frequency based on Chs. 477 (H.B. 547) and 478 (S.B. 485), Acts of 2021; and
- (4) Update the Maryland Medicaid Dental Services Fee Schedule and Procedure Codes CDT, which is incorporated by reference in this chapter.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The total estimated cost of providing certain medically necessary dental services for postpartum women until the end of the second month following the end of their pregnancy is \$1,000,000 total funds.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)	\$1,000,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	\$1,000,000
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. and D. This amount assumes:

(1) The State's Fiscal Year 2022 budget includes \$1,000,000 to pay for medically necessary dental services for postpartum women until the end of the second month following the end of their pregnancy.

(2) This amount is subject to a 50 percent federal match (\$500,000 federal funds and \$500,000 general funds).

D. See A. above.

### **Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Maryland Medicaid-enrolled dental providers who qualify as small businesses may benefit because they will be able to bill for postpartum dental care rendered to Maryland Medicaid participants. The FY 2022 budget provides \$1,000,000 for this purpose. To the extent that small businesses bill Medicaid for dental care rendered to this population, they will receive a portion of this amount.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Jason Caplan, 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](mailto:mdh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through August 16, 2021. A public hearing has not been scheduled.

### **Editor's Note on Incorporation by Reference**

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Maryland Medicaid Dental Services Fee Schedule and Procedure Codes CDT 2020 has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 48:1 Md. R. 7 (January 4, 2021), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

### **.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) "Adverse action" means any action taken by the [administrative services organization (ASO)] *dental benefits administrator (DBA)* to deny, reduce, terminate, delay, or suspend a covered service.

(2)—(3) (text unchanged)

(4) "Appeal" means the process:

(a) To resolve a participant's dispute with any adverse action taken by the [ASO] *DBA* to deny, reduce, terminate, delay, or suspend a covered service; and

(b) (text unchanged)

[(5)] "Administrative services organization (ASO)" means an organization with which MDH contracts to assist in the management of the dental program.]

[(6)] (5) "Benefits" means a schedule of dental services to be administered by the [ASO] *DBA* to Medical Assistance participants pursuant to this chapter.

[(7)] (6)—[(8)] (7) (text unchanged)

[(9)] (8) "Covered services" means:

(a)—(b) (text unchanged)

(c) Effective January 1, 2017, all medically necessary dental services for eligible former foster care participants younger than 26 years old; [and]

(d) Effective [January 1, 2019] *June 1, 2019*, certain medically necessary services for dual-eligible participants 21 through 64 years old[.]; and

(e) *Effective January 1, 2021, certain medical necessary services for postpartum women until the end of the second month following the end of their pregnancy.*

[(10)] (9) "Dental benefits administrator (DBA)" means an entity [that administers] *with which the Department contracts to administer* dental benefits by performing some or all of the following functions:

(a)—(h) (text unchanged)

[(11)] (10)—[(24)] (23) (text unchanged)

[(25)] (24) "Network provider" means a health care entity or health care professional that [is either employed by, or] has executed a provider agreement with[, the dental benefits administrator, or its subcontractor to render covered services to the participant] *Maryland Medicaid*.

[(26)] (25)—[(27)] (26) (text unchanged)

[(28)] (27) "Primary dental office" means the [dental care provider responsible for coordinating, integrating, and providing dental care for the participant] *fixed and permanent location where the mobile dental unit*:

(a) *Is linked through either ownership or a legally binding contract; and*

(b) *Transmits participant records.*

[(29)] (28)—[(33)] (32) (text unchanged)

(33) “*Traditional comprehensive orthodontic treatment*” means a coordinated diagnosis and treatment to improve craniofacial dysfunction or dentofacial deformity which may utilize fixed and removable orthodontic appliances and focus on specific objectives at various stages of dentofacial development.

### **.03 Provider Qualifications and Conditions for Participation.**

A.—D. (text unchanged)

E. Mobile Dental Unit.

(1)—(7) (text unchanged)

(8) The owner or owners of a mobile dental unit shall submit a business plan to the [Dental Administrative Services Organization (ASO)] *dental benefits administrator* for the mobile unit that includes:

(a)—(d) (text unchanged)

F. (text unchanged)

### **.04 Covered Services.**

A. (text unchanged)

B. The Program covers the following medically necessary dental services for pregnant *and postpartum* participants and REM participants 21 years old or older:

(1) (text unchanged)

(2) X-rays, including:

(a) (text unchanged)

(b) Single, tow, three, or four film bitewings, which are limited to:

(i) (text unchanged)

(ii) One per patient per year for pregnant *and postpartum* participants 21 years old or older; and

(3) Prophylaxis for adults, which is limited to:

(a) (text unchanged)

(b) [One] *Two* per patient per [6] *12* months for pregnant *and postpartum* participants 21 years old or older;

(4) Topical application of fluoride, which is limited to:

(a) (text unchanged)

(b) One application per patient per year for pregnant *and postpartum* participants 21 years old or older;

(5) Amalgam restorations for permanent teeth for one, two, three, four, or more surfaces, which are limited to one identical restoration per tooth per [36] *24* months;

(6) Resin restorations for anterior permanent teeth for one, two, three, four, or more surfaces or involving incisal angle, which are limited to one identical restoration per tooth per [36] *24* months;

(7)—(20) (text unchanged)

C. As provided for in the budget, the Program covers the following medically necessary dental services, up to \$800 per calendar year, for dual eligible participants who are 21 through 64 years old:

(1)—(2) (text unchanged)

(3) Prophylaxis for adults, which is limited to [one] *two* per patient per [6] *12* months;

(4) Amalgam restorations for permanent teeth for one, two, three, four, or more surfaces, which is limited to one identical restoration per tooth per [36] *24* months;

(5) Resin restorations for anterior permanent teeth for one, two, three, four, or more surfaces or involving incisal angle, which are limited to one identical restoration per tooth per [36] *24* months; and

(6) (text unchanged)

D. The Program shall reimburse for covered services in §§A—C of this regulation if:

(1)—(3) (text unchanged)

(4) The services are adequately described on the participant’s dental care record *in accordance with record-keeping practices detailed in COMAR 10.44.30.*

### **.05 Limitations.**

A. (text unchanged)

B. The Program does not cover:

(1)—(4) (text unchanged)

(5) Inpatient hospital dental or oral health care services rendered during an admission [denied by the utilization control agent or during any period that is in excess of the length of stay authorized by the utilization control agent];

(6)—(16) (text unchanged)

(17) Unilateral partial dentures replacing [less] *fewer* than three teeth, excluding third molars; [and]

(18) Implants[.];

(19) *More than one, per participant per lifetime, of the following services:*

(a) *Traditional comprehensive orthodontic treatment; or*

(b) *Self-ligating braces; and*

(20) *Services rendered without the required preauthorization.*

C. (text unchanged)

**.06 Preauthorization Requirements.**

- A. Preauthorization is issued when:
- (1) (text unchanged)
  - (2) Program limitations are met; [and]
  - (3) The provider submits to the Department, adequate documentation demonstrating that the service to be preauthorized is medically necessary[.]; *and*
  - (4) *The participant is eligible for the service.*
- B. Preauthorization is required for the following:
- (1)—(19) (text unchanged)
  - (20) Meniscectomy; [and]
  - (21) Arthrotomy[.]; *and*
  - (22) *All orthodontic procedures.*
- C. (text unchanged)
- D. [Preauthorization] *Except as described in §F of this regulation, preauthorization* is valid for dental services when the services are approved and completed within 6 months after the date of the receipt of the preauthorization number from the Program [and is contingent on the participant's continued eligibility].
- E. (text unchanged)
- F. *Preauthorization for Orthodontic Treatment.*
- (1) Preauthorization is required for traditional *comprehensive* orthodontic [services] *treatment* and for self-ligating braces for the correction of medically necessary conditions, which cause dysfunction due to a handicapping malocclusion. At a minimum the following comprehensive pretreatment documentation shall be submitted:
    - [(1)] (a)—[(6)] (f) (text unchanged)
    - (2) *Preauthorization for monthly orthodontic treatment is valid for:*
      - (a) *24 months for traditional comprehensive orthodontic treatment; or*
      - (b) *12 months for self-ligating braces.*

**.07 Payment Procedures.**

- A.—D. (text unchanged)
- E. The current Maryland Medicaid Dental Services Fee Schedule and Procedure Codes CDT is incorporated by reference, effective [January 1, 2018] *January 1, 2020*.
- F.—H. (text unchanged)
- I. Reimbursement for Traditional *Comprehensive* Orthodontic Treatment.
- (1) (text unchanged)
  - (2) [Preauthorization for the treatment is valid for 6 months.] *Orthodontic treatment is a once in a lifetime benefit.*
- J.—O. (text unchanged)

DENNIS R. SCHRADER  
Secretary of Health