**FINAL AND PROPOSAL**

**Issue Date: June 4, 2021**

**Volume 48 • Issue 12 • Page 473**

 **Title 10
MARYLAND DEPARTMENT OF HEALTH**

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.36 General Medical Assistance Provider Participation Criteria**

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

**Notice of Final Action**

[20-171-F]

On May 12, 2021, the Secretary of Health adopted amendments to Regulations **.01**, **.08**, and **.09** under **COMAR 10.09.36 General Medical Assistance Provider Participation Criteria**. This action, which was proposed for adoption in 47:24 Md. R. 1035—1036 (November 20, 2020), has been adopted as proposed.

**Effective Date: June 14, 2021.**

DENNIS R. SCHRADER
Secretary of Health

**PROPOSAL**

**Maryland Register**

**Issue Date: November 20, 2020**

**Volume 47 • Issue 24 • Page 1035-1036**

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**Notice of Proposed Action**

[20-171-P]

     The Secretary of Health proposes to amend Regulations **.01**, **.08**, and **.09** under **COMAR 10.09.36 General Medical Assistance Provider Participation Criteria**.

**Statement of Purpose**

The purpose of this action is to:

(1) Define the terms “claim” and “clean claim” in order to clarify the Program’s billing requirements;

(2) Clarify the definitions of terms “provider”, “overpayment”, and “withhold payment”;

(3) Codify the Department’s ability to recover an overpayment and providers’ ability to appeal an overpayment recovery; and

(4) Explain the effective date of the Program’s action to suspend payment when a credible allegation of fraud is determined.

**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 December 21, 2020. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(3) (text unchanged)

*(4) “Claim” means:*

*(a) A bill for services;*

*(b) A line item of service; or*

*(c) All services for one participant within a bill.*

*(5) Clean Claim.*

*(a) “Clean claim” means a claim that can be processed consistent with applicable regulations without obtaining additional information from the provider of the service or from a third party.*

*(b) “Clean claim” includes a claim with errors originating in a State’s claims system;*

*(c) “Clean claim” does not include a claim:*

*(i) From a provider who is under investigation for fraud or abuse; or*

*(ii) Under review for medical necessity.*

**[**(4)**]** *(6)*—**[**(12)**]** *(14)* (text unchanged)

**[**(13)**]** *(15)* Overpayment.

(a) “Overpayment” means any payment made by the Medicaid Program to a provider for medical care provided to a **[**recipient**]** *participant* which at the time of payment, or at a subsequent date, is determined to be*:*

*(i)* **[**a**]** *A* duplicate payment**[**,**]***;*

*(ii) A payment for services for which reimbursement is claimed when all or any part of the claim submitted to the Department is for services that were provided in violation of one or more regulations;*

*(iii)***[**excessive**]** *Excessive* in amount**[**,**]***;* or

*(iv)* **[**the**]** *The* primary obligation of a health insurance carrier or any other person, including the **[**recipient**]** *participant*, who is legally or contractually obligated to pay for that medical care.

(b) (text unchanged)

*(16) “Participant” means a person who is certified as eligible for, and is receiving, Medical Assistance benefits.*

**[**(14)**]** *(17)*—**[**(15)**]** *(18)* (text unchanged)

**[**(16)**]** *(19)* “Provider” means:

(a) (text unchanged)

(b) An agent, employee, or related party of a person identified in **[**§A(2)(a)**]** *§B(19)(a)*of this regulation; or

(c) An individual or any other person with an ownership interest in a person identified in **[**§A(2)(a)**]** *§B(19)(a)*of this regulation.

**[**(17) “Recipient” means a person who is certified as eligible for, and is receiving, Medical Assistance benefits.**]**

*(20) “Withhold payment” means the Program’s decision to not pay or suspend payment to a provider as a sanction for failure to comply with applicable federal or State laws or regulations or because of a credible allegation of fraud.*

**.08 Cause for Suspension or Removal and Imposition of Sanctions.**

A. If the Department determines that a provider, any agent or employee of the provider, or any person with an ownership interest in the provider or related party of the provider has failed to comply with applicable federal or State laws or regulations, the Department may initiate one or more of the following actions against the responsible party:

(1)—(2) (text unchanged)

*(3) Recovery of an overpayment;*

**[**(3)**]** *(4)*—**[**(4)**]** *(5)* (text unchanged)

B.—C. (text unchanged)

D. A provider who voluntarily withdraws from the Program, or is removed or suspended from the Program according to this regulation, shall notify **[**recipients**]** *participants*, before rendering additional services, that the provider no longer honors Medical Assistance cards.

**.09 Filing Appeal.**

A. Source of Appeals.

(1) A provider may file an appeal from a proposed Program action to:

(a)—(b) (text unchanged)

*(c) Recover an overpayment;*

**[**(c)**]***(d)*—**[**(d)**]***(e)* (text unchanged)

(2) (text unchanged)

B. (text unchanged)

C. Effective Date. The proposed Program action shall be effective on:

(1)—(4) (text unchanged)

(5) The date the Secretary renders a decision in favor of the Program pursuant to COMAR 10.01.03 if any party files exceptions with the Secretary in accordance with **[**§D(1)**]** *§E(1)* of this regulation*.*

*D. A Program determination to suspend payments due to a credible allegation of fraud shall be effective immediately unless the Department determines, consistent with 42 CFR §455.23, that a good cause exception to immediate suspension exists.*

**[**D.**]** *E.*—**[**E.**]** *F.*(text unchanged)

ROBERT R. NEALL
Secretary of Health