



**MEDICAL CARE POLICY ADMINISTRATION
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201

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Governor

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Secretary

MARYLAND MEDICAL ASSISTANCE PROGRAM

Pharmacy Transmittal No. 158

August 21, 1998

Pharmacies
Managed Care Organizations

FROM: Joseph M. Millstone, Director
Medical Care Policy Administration

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

Elimination of Copay for Waiver-eligible Recipients on Carve-out Drugs
Change in Estimated Acquisition Cost of Drugs
Pharmacy Professional Fee for Nursing Home Prescriptions
Faxed Prescriptions

ACTION: Emergency Regulations
Proposed Regulations

EFFECTIVE DATE: 7/9/98

WRITTEN COMMENTS TO: Michele Phinney, 201 W. Preston Street
Baltimore, Maryland 21201
Fax (410) 767-6489 or
Call (410) 767-6499

PROGRAM CONTACT PERSON: Frank Tetkoski (410) 767-1455
Division of Medical Services

COMMENT PERIOD EXPIRES: Aug. 31, 1998

The Secretary of Health and Mental Hygiene has adopted emergency amendments to Regulations .01 Definitions, .05 Limitations and .07 Payment Procedures under COMAR 10.09.03 Pharmacy Services. The Department is proposing to adopt these amendments on a permanent basis January 1, 1999.

July of 1997, recipients began to receive services from managed care organizations (MCOs) operating under the HealthChoice Program. The MCOs are responsible for most prescriptions but Specialty Mental Health prescriptions and prescriptions for certain drugs used to treat the AIDS virus are carved-out of managed care and paid directly as fee-for-service by the Medicaid Program. Under current regulations, fee-for-service prescriptions require a copay. Managed Care regulations prohibit a copay on prescriptions covered by the MCO. Therefore, for recipients in managed care a copay is due on some prescriptions but not on others. These amendments eliminate this difference by eliminating the copay on the carve-out drugs for waiver-eligible recipients.

These amendments also revise the method used by the Program to calculate the estimated acquisition cost (EAC) used to reimburse pharmacy providers for the drug portion of prescriptions, increase the dispensing fee on prescriptions dispensed to recipients in nursing homes, establish certain billing requirements for nursing home prescriptions, and allow faxed prescriptions.

The amendments as they have been submitted to the Maryland Register are attached.

JMM/

Attachment

For information concerning Emergency Action on Regulations, see inside front cover.

Symbol Key

Roman type indicates text existing before emergency status was granted. *Italic type* indicates new text. [Single brackets] indicate deleted text.

Emergency Regulations

Under State Government Article, §10-111(b), Annotated Code of Maryland, an agency may petition the Joint Standing Committee on Administrative, Executive, and Legislative Review (AELR), asking that the usual procedures for adopting regulations be set aside because emergency conditions exist. If the Committee approves the request, the regulations are given emergency status. Emergency status means that the regulations become effective immediately, or at a later time specified by the Committee. After the Committee has granted emergency status, the regulations are published in the next available issue of the Maryland Register. The approval of emergency status may be subject to one or more conditions, including a time limit. During the time the emergency status is in effect, the agency may adopt the regulations through the usual promulgation process. If the agency chooses not to adopt the regulations, the emergency status expires when the time limit on the emergency regulations ends. When emergency status expires, the text of the regulations reverts to its original language.

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.03 Pharmacy Services

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

Notice of Emergency Action

[98-267-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .01, .05, and .07 under COMAR 10.09.03 Pharmacy Services.

Emergency status began: July 9, 1998.

Emergency status expires: January 1, 1999.

Editor's Note: The text of this document will not be printed here because it appears as a Notice of Proposed Action on pages 1305 — 1307 of this issue reference as [98-267-P].

MARTIN P. WASSERMAN, M. D.
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

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

Notice of Emergency Action

[98-267-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .01 under COMAR 10.09.62 Maryland Medicaid Managed Care Program: Definitions; amendments to Regulations .01, .02, and .04 under COMAR 10.09.63 Maryland Medicaid Managed Care Program: Eligibility and Enrollment; amendments to Regulation .06 under COMAR 10.09.64 Maryland Medicaid

Managed Care Program: MCO Application; amendments to Regulations .02, .03, .05, .08, .11, .11-1, .11-2, .15, .16, .19, and .20, and new Regulations .24 and .25 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations; amendments to Regulation .07 under COMAR 10.09.66 Maryland Medicaid Managed Care Program: Access; amendments to Regulations .01, .04, .06, .07, .10, .13, .21, and .28 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits; amendments to Regulations .01, .02, and .14 under COMAR 10.09.69 Maryland Medicaid Managed Care Program: Rare and Expensive Case Management and Stop Loss Case Management; amendments to Regulation .10 under COMAR 10.09.70 Maryland Medicaid Managed Care Program: Specialty Mental Health System; amendments to Regulations .01, .02, and .03 under COMAR 10.09.72 Maryland Medicaid Managed Care Program: Departmental Dispute Resolution Procedures.

Emergency status began: July 1, 1998.

Emergency status expires: January 1, 1999.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency regulation.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

July 14, 1998

Honorable Martin P. Wasserman, M.D., J.D.
Secretary
Department of Health and Mental Hygiene
201 West Preston Street
Baltimore, Maryland 21201

Re: Approval of Emergency Regulation: Department of Health & Mental Hygiene: Medical Care Programs: COMAR 10.09.62—.67, .69, .70, and .72

Dear Secretary Wasserman:

Your Department's request for emergency status for the above-referenced regulations has been conditionally approved by the AELR Committee for the period beginning July 1, 1998 through January 1, 1999.

A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .53 of this chapter.

G. The Office on Administrative Hearings shall conduct a hearing as provided in Regulation .53 of this chapter and issue a proposed decision within 10 business days of the close of the hearing record. Exceptions may be filed by an aggrieved person pursuant to COMAR 10.01.03. The Secretary shall make a final decision pursuant to COMAR 10.01.03.

H. If the Secretary's final decision does not uphold the emergency suspension, the assisted living program may resume operation.

.52 Suspension or Revocation of License.

A. Suspension or Revocation of License. The Secretary, for cause shown, may notify the assisted living program of its decision to suspend or revoke the assisted living program's license. The suspension or revocation shall be stayed if a hearing is requested.

B. The Department shall notify the assisted living program in writing of the following:

- (1) The effective date of the suspension or revocation;
- (2) The reason for the suspension or revocation;
- (3) The regulations with which the licensee has failed to comply that forms the basis for the suspension or revocation;
- (4) That the assisted living program is entitled to a hearing if requested, and to be represented by counsel;
- (5) That the assisted living program shall stop providing services on the effective date of the suspension or revocation if the assisted living program does not request a hearing;
- (6) That the suspension or revocation shall be stayed if a hearing is requested; and
- (7) That the assisted living program is required to surrender its license to the Department if the suspension or revocation is upheld.

C. The licensee shall notify the residents or residents' representatives of any final suspension or revocation and make every reasonable effort to assist them in making other assisted living arrangements. The Department may assist in the relocation of residents.

D. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .53 of this chapter.

.53 Hearings

A. A request for a hearing shall be filed with the Office of Administrative Hearings, with a copy to the Licensing and Certification Administration of the Department, not later than 30 days after receipt of notice of the Secretary's action. The request shall include a copy of the Secretary's action.

B. A hearing requested under this chapter shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 28.02.01 and 10.01.03.

C. The burden of proof is as provided in COMAR 10.01.03.28.

D. Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in COMAR 28.02.01.

E. The aggrieved person may file exceptions as provided in COMAR 10.01.03.35.

Decision by the Secretary shall be issued in accordance with COMAR 10.01.03.25.

MARTIN P. WASSERMAN, M.D.
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS
10.09.03 Pharmacy Services

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

Notice of Proposed Action
(98-267-P)

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .05, and .07 under COMAR 10.09.03 Pharmacy Services.

Statement of Purpose

In July of 1997, recipients began to receive services from managed care organizations (MCOs) operating under the HealthChoice Program. The MCOs are responsible for most prescriptions except specialty mental health prescriptions and prescriptions for certain drugs used to treat the AIDS virus which are carved-out of managed care and paid directly as fee-for-service by the Medicaid Program. Under current regulations, fee-for-service prescriptions require a copay. Managed care regulations prohibit a copay on prescriptions covered by the MCO. Therefore, for recipients in managed care, a copay is due on some prescriptions but not on others. These amendments eliminate this difference by eliminating the copay on the carve-out drugs for HealthChoice recipients.

These amendments also revise the method used by the Program to calculate the estimated acquisition cost (EAC) used to reimburse pharmacy providers for the drug portion of prescriptions, increase the dispensing fee on prescriptions dispensed to recipients in nursing homes, establish certain billing requirements for nursing home prescriptions, and allow faxed copies of prescriptions.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed regulation.

Estimate of Economic Impact

I. Summary of Economic Impact. Adoption of these amendments will reduce Medicaid General Fund expenditures by \$33,754 for the 6 months of the proposed period. Adoption of these amendments will cost the Mental Hygiene Administration \$183,500 in General Funds for the 6 months of the proposed period due to the elimination of copay on specialty mental health prescriptions for waiver-eligible recipients.

II. Types of Economic Impacts.	Revenue	Magnitude
	(R+/R-) Expenditure (E+/E-)	
A. On issuing agency: Medicaid	(E+) \$ 38,066 (Federal Funds) (E-) \$ 33,754 (General Funds)	
B. On other State agencies: Mental Hygiene Administration	(E+) \$183,500 (Federal Funds) (E+) \$183,500 (General Funds)	
C. On local governments:	NONE	

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups: Pharmacy Providers	(+)	\$3.688
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	\$375,000

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Program estimates that there will be 16,000 prescriptions annually for the AIDS carve-out drugs subject to a copay. The copay is \$1 per prescription so the cost to the Program is estimated to be \$16,000 in FY99. The cost for the 6 months of the proposed period is estimated to be \$8,000 with \$4,000 in federal funds and \$4,000 in General Funds.

The Program estimates that there will be 900,000 prescriptions dispensed to recipients in nursing homes in FY99. Increasing the dispensing fee by \$1.04 on each prescription is estimated to cost the Program \$936,000 in FY99. The cost for the 6 month proposed period is \$468,000 with \$234,000 in federal funds and \$234,000 in General Funds.

The Program estimates that the new billing requirements for prescriptions dispensed to recipients in nursing homes will reduce the number of claims by 2 percent. The savings is estimated to be \$94,500 (900,000 × 0.02 × \$5.25) in FY99. The savings for the 6 months of the proposed period is \$47,250 with \$23,625 in federal funds and \$23,625 in General Funds.

It is estimated that the Program will spend \$110,229,000 under Medicaid (non-hemophilia), \$26,600,000 under Pharmacy Assistance, and \$2.2 million for Medicaid (hemophilia) on the drug ingredient portion of prescriptions in FY99. The change in the method used to determine the estimated acquisition cost (EAC) is estimated to save 1.8 percent of the cost on 30 percent of the prescriptions under Medicaid and Pharmacy Assistance and 10 percent of the cost on 50 percent of the prescriptions for the hemophilia drugs. The change in the determination of the EAC is estimated to save the Program \$848,876 in FY99 (\$595,236 under Medicaid nonhemophilia, \$143,640 under Pharmacy Assistance, and \$110,000 for Medicaid hemophilia drugs.) The savings for the 6 months proposed period is estimated to be \$424,438 (\$297,618 + \$71,820 + \$55,000) with \$176,309 (\$148,809 + \$0 + \$27,500) in federal funds and \$248,129 (\$148,809 + \$71,820 + \$27,500) in General Funds.

For the 6 month proposed period the Medicaid Program will realize a savings \$33,754 (-\$4,000 - \$234,000 + \$23,625 + \$248,129) in General Funds.

B. The Program estimates that there will be 734,000 mental health prescriptions annually for recipients in HealthChoice subject to a copay. The copay is \$1 per prescription so the total annual cost is estimated to be \$734,000 in FY99. The total cost for the 6 months of the proposed period is estimated to be \$367,000 with \$183,500 in federal funds and \$183,500 in General Funds.

D. Overall, the impact on pharmacy providers appears insignificant.

F. Recipients enrolled in HealthChoice will not have to pay \$375,000 in copay.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Regulations Coordinator, O'Connor Building, Room 521, 201 W. Preston Street, Baltimore, Maryland 21201, or fax to (410) 333-7687, or call (410) 767-6499. These comments must be received not later than August 31, 1998.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (11) (text unchanged)

(12) "Estimated acquisition cost (EAC)" means the [Program's best estimate of the cost of a drug product based on the following criteria in order of selection] lowest price of a drug product as determined by the following criteria:

(a) (text unchanged)

(b) Direct price plus 10 percent [if §B(12)(a) of this regulation is not available];

(c) Distributors price plus 10 percent [if neither §B(12)(a) or (b) of this regulation is available]; or

(d) Average wholesale price (AWP) less 10 percent [if neither §B(12)(a), (b), or (c) of this regulation is available].

(13) — (25) (text unchanged)

(26) "Prescription" means [a written order for medication, medical supplies, or equipment signed by the prescriber] an original written order signed by the prescriber or a facsimile of it sent directly from the prescriber to the pharmacy provider for covered pharmacy services in accordance with applicable federal and State laws.

(27) — (33) (text unchanged)

.05 Limitations.

A. — B. (text unchanged)

C. Limitations on Covered Services.

(1) — (5) (text unchanged)

(6) There will be a \$1 copayment by federal category recipients for each covered service, except for prescriptions for the following:

(a) — (d) (text unchanged)

(e) Family planning drugs and devices[.];

(f) Drugs for waiver-eligible recipients as defined in COMAR 10.09.63.01A that are:

(i) Prescribed by a specialty mental health system provider under COMAR 10.09.70.10, or

(ii) Described in COMAR 10.09.67.27B(27).

(7) — (9) (text unchanged)

(10) Prescriptions dispensed to recipients residing in nursing homes are subject to the following limitations:

(a) Claims shall be identified as nursing home prescriptions by coding mechanisms determined by the Program;

(b) Credits, less the paid dispensing fee, for unused unit dose medication and any other medication which may legally be returned to pharmacy stock shall be made within 60 days of Program payment and include adjustments for leave of absence prescriptions; and

(c) Multiple prescriptions dispensed to a recipient residing in a nursing home for the same drug product or compounded prescription shall receive only one professional fee per calendar month except for:

(i) Leave of absence prescriptions,

(ii) Compounded prescriptions for home intravenous therapy, and

(iii) Prescriptions for Schedule II-V controlled dangerous substances.

D. (text unchanged)

.07 Payment Procedures.

A. — H. (text unchanged)

I. Payment for covered services to a pharmacy shall be made as follows:

(1) Payment for legend drugs, Schedule V cough preparations, enteric coated aspirin, and oral ferrous sulfate products is the lower of:

(a) (text unchanged)

(b) The allowable cost of the item in §H of this regulation, plus a professional fee of \$4.21, except as provided in §I(8) of this regulation, for all prescriptions other than compounded home intravenous therapy, and for compounded home intravenous therapy a professional fee of \$7.25 per day of therapy or per unit of therapy compounded, whichever is less, less any applicable copayment according to Regulation .05C(5) and (6) of this chapter.

(2) Payment for over-the-counter drugs, except enteric coated aspirin, oral ferrous sulfate products, and chewable tablets of ferrous salts in combination described in Regulation .04A(9) of this chapter shall be the lowest of:

(a) — (b) (text unchanged)

(c) The allowable cost plus a professional fee of \$4.21, except as provided in §I(8) of this regulation, less any applicable copayment according to Regulation .05C(5) and (6) of this chapter.

(3) Payment for chewable tablets of ferrous salts in combination described in Regulation .04A(9) of this chapter shall be the lowest of one of the following:

(a) — (b) (text unchanged)

(c) The allowable cost plus a professional fee of \$4.21, except as provided in §I(8) of this regulation, less any applicable copayment according to Regulation .05C(5) and (6) of this chapter.

(4) — (7) (text unchanged)

(8) The professional fee for covered services, other than compounded home intravenous therapy, to a pharmacy for recipients residing in nursing homes, shall be \$5.25.

J. — L. (text unchanged)

MARTIN P. WASSERMAN, M.D.
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS
10.09.10 Nursing Facility Services

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

Notice of Proposed Action
(98-250-P)

The Secretary of Health and Mental Hygiene proposes to amend Regulations .08 — .11 and .20 under COMAR 10.09.10 Nursing Facility Services.

Statement of Purpose

These proposed amendments will establish reimbursement parameters for nursing facility services, consistent with the Maryland Medical Assistance Program's budget for fiscal year 1999, as follows: The maximum per diem rate for administrative/routine costs is 114 percent of the median cost in each reimbursement class; The maximum per diem rate for other patient care costs is 119 percent of the median in each reimbursement class; Efficiency incentives in the administrative/routine and other patient care cost centers are 40 percent of the difference between the provider's cost and the ceiling, with a maximum efficiency incentive in each cost center of 10 percent of the ceiling; The net capital value rental rate is 7.87 percent; The percentage of the nursing service rate which may be allowed as profit above the provider's costs is set at 7.5 percent.

The amendment proposes that nursing procedure and activity times and personnel category weights be recalibrated

effective July 1, 1999, and at least every 5 years after that. In addition, due to the elimination of a Consumer Price Index used in calculating some administrative and routine costs, an alternative index has been selected.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed regulation.

Estimate of Economic Impact

I. Summary of Economic Impact. These amendments will set cost containment adjustments to nursing facility reimbursement for fiscal year 1999. Other proposed amendments will have no economic impact.

II. Types of Economic Impacts.

Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
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Medical Assistance Program	(E-)	\$4.75 million
On other State agencies	NONE	
On local government	NONE	

Benefit (+) Cost (-)	Magnitude
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D. On regulated industry or trade groups:		
Nursing home providers	(-)	\$4.75 million

E. On other industries or trade groups:	NONE	
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F. Direct and indirect effect on public:	NONE	
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III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Adjustments of reimbursement parameters will reduce the average rate by \$1.55 per day. At 3,055,740 Medical Assistance Program days during the period January 1, 1999, through June 30, 1999, Program savings will equal \$4.75 million. Fifty percent of this amount is federal funds.

D. Nursing home reimbursement will be reduced by a total of \$4.75 million during the period January 1, 1999, through June 30, 1999, as calculated in Item A.

Economic Impact on Small Businesses

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

Of 244 nursing home providers, 34 are considered small businesses. Reimbursement rates for these providers is reduced by an average \$1.55 per day.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Regulations Coordinator, O'Connor Building, 201 West Preston Street, Room 521, Baltimore, Maryland 21201, or fax to (410) 333-7687, or call (410) 767-6499. These comments must be received by August 31, 1998.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Emergency Action in 25:15 M. & R. 1181 (July 17, 1998) referenced as (98-250-E).

MARTIN P. WASSERMAN, M.D.
Secretary of Health and Mental Hygiene