

Final Action on Regulations

Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- Single underline, italic indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- ~~[[Double brackets]]~~ indicate text deleted at the time of final action.

Title 09

DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 01 OFFICE OF THE SECRETARY

09.01.04 Public Information Act Requests

Authority: Business Regulation Article, §2-105; *General Provisions Article, Title 4*; Annotated Code of Maryland

Notice of Final Action

[17-239-F]

On November 14, 2017, the Secretary of Labor, Licensing, and Regulation adopted amendments to Regulations .01, .02, and .04, the repeal of existing Regulations .05—.07, .15, and .16, amendments to and the recodification of existing Regulations .08—.12, .13, .14, and .17 to be Regulations .05—.09, .11, .12, and .13, respectively, and new Regulation .10 under **COMAR 09.01.04 Public Information Act Requests**. This action, which was proposed for adoption in 44:20 Md. R. 949—952 (September 29, 2017), has been adopted as proposed.

Effective Date: December 18, 2017.

KELLY M. SCHULZ
Secretary of Labor, Licensing, and Regulation

Title 10

MARYLAND DEPARTMENT OF HEALTH

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.79 *Presumptive Eligibility for Correctional Facilities*

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

Notice of Final Action

[17-140-F]

On November 27, 2017, the Secretary of Health adopted new Regulations .01—.08 under a new chapter, **COMAR 10.09.79 Presumptive Eligibility for Correctional Facilities**. This action, which was proposed for adoption in 44:11 Md. R. 529—531 (May 26, 2017), has been adopted as proposed.

Effective Date: December 18, 2017.

DENNIS SCHRADER
Secretary of Health and Mental Hygiene

Title 11

DEPARTMENT OF TRANSPORTATION

Subtitle 14 MOTOR VEHICLE ADMINISTRATION—VEHICLE INSPECTIONS

11.14.08 Vehicle Emissions Inspection Program

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, and 2-301—2-303; Transportation Article, §§12-104(b), 23-202(a), 23-206.2, 23-206.4, and 23-207; Annotated Code of Maryland

Notice of Final Action

[17-234-F]

On October 17, 2017, the Secretary of the Environment and the Administrator of the Motor Vehicle Administration jointly adopted amendments to Regulations .01, .03—.05, and .09 under **COMAR 11.14.08 Vehicle Emissions Inspection Program**. This action, which was proposed for adoption in 44:18 Md. R. 868 — 871 (September 1, 2017), has been adopted as proposed.

Effective Date: January 1, 2018.

CHRISTINE NIZER
Administrator
Motor Vehicle Administration

BENJAMIN H. GRUMBLES
Secretary
Maryland Department of the Environment

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 10 HEALTH INSURANCE — GENERAL

31.10.44 *Network Adequacy*

Authority: *Insurance Article, §§2-109(a)(1) and 15-112(a) — (d)*, Annotated Code of Maryland

Notice of Final Action

[17-199-F]

On November 21, 2017, the Insurance Commissioner adopted new Regulations .01—.09 under a new chapter, **COMAR 31.10.44 Network Adequacy**. This action, which was proposed for adoption

in 44:15 Md. R. 776—780 (July 21, 2017), has been adopted with the nonsubstantive changes shown below.

Effective Date: December 31, 2017.

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:

COMAR 31.10.44.02B(6): Essential community providers: Taking out the word “mental” and adding the word “behavioral” because the definition of behavioral already includes mental health care.

COMAR 31.10.44.02B(10) and (11): Adding definitions because these words are used in the newly added Regulation .04C(2).

COMAR 31.10.44.02B(10)—(18): Renumbering the definitions based on the addition of the two listed above.

COMAR 31.10.44.02B(19): Rural area: Rather than listing areas by region we are using a zip code system which will make it easier for members and carriers to determine which region fits into which distance standards required in Regulation .04.

COMAR 31.10.44.02B(20): Specialty provider: Adding Board eligible because these doctors can provide services to patients as they have met all of the requirements to be a physician other than taking their certifying examination.

COMAR 31.10.44.02B(21): Suburban area: Rather than listing areas by region we are using a zip code system which will make it easier for members and carriers to determine which region fits into which distance standards required in Regulation .04.

COMAR 31.10.44.02B(23): Tiered network: Removing tiered networks from the regulation to simplify the regulations and avoid confusion as to how it would apply to specialty networks.

COMAR 31.10.44.02B(24): Urban area: Rather than listing areas by region we are using a zip code system which will make it easier for members and carriers to determine which region fits into which distance standards required in Regulation .04.

COMAR 31.10.44.02B(25)(a): Urgent care: Changing the word from mental to behavioral as the definition of behavioral encompasses mental health care.

(a)(v): Changing the word from “mental” to “behavioral” as the definition of “behavioral” encompasses mental health care. Also reworded the sentence to clarify expectations.

(b): Changing the word from “mental” to “behavioral” as the definition of “behavioral” encompasses mental health care.

COMAR 31.10.44.02B(26): Renumbering to account for new definitions above and removal of tiered network.

COMAR 31.10.44.03A: Adding language “Using the instructions on the Maryland Insurance Administration’s website to determine rural, suburban, and urban zip code areas each” to clarify that the instructions are not open-ended and relate to identifying zip code areas on the Maryland Insurance Administration’s website.

COMAR 31.10.44.04A(1): Taking out the word “mental” and replacing it with “behavioral” as the definition of the word “behavioral” encompasses mental health care. Renumbering cross references so that they are accurate since new information was added to Section A(4).

A(2): Adding the phrase “primary care provider” to clarify which standard the use of a gynecologist, pediatrician, or certified registered nurse practitioner applies to. Also fixes a cross reference since a new Section A(4) was added.

A(3): Fixes the cross reference as a new Section A(4) was added.

A(4): Clarifying the intent and applicability of the “Other provider not listed” term which was originally listed on the proposed Chart of Travel Distance Standards.

A(5): Renumbered as new Section A(4) was added. Added “Applied Behavioral Analyst” to the listing of provider types and removed “Applied Behavioral Analysis” to the listing of facility types because this specialty is a type of provider rather than a type of facility.

A(5): Removed words “Other Provider Not Listed” and Added “All other licensed or certified providers under contract with a carrier not listed” to clarify the scope and applicability of the distance standards.

A(5): Added “Other Behavioral Health/Substance Abuse Facilities” as a more specific facility to reflect the intended applicability of in-patient psychiatric facilities and acute inpatient hospitals.

A(5): Removed “Other Facilities” and replaced it with “All other licensed or certified facilities under contract with a carrier not listed” to clarify the scope and applicability of the distance standards.

COMAR 31.10.44.04B(1): Removed the word “Mental” and replaced it with the word “behavioral” as the definition of “behavioral” encompasses mental health care. Updated cross references which are incorrect because a new Section B(4) was added.

B(2): Adding the phrase “primary care provider” to clarify which standard the use of a gynecologist, pediatrician, or certified registered nurse practitioner applies to. Also fixes a cross reference since a new Section B(4) was added.

B(3): Fixes the cross reference as a new Section B(4) was added.

B(4): Clarify the intent and applicability of the “Other provider not listed” which was originally listed on the proposed Chart of Travel Distance Standards.

B(5): Renumbered as new Section B(4) was added. Added “Applied Behavioral Analyst” to the listing of provider types and removed “Applied Behavioral Analysis” to the listing of facility types because this specialty is a type of provider rather than a type of facility.

B(5): Removed words “Other Provider Not Listed” and Added “All other licensed or certified providers under contract with a carrier not listed” to clarify the scope and applicability of the distance standards.

B(5): Added “Other Behavioral Health/Substance Abuse Facilities” as a more specific facility to reflect the intended applicability of in-patient psychiatric facilities and acute inpatient hospitals.

B(5): Removed “Other Facilities” and replaced it with “All other licensed or certified facilities under contract with a carrier not listed” to clarify the scope and applicability of the distance standards.

COMAR 31.10.44.04C: Removed “Each provider panel of a carrier shall include at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas.” As a new C is added.

New 31.10.44.04C: Added an Essential Community Providers subsection. New C(1) reiterates the requirements that at least 30 percent of available essential community providers be included in a carrier’s provider panel, except for group model HMO plans.

New C(2): Clarifies that group model HMO plans may use alternative standards as allowed by Insurance Article, Section 15-112(b)(3)(ii)(2), Annotated Code of Maryland.

New C(3): Allows Group Model HMOs to prove compliance with the Essential Community Providers standards through an alternative standard as allowed by Insurance Article, Section 15-112(c)(4)(v)(2), Annotated Code of Maryland.

Remove D as we are removing tiered networks from these regulations to simplify the regulations and avoid confusion as to how it would apply to specialty networks.

COMAR 31.10.44.05A(1): Add “subject to the exceptions in” to clarify the applicability of the Regulation.

B: Remove the word “mental” and replace it with “behavioral” as the definition of “behavioral” encompassed mental health care.

C: Removed “Non-urgent ancillary services” and the corresponding waiting time requirement as non-urgent ancillary services are covered by the non-urgent specialty care category.

COMAR 31.10.44.06B(4): Remove the word “mental” and replace it with the word “behavioral” as the definition of “behavioral” encompasses mental health care.

COMAR 31.10.44.08: Adding language at the beginning A to clarify that carriers are required to provide certain information to a requester relating to non-quantitative treatment limitations in order to determine mental health parity. This is both a federal requirement as well as a statutory requirement found in Insurance Article, Section 15-802(d)(4), Annotated Code of Maryland.

COMAR 31.10.44.09A(1)(a): Changing the wording to clarify our expectations that carriers must meet the standards on the travel distance standards based on the enrollee population and distribution.

A(2)(a): Changing the wording to clarify our expectations that a carrier must measure results on a bases of the enrollee population and appointment type.

A(2)(a): Removed the word “mental” and added the word “behavioral” as the definition of “behavioral” encompasses mental health care.

A(3)(b): Changing the words to clarify our expectations that carriers will tell us if they met the standards of the appointment wait time regulation.

A(3)(b)(iv) Removed the word “mental” and added the word “behavioral” because the definition of the word “behavioral” encompasses mental health care.

.02 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1) — (5) (proposed text unchanged)

(6) “Essential community provider” means a provider that serves predominantly low-income or medically underserved individuals. “Essential community provider” includes:

(a) (proposed text unchanged)

(b) Outpatient behavioral ~~[[mental]]~~ health and community based substance use disorder programs; and

(c) (proposed text unchanged)

(7) — (9) (proposed text unchanged)

(10) “Health professional shortage area” means those geographic areas in Maryland which have been designated by the Health Resources and Services Administration as such, as a result of having a shortage of primary medical care or behavioral health providers.

(11) “HEDIS” means the Healthcare Effectiveness Data and Information Set of standardized performance measures, developed and used by the National Committee for Quality Assurance, to evaluate managed care health plan performance for care and services provided.

[[10]] (12) — [[18]] (20) (proposed text unchanged)

[[19]] (21) “Rural area” means a ~~[[region]]~~ zip code that, according to the Maryland Department of Planning, has a human population of less than 1,000 per square mile.

[[20]] (22) “Specialty provider” means a provider who:

(a) Focuses on a specific area of physical care ~~[[, mental health care,]]~~ or behavioral health care for a group of patients;

(b) (proposed text unchanged)

(c) For a physician, has obtained Board certification or is Board eligible through the American Board of Medical Specialties.

[[21]] (23) “Suburban area” means a ~~[[region]]~~ zip code that, according to the Maryland Department of Planning, has a

human population equal to or more than 1,000 per square mile, but less than 3,000 per square mile.

[[22]] (24) (proposed text unchanged)

[[23] “Tiered network” means a network of participating providers that has been divided into sub-groupings differentiated by the carrier according to:

(a) Cost-sharing levels;

(b) Provider payment;

(c) Performance ratings;

(d) Quality scores; or

(e) Any combination of these or other factors established as a means of influencing an enrollee’s choice of provider.]]

[[24]] (25) “Urban area” means a ~~[[region]]~~ zip code that, according to the Maryland Department of Planning, has a human population equal to or greater than 3,000 per square mile.

[[25]] (26) “Urgent care” means the treatment for a condition of an enrollee that satisfies either of the following:

(a) A medical condition, including a physical condition or a ~~[[mental]]~~ behavioral health condition, that, in the absence of medical care or treatment within 72 hours, could reasonably be expected by an individual, acting on behalf of a carrier and applying the judgment of a prudent layperson who possesses an average knowledge of health and medicine, would result in:

(i) — (iv) (proposed text unchanged)

(v) The enrollee remaining seriously ~~[[mentally]]~~ ill with behavioral health symptoms that cause the enrollee to be a danger to self or others; or

(b) A medical condition of an enrollee, including a physical condition or a ~~[[mental]]~~ behavioral health condition, that, in the absence of medical care or treatment within 72 hours, would, in the opinion of a provider with knowledge of the enrollee’s medical condition, subject the enrollee to severe pain that cannot be adequately managed without the care or treatment.

[[26]] (27) (proposed text unchanged)

.03 Filing of Access Plan.

A. ~~[[Each]]~~ Using the instructions on the Maryland Insurance Administration’s website to determine rural, suburban, and urban zip code areas, each carrier subject to this chapter shall file an annual access plan with the Commissioner through the System for Electronic Rate and Form Filing (SERFF) on or before July 1 of each year for each provider panel used by the carrier, with the first access plan filing due on or before July 1, 2018.

B. — C. (proposed text unchanged)

.04 Travel Distance Standards.

A. Sufficiency Standards.

(1) Except as stated in §B of this regulation, each provider panel of a carrier shall have within the geographic area served by the carrier’s network or networks, sufficient primary care physicians, specialty providers, ~~[[mental]]~~ behavioral health and substance use disorder providers, hospitals, and health care facilities to meet the maximum travel distance standards listed in the chart in ~~[[§A(4)]]~~ §A(5) of this regulation for each type of geographic area. The distances listed in ~~[[§A(4)]]~~ §A(5) of this regulation shall be measured from the enrollee’s place of residence.

(2) When an enrollee elects to utilize a gynecologist, pediatrician, or certified registered nurse practitioner for primary care, a carrier may consider that utilization as a part of its meeting the primary care provider standards listed in ~~[[§A(4)]]~~ §A(5) of this regulation.

(3) The travel distance standards listed in ~~[[§A(4)]]~~ §A(5) of this regulation do not apply to the following:

(a) — (h) (proposed text unchanged)

(4) All other providers and facility types not listed in the chart in §A(5) of this regulation shall individually be required to meet

maximum distances standards of 15 miles for Urban Areas, 40 miles for Suburban Areas, and 90 miles for Rural Areas.

[(4)] (5) Chart of Travel Distance Standards.

	Urban Area Maximum Distance (miles)	Suburban Area Maximum Distance (miles)	Rural Area Maximum Distance (miles)
Provider Type:			
Primary Care Physician — Allergy and Immunology	(proposed text unchanged)		
Applied Behavioral Analyst	15	30	60
Cardiovascular Disease — Urology	(proposed text unchanged)		
[[Other Provider Not Listed]] All other licensed or certified providers under contract with a carrier not listed	15	40	90
Facility Type:			
Pharmacy — Acute Inpatient Hospitals	(proposed text unchanged)		
[[Applied Behavioral Analysis]]	[[15]]	[[30]]	[[60]]
Critical Care Services — Intensive Care Units — Surgical Services (Outpatient or Ambulatory Surgical Center)	(proposed text unchanged)		
Other Behavioral Health/Substance Abuse Facilities	10	25	60
[[Other Facilities]] All other licensed or certified facilities under contract with a carrier not listed	15	40	90

B. Group Model HMO Plans Sufficiency Standards.

(1) Each group model HMO's health benefit plan's provider panel shall have within the geographic area served by the group model HMO's network or networks, sufficient primary care physicians, specialty providers, [[mental]] behavioral health and substance use disorder providers, hospitals, and health care facilities to meet the maximum travel distance standards listed in the chart in [(4)] (5) of this regulation for each type geographic area. The distances listed in [(4)] (5) of this regulation shall be measured from the enrollee's place of residence or place of employment from which the enrollee gains eligibility for participation in the group model HMO's health benefit plan.

(2) When an enrollee elects to utilize a gynecologist, pediatrician, or certified registered nurse practitioner for primary care, a carrier may consider that utilization as a part of its meeting the primary care provider standards listed in [(4)] (5) of this regulation.

(3) The travel distance standards listed in [(4)] (5) of this regulation do not apply to the following:

- (a) — (h) (proposed text unchanged)

(4) All other provider and facility types not listed in the chart at (5) of this regulation shall individually be required to meet maximum distances standards of 15 miles for Urban Areas, 40 miles for Suburban Areas, and 90 miles for Rural Areas.

[(4)] (5) Chart of Travel Distance Standards.

	Urban Area Maximum Distance (miles)	Suburban Area Maximum Distance (miles)	Rural Area Maximum Distance (miles)
Provider Type:			
Primary Care Physician — Allergy and Immunology	(proposed text unchanged)		
Applied Behavioral Analyst	15	20	60
Cardiovascular Disease — Urology	(proposed text unchanged)		
[[Other Provider Not Listed]] All other licensed or certified providers under contract with a carrier not listed	20	40	90
Facility Type:			
Pharmacy — Acute Inpatient Hospitals	(proposed text unchanged)		
[[Applied Behavioral Analysis]]	[[15]]	[[30]]	[[60]]
Critical Care Services — Intensive Care Units — Surgical Services (Outpatient or Ambulatory Surgical Center)	(proposed text unchanged)		
Other Behavioral Health/Substance Abuse Facilities	15	30	60
[[Other Facilities]] All other licensed or certified facilities under contract with a carrier not listed	15	40	120

[[C. Each provider panel of a carrier shall include at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas.]]

C. Essential Community Providers.

(1) Each provider panel of a carrier, that is not a group model HMO provider panel, shall include at least 30 percent of the available essential community providers in each of the urban, rural, and suburban areas.

(2) Each group model HMO plan shall demonstrate that its own providers located in Health Professional Shortage Areas or low-income zip codes within its service area perform at or above the 50th percentile on the following two HEDIS measures:

(a) Initiation and Engagement of Alcohol and Other Drug Abuse or Dependence Treatment; and

(b) Utilization of the PHQ-9 to Monitor Depression Symptoms for Adolescents and Adults.

(3) Each group model HMO plan shall demonstrate that it has alternative standards for addressing the needs of low income, medically underserved individuals. One manner in which a group

model HMO may demonstrate this is by providing the Maryland Insurance Administration with its narrative or alternate standard justification to the essential community provider requirement, which was submitted to and accepted by the Maryland Health Benefit Exchange for certification as a qualified health plan.

[[D. If a carrier uses a tiered network, the carrier's provider panel shall meet the standards of this regulation for the lowest cost-sharing tier.]]

.05 Appointment Waiting Time Standards.

A. Sufficiency Standards.

(1) Subject to the exceptions in §B of this regulation, each carrier's provider panel shall meet the waiting time standards listed in §C of this regulation for at least 95 percent of the enrollees covered under health benefit plans that use that provider panel.

(2) (proposed text unchanged)

B. Preventive care services and periodic follow-up care, including but not limited to, standing referrals to specialty providers for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac or [[mental]] behavioral health or substance use disorder conditions, and laboratory and radiological monitoring for recurrence of disease, may be scheduled in advance consistent with professionally recognized standards of practice as determined by the treating provider acting within the scope of the provider's license, certification, or other authorization.

C. Chart of Waiting Time Standards.

Waiting Time Standards	
Urgent care (including medical, [[mental]] behavioral health, and substance use disorder services)	72 hours
Routine primary care — Non-urgent specialty care	(proposed text unchanged)
[[Non-urgent ancillary services]]	[[30 calendar days]]
Non-urgent [[mental]] behavioral health/substance use disorder services	10 calendar days

.06 Provider-to-Enrollee Ratio Standards.

A. (proposed text unchanged)

B. The provider-to-enrollee ratios shall be equivalent to at least 1 full-time physician, or as appropriate, another full-time provider for:

(1) — (3) (proposed text unchanged)

(4) 2,000 enrollees for [[mental]] behavioral health care or services; and

(5) (proposed text unchanged)

.08 Confidential Information in Access Plans.

A. [[The]] Subject to §15-802 of the Insurance Article, Annotated Code of Maryland, the following information that is included in a carrier's access plan shall be considered confidential by the Commissioner:

(1) — (3) (proposed text unchanged)

B. — D. (proposed text unchanged)

.09 Network Adequacy Access Plan Executive Summary Form.

A. For each provider panel used by a carrier for a health benefit plan, the carrier shall provide the network sufficiency results for the health benefit plan service area as follows:

(1) Travel Distance Standards.

(a) For each provider type listed in Regulation .04 list [[List]] the percentage of [[the participating providers, by primary care provider and specialty provider type,]] enrollees, for which the

carrier met the travel distance standards, [[listed in Regulation .04 of this chapter,]] in the following format:

	Urban Area	Suburban Area	Rural Area
Primary Care Provider — Specialty Provider	(proposed text unchanged)		

(b) — (e) (proposed text unchanged)

(2) Appointment Waiting Time Standards.

(a) For each appointment type listed in Regulation .05, list [[List]] the percentage of enrollees, [[appointments, by type of care, visits, or services,]] for which the carrier met the appointment [[waiting]] wait time standards[[listed in Regulation .05 of this chapter]], in the following format:

Appointment Waiting Time Standard Results	
Urgent care — within 72 hours — Non-urgent ancillary services — within 30 calendar days	(proposed text unchanged)
Non-urgent [[mental]] behavioral health/substance use disorder services — within 10 calendar days	

(b) List the total percentage of telehealth appointments counted as part of the appointment waiting time standard results.

(3) Provider-to-Enrollee Ratio Standards.

(a) (proposed text unchanged)

(b) For all other carriers, list whether the percentage of provider-to-enrollee ratios [[that met]] meet the provider-to-enrollee ratio standards listed in Regulation .06 of this chapter for each of the following categories:

(i) — (iii) (proposed text unchanged)

(iv) 2,000 enrollees for [[mental]] behavioral health care or service; and

(v) (proposed text unchanged)

B. (proposed text unchanged)

ALFRED W. REDMER, JR.
Insurance Commissioner

Subtitle 10 HEALTH INSURANCE — GENERAL

31.10.45 Dental Network Adequacy

Authority: Insurance Article, §§2-109(a)(1) and 15-112(e), Annotated Code of Maryland

Notice of Final Action

[17-258-F]

On November 28, 2017, the Insurance Commissioner adopted new Regulations .01—.06 under a new chapter, **COMAR 31.10.45 Dental Network Adequacy**. This action, which was proposed for adoption in 44:21 Md. R. 1012—1014 (October 13, 2017), has been adopted with the nonsubstantive changes shown below.

Effective Date: December 31, 2017.

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: