Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 09 MEDICAL CARE PROGRAMS
10.09.16 Behavioral Health Crisis Services

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

Notice of Final Action

[23-339-F]

On May 7, 2024, the Secretary of Health adopted new Regulations **.01—.12** under a new chapter, **COMAR 10.09.16 Behavioral Health Crisis Services**. This action, which was proposed for adoption in 51:3 Md. R. 159—161 (February 9, 2024), has been adopted with the nonsubstantive changes shown below.

Effective Date: May 27, 2024.

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 changes could have been reasonably anticipated by interested parties, do not substantially change the intended benefits of the regulation, and do not increase the burdens of the regulations as proposed. The specific changes are as follows:

Regulation .01B(2): The Maryland Department of Health (the Department) will correct a grammatical error in the definition of the Behavioral Health Administration.

Regulation .01B(10): The Department will properly capitalize Medical Assistance.

Regulation .03B(3)(f): The Department will add a reference to the federal regulation 42 CFR Part 2, which applies to requirements for substance use disorder patient confidentiality.

Regulation .05B(5): The Department will include caregivers as an appropriate contact for the follow-up outreach service.

Regulation .05C(3): The Department will correct an erroneous reference to the relevant staffing information in COMAR 10.63.21.

Regulation .06A(9): The Department will remove language prohibiting coverage of services under this chapter if those services are non-emergency and not authorized by the ASO.

.01 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1) (proposed text unchanged)

(2) "Behavioral Health Administration (BHA)" means the administration within the Department that establishes regulatory requirements **[[***for***]]** *that behavioral health programs are to maintain in order to become licensed by the Department.*

(3)—(9) (proposed text unchanged)

(10) "Participant" means an individual who is certified as eligible for, and is receiving, **[[***medical assistance***]]** *Medical Assistance benefits.*

(11)—(12) (proposed text unchanged)

.03 Provider Requirements for Participation.

A. (proposed text unchanged)

B. To participate in the Program, a provider of behavioral health crisis services shall:

(1)—(2) (proposed text unchanged)

(3) Maintain, either manually or electronically, adequate documentation of each contact with a participant as part of the medical record, which, at a minimum, meets the following requirements:

(a)—(e) (proposed text unchanged)

(f) Complies with all federal statutes and regulations, including but not limited to the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320D et seq., and implementing regulations at 42 CFR Part 2 and 45 CFR Parts 160 and 164.04.

C.—D. (proposed text unchanged)

.05 Covered Services.

A. (proposed text unchanged)

B. Mobile crisis team services shall:

(1)—(4) (proposed text unchanged)

(5) Include mobile crisis follow-up outreach by means of telephone, telehealth, or in-person contact with the individual served **[[***or***]]***, family* **[[***member and***]]** *members, caregivers, or referred providers***[[***, if applicable***]]***.*

C. Behavioral health crisis stabilization center services shall:

(1)—(2) (proposed text unchanged)

(3) Include an initial evaluation by an approved physician or psychiatric nurse practitioner in accordance with **[[***COMAR 10.63.03.21G***]]** *10.63.03.21F;*

(4)—(5) (proposed text unchanged)

.06 Limitations.

A. The Program does not cover the following:

(1)—(8) (proposed text unchanged)

[[*(9) Non-emergency services not authorized by the ASO;***]]**

[[*(10)***]]** *(9)*—**[[***(11)***]]** *(10)* (proposed text unchanged)

B. (proposed text unchanged)

LAURA HERRERA SCOTT
Secretary of Health

Subtitle 63 COMMUNITY

Notice of Final Action

[23-336-F]

On May 7, 2024, the Secretary of Health adopted:

(1) Amendments to Regulation **.02** under **COMAR 10.63.02 Programs Required to Be Accredited in Order to Be Licensed to Provide Community-Based Behavioral Health Services**; and

(2) New Regulations **.20** and **.21** under **COMAR 10.63.03 Descriptions and Criteria for Programs and Services Required to Have an Accreditation-Based License**.

This action, which was proposed for adoption in 51:3 Md. R. 168—173 (February 9, 2024), has been adopted with the nonsubstantive changes shown below.

Effective Date: May 27, 2024.

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 10.63.03.20B: Capitalization is corrected.

COMAR 10.63.03.20B(3): In response to public comment, the reference to "Mental Health Law" was amended to be "Health-General Article" to reflect the correct statute name.

COMAR 10.63.03.20B(5): In response to public comment, the phrase "non-threatening emotional symptoms or behaviors that are disrupting an individual's functioning" was replaced with "symptoms or behaviors that are disrupting an individual's behavioral health functioning". The term "non-threatening emotional" was redundant because if a patient is exhibiting threatening behavior, law enforcement will be contacted rather than the mobile crisis unit; therefore this change is nonsubstantive.

COMAR 10.63.03.20D(1)(e): In response to public comment, the meaning of response was clarified by naming who should respond and within the designated time period. This change clarifies the language and offers a more realistic time range for response and therefore is not substantive.

COMAR 10.63.03.20D(2)(c): In response to public comment, the term emotional was removed as a symptom of determining a plan for de-escalation and resolution of the crisis using in-person interventions for immediate de-escalation. The term emotional is redundant because behavioral symptoms include emotional symptoms, therefore this is not a substantive change.

COMAR 10.63.03.20D(2)(f): In response to public comment, the phrase "when appropriate" was added to "engaging peer and natural and family support", acknowledging that peer and family supports are not always beneficial relationships and protecting patients whose family might pose a safety risk to them. This kind of use of appropriate judgment is implied and is generally considered acceptable clinical practice; therefore it is not a substantive change.

COMAR 10.63.03.20D(2)(h): In response to public comment, the term "which reduce the conditions" was modified to "to reduce the behavioral symptoms" to provide clarification that the goal of stabilization is reduction of symptoms and that a patient does not require a diagnosis of a particular condition in order to receive services. This language is clearer, and therefore the change is not substantive.

COMAR 10.63.03.20D(3): In response to public comment, the phrase "provided in-person, via phone, or via telehealth" was added to clarify the methods by which follow-up services can be provided. All of these methods are approved methods of service delivery under Maryland law, and therefore the change is not a substantive change.

COMAR 10.63.03.20E(1): In response to public comment, §E was recodified and the phrase "when indicated" was deleted because it was redundant. Neither change is substantive.

COMAR 10.63.03.20E(2)—(3): In response to public comment, these sections were deleted because they were redundant and confusing. The training requirements and requirements for other staff on the mobile crisis team are elsewhere in the regulation, and therefore the change is not substantive.

COMAR 10.63.03.20F: In response to public comment, "responding in person" was moved to §F(1). Because the language was moved elsewhere in the section, the change is not substantive.

COMAR 10.63.03.20F(1): In response to public comment, "responding in person" was moved to this section to clarify how many individuals must respond in person. Because this was moved from elsewhere in the regulations, this is not substantive.

COMAR 10.63.03.20F(2): In response to public comment, "face-to-face or via telehealth" was added to clarify that the licensed mental health practitioner may be present via telehealth. Because the presence via telehealth was already permitted in §E(1), the change is not substantive.

COMAR 10.63.03.20F(3): In response to public comment, "may not consider" was moved and changed to "may not be considered" to clarify the role of law enforcement, but, because the meaning remains the same, the change is not substantive.

COMAR 10.63.03.20I: In response to public comment, the language "to operate mobile crisis services in the PBHS ensuring that the" was modified to read "to operate mobile crisis services in the PBHS to ensure". This change was for style and grammar reasons and is not substantive.

COMAR 10.63.03.21A(2)(a): In response to public comment, "admissions" was changed to "engagement" to be more accurate because carceral systems do not generally refer to individuals becoming involved with the system as "admissions". Because this change adds clarification to an already inclusive list, it is not substantive.

COMAR 10.63.03.21C(2): In response to public comment, the reference to involuntary admissions was amended to be "Health-General Article, §§10-613—10-621, Annotated Code of Maryland". The amendment clarified the statutes for involuntary admissions. This is a clarifying change that is not substantive.

COMAR 10.63.03.21C(9): In response to public comment, "Provide withdrawal management services for all substances;" was removed because it is also listed in (10). Because the line had been duplicated, removing it is not a substantive change. The removal of (9) required the recodification of (10)—(16).

COMAR 10.63.03.21D(4)(b): In response to public comment, "including in-person reassessment, to any individual who has been emergency petitioned and remains in the BHCSC for more than 24 hours" was added to clarify the circumstances in which a provider would be required to make daily rounds because most admissions to a crisis stabilization center will be for less than one day. This is a clarifying change which does not alter the requirements for providers or the treatment provided to patients and therefore is not substantive.

COMAR 10.63.03.21F(4): In response to public comment, "in the BHCSC under an emergency petition" was added to clarify the circumstances under which individuals will be permitted to remain in a BHCSC for more than 24 hours. The number of hours was changed from 23 to 24 because the requirement for a Crisis Stabilization Center is less than 24 hours, not a limit of 23 hours. Because Health-General Article, §10-1403, Annotated Code of Maryland, refers to "23-hour holding beds", this clarifies the computation of the 23 hours. Because Health-General Article, §10-621, states that Crisis Stabilization Centers may be designated to accept individuals who are the subject of an emergency petition, and those individuals may remain in a center for the statutorily permitted period of time before admission to an inpatient unit is arranged, clarifying that requirements that apply to individuals in a center for over 24 hours only apply to those under emergency petition is not substantive.

COMAR 10.63.03.21F(8): In response to public comment, (8) was deleted because it is redundant and duplicates the daily rounds required in COMAR 10.63.03.21D(4)(b). Because this is a removal due to the requirement appearing elsewhere in the statute, the change is not substantive.

COMAR 10.63.03.21F(11)(c): In response to public comment, "developmental" was added. This change reflects current terminology which may be preferred by some individuals with disabilities. The term "developmental disabilities" is inclusive of individuals with intellectual disabilities and physical disabilities and therefore is not a substantive change.

COMAR 10.63.03.21F(12): In response to public comment, "and individuals referred by 9-8-8 and other local crisis hotlines" reflects the requirements of Health-General, §10-1403 Annotated Code of Maryland. Because this is an existing statutory requirement, the change is not substantive.

COMAR 10.63.03.21G(1): In response to public comment, "published" was replaced with "approved" due to concerns about the meaning and scope of publication creating barriers to the dissemination of valuable information in the most expedient manner possible. Because "published" was always a form of approval by the Department, this change is not substantive.

10.63.03 Descriptions and Criteria for Programs and Services Required to Have an Accreditation-Based License

Authority: Health-General Article, §§7.5-204, 8-402, 8-404, 10-901, *and 10-1402,* Annotated Code of Maryland

.20 Mobile Crisis Team Programs.

A. (proposed text unchanged)

B. In order to be licensed under this subtitle, a mobile crisis team within a **[[***Mobile Crisis Team***]]** <u>*mobile crisis team*</u> *program shall:*

(1)—(2) (proposed text unchanged)

(3) Meet the requirements defined in **[[***Mental Health Law***]]** <u>*Health-General Article*</u>*, Title 10, Subtitle 14, Annotated Code of Maryland;*

(4) (proposed text unchanged)

*(5) Respond to urgent***[[***, non-threatening emotional***]]** *symptoms or behaviors that are disrupting an individual's* <u>*behavioral health*</u> *functioning.*

C. (proposed text unchanged)

D. Mobile Crisis Team Program Services. A mobile crisis team program shall provide the following services:

(1) In-person, community-based professional and peer intervention services which shall:

(a)—(d) (proposed text unchanged)

(e) Include a response initiated by a mobile crisis team within an average of 60 to 120 minutes of determining an individual is in need of crisis intervention;

(f)—(h) (proposed text unchanged)

(2) Crisis Intervention Services. A mobile crisis team program shall provide medically necessary crisis intervention services, inclusive of the following:

(a)—(b) (proposed text unchanged)

(c) A plan for de-escalation and resolution of the crisis, including in-person interventions for immediate de-escalation of presenting **[[***emotional or***]]** *behavioral symptoms;*

(d)—(e) (proposed text unchanged)

(f) Engaging peer and natural and family support when appropriate;

(g) (proposed text unchanged)

(h) Stabilization services to ensure the individual's safety and connection to needed resources **[[***which***]]** *to reduce the* **[[***conditions***]]** *behavioral symptoms leading to crisis; and*

(i) (proposed text unchanged)

(3) Follow-up services, provided in-person, via phone, or via telehealth, which shall include, but are not limited to:

(a)—(b) (proposed text unchanged)

E. Mobile Crisis Team Program Staffing.

[[*(1)***]]** *A mobile crisis team program shall include at least one licensed mental health professional available at all times, either via telehealth or face-to-face* **[[***when indicated***]]**, *who is:*

[[*(a)***]]** *(1)*—**[[***(c)***]]** *(3)* (proposed text unchanged)

[[*(2) A mobile crisis team program may also include:*

(a) Additional licensed mental health professionals to ensure shift coverage;

(b) Certified peer and family recovery support specialists or individuals who complete the certification process within 2 years of hire; and

(c) Other staff, who shall complete training as set forth in §G of this regulation.

*(3) Certified peer and family recovery support specialists may not respond independently without a mental health or licensed professional.***]]**

F. A mobile crisis team **[[***responding in-person***]]**:

(1) Shall include two staff members responding in-person;

(2) Shall include a licensed mental health professional face-to-face or via telehealth; and

(3) May not **[[***consider***]]** *include law enforcement,* **[[***when***]]** *if present, as part of the two-person response team.*

G.—H. (proposed text unchanged)

I. A mobile crisis team program shall obtain pre-approval from the Department and LBHA or CSA to operate mobile crisis services in the PBHS **[[***ensuring that the***]]** *to ensure services meet local community needs for behavioral health crisis services.*

.21 Behavioral Health Crisis Stabilization Center (BHCSC) Program.

A. Definition.

(1) (proposed text unchanged)

(2) Term Defined. "Program" means the site and service combination which:

(a) Is recognized through licensure to offer an organized system of activities to provide an alternative to emergency departments for behavioral health crisis care, emergency petition assessment, and avoidable inpatient or carceral **[[***admissions***]]** *engagement; and*

(b) (proposed text unchanged)

B. (proposed text unchanged)

C. BHCSC Program Services. The BHCSC program shall:

(1) (proposed text unchanged)

(2) Process involuntary admissions according to Health-General Article, **[[***§10-613***]]** *§§10-613—10-621, Annotated Code of Maryland;*

(3)—(8) (proposed text unchanged)

[[*(9) Provide withdrawal management services for all substances;***]]**

[[*(10)***]]** *(9)*—**[[***(12)***]]** *(11)* (proposed text unchanged)

D. BHCSC Staffing Requirements.

(1)—(3) (proposed text unchanged)

(4) A BHCSC program shall employ a qualified prescriber or prescribers who are authorized to prescribe medications by the Maryland Board of Physicians or the Maryland Board of Nursing to provide general medical services and prescription of medications and treatment, and who shall:

(a) (proposed text unchanged)

(b) Make daily rounds, including in-person reassessment, to any individual who has been emergency petitioned and remains in the BHCSC for more than 24 hours; and

(c) (proposed text unchanged)

(5)—(7) (proposed text unchanged)

E. (proposed text unchanged)

F. BHCSC Program Quality Assurance and Reporting.

(1)—(3) (proposed text unchanged)

(4) For individuals in the BHCSC under an emergency petition with stays beyond **[[***23***]]** *24 hours, BHCSC mental health professional staff shall perform, at a minimum, daily in-person reassessment.*

(5)—(7) (proposed text unchanged)

[[*(8) A psychiatrist or psychiatric nurse practitioner shall conduct at least daily follow-up examinations for individuals that have not been discharged.***]]**

[[*(9)***]]** *(8)*—**[[***(10)***]]** *(9)* (proposed text unchanged)

[[*(11)***]]** *(10) A BHCSC program shall have protocols, which may include referral agreements with other programs, that provide for admission and treatment of individuals with:*

(a)—(b) (proposed text unchanged)

(c) Physical, developmental, and intellectual disabilities.

[[*(12)***]]** *(11) A BHCSC program shall develop and maintain written triage policies and procedures approved by the Department, including ability to accept and provide services to individuals under an emergency petition and individuals referred by 9-8-8 and other local crisis hotlines.*

[[*(13)***]]** *(12)*—**[[***(16)***]]** *(15)* (proposed text unchanged)

G. BHCSC Program Staff Training Requirements.

(1) BHCSC program staff shall complete required trainings **[[***published***]]** *approved by the Department.*

(2) (proposed text unchanged)

H.—N. (proposed text unchanged)