

**Maryland General Assembly  
Department of Legislative Services**

**Emergency/Proposed Regulation  
Department of Health and Mental Hygiene  
(DLS Control No. 14-010)**

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**Overview and Legal and Fiscal Impact**

The regulation establishes a variable amount of up to 1% in lieu of the fixed 1% assessed on hospitals to operate and administer the Maryland Health Insurance Plan (plan).

The regulation presents no legal issue of concern.

There is no net fiscal impact on State or local agencies; however, the regulation allows the Health Services Cost Review Commission (commission) to achieve required savings in the Medicaid budget.

**Regulation of COMAR Affected**

**Department of Health and Mental Hygiene:**

Health Services Cost Review Commission: Rate Application and Approval Procedures:  
COMAR 10.37.10.26-1

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**Legal Analysis**

**Background**

Each year, the commission is required to assess a uniform, broad-based, and reasonable amount in hospital rates to (1) reflect the aggregate reduction in hospital uncompensated care realized from the expansion of health care coverage under the Working Families and Small Business Health Coverage Act of 2007; and (2) operate the plan.

Chapter 153 of 2002 created the plan as an independent unit in the Maryland Insurance Administration. Chapter 259 of 2008 reorganized the plan as an independent agency. The plan contracts with a third-party administrator to provide health insurance for Maryland residents who do not otherwise have access to health insurance.

Chapter 173 of 2010 altered the plan to include responsibility for the federal temporary high-risk pool program in Maryland. The program makes available affordable health insurance to uninsured individuals with preexisting conditions. Enrollment in the plan is required to be

closed to any individual who is not enrolled in the plan as of December 31, 2013. The Board of Directors of the plan, in consultation with the Maryland Health Benefit Exchange, is required to determine the appropriate date on which the plan is required to decline to enroll members beyond the term of the members' existing plan coverage. The date on which the plan no longer will provide coverage to all plan members is required to be no earlier than January 1, 2014 and no later than January 1, 2020. Beginning October 1, 2013, and each year thereafter until the plan no longer provides coverage to members, the Board of Directors is required to provide notice to plan members that, effective January 1, 2014, the member (1) may not be denied health insurance because of a preexisting health condition; and (2) may be eligible to enroll in Maryland Medical Assistance Program, purchase a health benefit plan offered in the Maryland Health Benefit Exchange or in the insurance market outside the Maryland Health Benefit Exchange, and receive federal premium and cost-sharing assistance for the purchase of a health benefit plan in the Maryland Health Benefit Exchange.

### **Summary of Regulation**

The regulation establishes a variable amount of up to 1% in lieu of the fixed 1% assessed on hospitals to operate and administer the plan.

### **Legal Issue**

The regulation presents no legal issue of concern.

### **Statutory Authority and Legislative Intent**

The commission cites §§ 19-207 and 19-214 of the Health – General Article, §§ 14-502 and 14-504 of the Insurance Article, and § 10-304(b) of the State Government Article as authority for the regulation. Section 19-207 of the Health – General Article authorizes the commission to adopt regulations to carry out specified provisions of law. Section 19-214 of the Health – General Article requires the commission each year to assess a uniform, broad-based, and reasonable amount in hospital rates to operate and administer the plan. Section 14-502 of the Insurance Article establishes the plan. Section 14-504 of the Insurance Article establishes the Maryland Health Insurance Plan Fund. Section 10-304 of the State Government Article authorizes an interested party to submit to a unit of government a petition for a declaratory ruling regarding the manner in which the unit would apply a regulation that the unit enforces to a person or property on the facts set forth in the petition.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

### **Reason for Emergency Status**

The commission requests emergency status to begin March 1, 2014, and to expire July 1, 2014, to cover the period until final adoption of the accompanying, permanent nonemergency regulation. This period is within normal timeframes approved by the committee.

The purpose of the regulation to lower the assessment reflects the significant surplus collected by the Maryland Health Insurance Plan Fund under the previous assessment. Simultaneously, the Medicaid Budget Deficit Assessment will be increased by the same amount. Accordingly, the result is a revenue neutral transaction. The commission requests emergency status to effectuate the increased Medicaid assessment during the balance of the current year. The Budget Reconciliation and Financing Act of 2013 authorized these simultaneous actions to occur in fiscal year 2014.

## **Fiscal Analysis**

There is no net fiscal impact on State or local agencies; however, the regulation allows the commission to achieve required savings in the Medicaid budget.

### **Agency Estimate of Projected Fiscal Impact**

The proposed action requires the commission to assess each hospital *up to* 1% of net patient revenue to operate and administer the plan. Current law establishes a floor for the assessment of 0.8128%, with the current assessment set at 1.0% in regulation. The commission indicates that the regulation has minimal fiscal impact on State agencies. The Department of Legislative Services concurs and notes that, under the commission's cost containment proposal (see Additional Comments), special fund revenues for the plan decline, while special fund revenues for Medicaid increase. This regulation provides the commission the ability to achieve an appropriate level of Medicaid savings as required under the Budget Reconciliation and Financing Act of 2013.

### **Impact on Budget**

There is no net impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The commission advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Additional Comments**

One of the cost containment actions included in the fiscal 2013 and 2014 Medicaid budgets was tiered rates for outpatient and emergency room services. This cost containment action was estimated to save \$60 million in each fiscal year. However, an independent analysis confirmed that actual savings were significantly lower than anticipated. The Budget Reconciliation and Financing Act of 2013 requires the commission to take actions to generate the appropriate level of savings. Thus, this regulation allows the commission to reduce the plan assessment by an amount equal to \$22.6 million and correspondingly increase the Medicaid hospital assessment to generate an additional \$22.6 million in revenue.

## **Contact Information**

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