

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-011)**

Overview and Legal and Fiscal Impact

The regulations enact Fiscal Year 2014 reimbursement rates for providers of licensed residential and day programs under the Community Supported Living Arrangements Payment System. The regulations increase the rate paid to providers by allowing a cost of living increase to their rates.

The regulations present no legal issue of concern.

Expenditures for the Department of Health and Mental Hygiene's Developmental Disabilities Administration (DDA) increase by an estimated \$21.3 million (56% general funds, 44% federal funds) in fiscal 2014 to increase reimbursement rates. This funding is included in the fiscal 2014 budget.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Developmental Disabilities: Fee Payment System for Licensed Residential and Day Programs: COMAR 10.22.17.06-.08

Community Supported Living Arrangements Payment System: COMAR 10.22.18.04

Legal Analysis

Summary of Regulations

The regulations enact Fiscal Year 2014 reimbursement rates for providers of licensed residential and day programs under the Community Supported Living Arrangements Payment System. The regulations increase the rate paid to providers by allowing a cost of living increase to their rates.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene (department) cites §§ 2-104(b), 7-306.1, 7-714, 7-910(c), 15-105, 15-107, and 16-201 of the Health – General Article as legal authority for the regulations. Section 2-104(b) requires the Secretary of Health and Mental Hygiene to adopt regulations, in consultation and cooperation with local governing bodies, to govern the siting of community residences for special populations funded by the department, the Department of Housing and Community Development, the Department of Human Resources, and the Department of Juvenile Services. The regulations are required to comply with the federal Fair Housing Amendment Act of 1988. Prior to the adoption of any regulations, the Secretary is required to conduct a public hearing for the sole purpose of allowing the governing bodies of each county and municipality the opportunity to review and comment on the proposed regulations.

Section 7-306.1 requires the Mental Hygiene Administration (administration) to develop and implement a funding system for the distribution of State funds to private providers that are under contract with the administration to provide community-based services to individuals with a disability. The administration is required to notify each private provider at least 30 days before the beginning of the fiscal year of the billing rate or amount of funds to be paid to the provider for the provision of community-based services to individuals with a development disability or a group of individuals with developmental disabilities for the coming fiscal year. Section 7-714 requires the Secretary to adopt regulations to implement specified provisions of law relating to the Individual Support Services Program (program). Section 7-910(c) authorizes the administration to impose a specified penalty for each day a violation occurs on a private provider of community-based services that fails to submit to the administration cost reports for rate-based payment systems no later than six months after the end of the State fiscal year and wage surveys within a specified timeframe.

Section 15-105 requires the department to adopt regulations for the reimbursement of providers under the program. Section 15-107 authorizes the department to require a facility to submit cost reports, as defined by the department, within the time set by the department. If a report is not submitted within that time, the department is required to withhold from the facility up to 10% of current interim payments for the calendar month in which the report is due and any later calendar months until the report is submitted. Section 16-201 requires the Secretary to adopt regulations that set charges for services that the department provides for recipients of specified services. Charges for services are required to be set annually.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

Expenditures for the department's DDA increase by an estimated \$21.3 million (56% general funds, 44% federal funds) in fiscal 2014 to increase reimbursement rates. This funding is included in the fiscal 2014 budget.

Agency Estimate of Projected Fiscal Impact

Chapters 497 and 498 of 2010 requires a rate adjustment for community providers in DDA (and the Mental Hygiene Administration) equivalent to the increase in the Executive Branch for certain cost centers. While this provision has traditionally been interpreted as a mandate, the Office of the Attorney General has determined that the statute is too vague to be viewed as a mandate and, thus, any rate adjustment is discretionary. The regulations implement a rate adjustment for DDA, providing a 2.46% increase for community providers.

Impact on Budget

Expenditures for DDA increase by an estimated \$21.3 million (56% general funds, 44% federal funds) in fiscal 2014 to increase reimbursement rates. This funding is included in the fiscal 2014 budget.

Agency Estimate of Projected Small Business Impact

The Department of Health and Mental Hygiene advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services disagrees. Small business DDA providers receive a 2.46% rate increase under the regulations.

Contact Information

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