

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 14-164)**

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**Overview and Legal and Fiscal Impact**

The proposed regulations extend an increased cost threshold that needs to be exceeded in order for a Medicaid provider to request a rate change due to higher costs in the Administrative/Routine, Other Patient Care, and Capital cost centers; maintains current reimbursement rates for nursing home providers through December 31, 2014; extends the Interim Working Capital Fund by one year to May 1, 2015; and classifies as non-allowable costs incurred for legal services for establishing financial eligibility or to obtain representation or guardianship of nursing facility residents or their property.

The regulations do not present any legal issues of concern.

General fund revenues decline by \$112,413 in fiscal 2015 from lost interest revenues associated with extension of the Interim Working Capital Fund.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Medical Care Programs: Nursing Facility Services: COMAR 10.09.10.07, .07-1, and .17

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**Legal Analysis**

**Summary of Regulations**

The Department's proposed regulations alter COMAR 10.09.10.07A to extend the cost change threshold of 10% for providers to request an interim rate change due to higher costs in the Administrative/Routine, Other Patient Care and Capital cost centers from June 30, 2014 to December 31, 2014. After that time, the cost change threshold will revert to 5%. A new section C-3 is also added which maintains interim and maximum reimbursement rates for July 1, 2014 through December 31, 2014 at the same level as the rates in effect for the period of July 1, 2013 through June 30, 2014. The department indicates this action is consistent with the budget for fiscal year 2015.

COMAR 10.09.10.07-1I extends the Interim Working Capital Fund for one year to May 1, 2015. The Interim Working Capital Fund provides funding to nursing facility providers on a temporary basis that shall be repaid to the department. Under the proposed regulation change, all outstanding allotments must be repaid to the department by May 1, 2015.

COMAR 10.09.10.17 lists certain costs that are not allowable when establishing interim and final per diem reimbursement rates. A new section X adds costs incurred for legal services for establishing financial eligibility or to obtain representation or guardianship of nursing facility residents or their property to the list of non-allowable costs.

## **Legal Issue**

The regulations do not present any legal issues of concern. The expiration date for the Interim Working Capital Fund and the 10% cost change threshold have previously been extended by amendments to those provisions.

## **Statutory Authority and Legislative Intent**

The department cites §§ 2-104(b), 15-103, and 15-105 of the Health – General Article as legal authority for the regulations. Section 2-104(b) gives the Secretary of Health and Mental Hygiene authority to adopt rules and regulations to carry out the provisions of law with the jurisdiction of the Secretary. Section 15-103 establishes the Maryland Medical Assistance Program, and requires the Secretary to administer the program, including adopting regulations. Section 15-105(b) requires the department to adopt rules and regulations for the reimbursement of providers for services under the Medicaid program.

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

## **Fiscal Analysis**

General fund revenues decline by \$112,413 in fiscal 2015 from lost interest revenues associated with extension of the Interim Working Capital Fund.

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

The regulations (1) extend the cost threshold of 10% for providers to request an interim rate change from June 30, 2014, to December 31, 2014; (2) maintain fiscal 2014 reimbursement rates (with the exception of specified interim rate changes) for nursing home providers for the first half of fiscal 2015 (July 1, 2014, through December 31, 2014); (3) extend the Interim Working Capital Fund for one year from May 1, 2014, to May 1, 2015; and (4) classify costs incurred for legal services for establishing financial eligibility or to obtain representation or guardianship of nursing facility residents or their property as nonallowable costs.

The department advises that holding nursing home rates at fiscal 2014 levels reduces Medicaid expenditures by \$46,801,056 (50% general funds, 50% federal funds). Extension of the Interim Working Capital Fund reduces interest revenues by \$112,413. Thus, the net impact on Medicaid is reduced expenditures of \$46,688,643 (total funds). However, the Department of Legislative Services notes that holding nursing home rates at fiscal 2014 levels merely maintains cost containment actions built into the budget for several years. Any savings have already been accounted for in the fiscal 2015 budget.

## **Impact on Budget**

General fund revenues decline by \$112,413 in fiscal 2015 from lost interest revenues associated with extension of the Interim Working Capital Fund.

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

The department advises that the regulations have a meaningful impact on small businesses in the State. An estimated 38 nursing homes (which qualify as small businesses) are anticipated to lose approximately \$6.7 million in revenues during the first half of fiscal 2015 (July 1, 2014, through December 31, 2014). The Department of Legislative Services disagrees as the regulations merely maintain cost containment actions in accordance with the fiscal 2015 budget.

## **Additional Comments**

The *Joint Chairmen's Report* for the 2014 session expressed the intent of the General Assembly to identify savings in the Medicaid budget in order to support a 2.5% rate increase for nursing homes for fiscal 2015. Nursing homes are currently scheduled to receive a rate increase of 1.725% beginning January 1, 2015. In order to fund a 2.5% increase, general fund savings of \$9.0 million would need to be identified and applied to a rate increase. On July 2, 2014, the Board of Public Works took cost containment actions, including establishing that nursing home rates would only be increased by the amount originally included in the budget.

## **Contact Information**

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