

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-241)**

Overview and Legal and Fiscal Impact

The proposal establishes requirements for the determination of presumptive Medicaid eligibility by qualified hospitals, in accordance with the federal Patient Protection and Affordable Care Act (Affordable Care Act).

The regulations present one legal issue of concern.

Medicaid expenditures increase significantly, possibly by an estimated \$37.5 million (50% general funds, 50% federal funds) in fiscal 2015, due to implementation of hospital presumptive eligibility as required under the federal Patient Protection and Affordable Care Act.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: COMAR 10.09.91.01-.09

Legal Analysis

Background

For several years, states have had the option under federal law to use presumptive eligibility to connect children and pregnant women to Medicaid. Starting on January 1, 2014, the Affordable Care Act gave qualified hospitals the option to connect other populations to Medicaid coverage. Under this new presumptive eligibility authority, hospitals can immediately enroll patients who are likely eligible under a state's Medicaid eligibility guidelines for a temporary period of time. An individual provides information about the individual's income and household size, and (at state option) information regarding citizenship, immigration status, and residency, and if the individual appears to be eligible for Medicaid based on this information, a hospital determines the individual to be "presumptively eligible" for Medicaid. The individual is temporarily enrolled, and health care providers (not just hospitals) receive payment for services provided during the interim period pending a final adjudication of Medicaid eligibility by the state Medicaid agency.

Under the law, the choice to make presumptive eligibility determinations rests with each individual hospital, not with the state, and is not dependent on whether the hospital or the state uses presumptive eligibility for other populations. (Maryland does not use presumptive eligibility for other populations.)

States were required to submit a Medicaid state plan amendment to implement the presumptive eligibility provision. The Department of Health and Mental Hygiene reports that the Centers for Medicare and Medicaid Services recently approved Maryland's state plan amendment, with an effective date of October 1, 2014.

Summary of Regulations

The regulations establish requirements for hospitals to make presumptive eligibility decisions; establish provisions for disqualifying a hospital or a hospital employee from making presumptive eligibility decisions; establish criteria and eligibility requirements for individuals to be presumptively eligible for Medicaid; prohibit individuals from applying for presumptive eligibility under certain circumstances; establish the certification period for presumptive eligibility; and specify that an individual or an organization does not have appeal rights for presumptive eligibility determinations.

To be eligible to make presumptive eligibility decisions, a hospital must participate as a Maryland Medical Assistance Program provider in good standing and sign an agreement prepared by the department. The agreement must require the hospital to comply with departmental policies and procedures, meet accuracy and timeliness standards, submit a list of hospital employees who will attend presumptive eligibility training developed by the department, prohibit employees who have not attended the training and passed a post-training test from making presumptive eligibility decisions, and report all requested information on a departmental form. A hospital employee must (1) check the department's eligibility verification system to make sure the individual is not actively enrolled in the Maryland Medical Assistance Program; (2) fill out a presumptive eligibility application based on information supplied by the applicant; (3) provide information concerning the full Medical Assistance application process to the individual and assist or refer the applicant to an individual who can assist in completing the full Medical Assistance application; (4) determine that the applicant has not had a prior presumptive eligibility period within the last 12 months or, for a pregnant woman, has not had a prior presumptive eligibility period during the current pregnancy; and (5) make a presumptive eligibility decision based on, as reported by the applicant: residency, citizenship, family size and composition, and gross family income. The hospital must submit the presumptive eligibility application to the department on the date of application completion to allow the individual to have temporary Medical Assistance coverage.

A hospital must (1) make presumptive eligibility determinations in accordance with established departmental policies and procedures and (2) disqualify a hospital employee who does not follow them. If a hospital fails to meet these requirements, the department must provide the hospital with additional training or take other reasonable corrective action measures. If the remedial measures fail to provide a satisfactory resolution, the department must disqualify the hospital from making presumptive eligibility decisions.

An individual, the individual's guardian, or a representative of the individual with personal knowledge must apply for presumptive eligibility through a participating hospital. The applicant must attest to the citizenship and residency requirements in regulation, the individual's pregnancy status, the individual's family size, and the individual's household's gross monthly income.

Presumptive eligibility may be established for the following groups (in accordance with the Affordable Care Act, those whose eligibility is determined according to modified adjusted gross income): (1) parents and other caretaker relatives whose household income is equal to or less than 133% of the federal poverty level; (2) pregnant women whose income is equal to or less than 250% of the federal poverty level; (3) adults without dependent children who are older than 19 years old and younger than 65 years old, whose household income is equal to or less than 133% of the federal poverty level; (4) children who are younger than 19 years old who are under 300% of the federal poverty level; or (5) former foster care individuals who are younger than 26 years old.

An individual may not apply for presumptive eligibility if the individual is currently enrolled in Medicaid or Medicare, is incarcerated, had a prior presumptive eligibility period during the last 12 months and is not pregnant, or does not meet residency or citizenship requirements.

Presumptive eligibility begins on the day the hospital determines the individual is presumptively eligible and ends on the earlier of (1) the day in which the individual is determined eligible for regular Medicaid or (2) if the individual is found ineligible or failed to apply for Medicaid, the last day of the month following the month in which the hospital determined presumptive eligibility. A non-pregnant individual may be determined presumptively eligible once per 12-month period. A pregnant individual may be determined presumptively eligible once per pregnancy.

Legal Issue

As described below under “Statutory Authority”, § 15-103(a) of the Health – General Article requires the Maryland Medical Assistance Program to provide medical and other health care services for specified individuals, *subject to the limitations of the State budget* (emphasis added). The department’s estimate of the economic impact of the regulations states that the budget does not contain funds to implement the regulations. According to program staff, the department did not have sufficient information to accurately project the costs at the time the fiscal 2015 budget was prepared.

Although the State budget does not expressly provide funds for hospital presumptive eligibility, the State is required to comply with the federal law, as a condition of participating in the Medicaid program. (It should be noted that the hospital presumptive eligibility requirements of the Affordable Care Act are separate and distinct from the provisions of the law relating to the expansion of Medicaid eligibility to individuals with income up to 133% of the federal poverty level.)

Statutory Authority and Legislative Intent

The department cites §§ 2-104(b), 2-105(b), and 15-103 of the Health – General Article as authority for the regulations. Section 2-104(b) authorizes the Secretary of Health and Mental Hygiene to adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary. Section 2-105(b) provides that the Secretary is responsible for the health interests of the people of the State and shall supervise generally the administration of the health laws of the state and its subdivisions. Section 15-103(a) requires the Secretary to administer the Maryland Medical Assistance Program and requires the program to provide

medical and other health care services for specified individuals, subject to the limitations of the State budget. This statutory authority is correct and complete.

As discussed above under “Legal Issue”, the regulations may not comply with legislative intent that services be provided, subject to the limitations of the State budget. However, the legislature generally has been supportive of efforts to expand the use of Medicaid to reduce the number of uninsured individuals, as well as reduce hospital uncompensated care, in the State. The regulations bolster these efforts.

Fiscal Analysis

Medicaid expenditures increase significantly, possibly by an estimated \$37.5 million (50% general funds, 50% federal funds) in fiscal 2015, due to implementation of hospital presumptive eligibility as required under the federal Patient Protection and Affordable Care Act.

Agency Estimate of Projected Fiscal Impact

The regulations establish requirements for the determination of presumptive Medicaid eligibility by qualified hospitals. Maryland currently does not allow presumptive eligibility determinations. Under the regulations, individuals determined by hospitals to have presumptive eligibility may receive up to 60 days of temporary Medicaid benefits regardless of whether they are ultimately determined eligible for Medicaid. Individuals applying for presumptive eligibility must attest to citizenship and residency requirements, pregnancy status, family size, and household gross monthly income. However, presumptive eligibility determinations cannot be held up pending verification of such information.

According to the department, Medicaid expenditures will increase by an estimated \$37.5 million (50% general funds, 50% federal funds) in fiscal 2015. This estimate assumes that approximately 5% of the \$1.0 billion currently used to fund hospital uncompensated care (\$50 million) will instead be used to cover increased Medicaid expenditures. With an October 1, 2014 effective date, Medicaid expenditures are anticipated to increase by \$37.5 million in fiscal 2015. The department assumes these expenditures will be split 50% general funds, 50% federal funds. The federal Centers for Medicare and Medicaid Services will provide a 50% matching rate for individuals in the presumptive eligibility category, even if such individuals are ultimately found ineligible for Medicaid. If individuals are found eligible under a Medicaid category with a higher matching rate (*i.e.*, adults with incomes up to 138% of federal poverty guidelines), the department will be able to claim a higher matching rate (up to 100%).

The Department of Legislative Services concurs that Medicaid expenditures will likely increase by a potentially significant amount; however, actual expenditures cannot be reliably estimated and will depend on (1) the number of individuals found presumptively eligible for Medicaid; (2) the Medicaid services provided to such individuals during their presumptive eligibility period; (3) whether those individuals are ultimately found eligible for Medicaid; and (4) the federal matching rate associated with those individuals who are ultimately found eligible for Medicaid.

Impact on Budget

Medicaid expenditures increase significantly, possibly by an estimated \$37.5 million (50% general funds, 50% federal funds) in fiscal 2015, due to implementation of hospital presumptive eligibility effective October 1, 2014. Although required under Affordable Care Act, funds for hospital presumptive eligibility are not included in the fiscal 2015 budget. The department indicates that it did not have sufficient information to accurately project the costs at the time the fiscal 2015 budget was prepared.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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