

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Health and Mental Hygiene  
(DLS Control No. 14-281)**

---

**Overview and Legal and Fiscal Impact**

The proposed changes to the regulation implement mid-year adjustments to the 2014 calendar year managed care organization HealthChoice rates, and add a supplemental payment for Hepatitis C therapy services.

The proposed change to the regulation presents no potential legal issues of concern.

Medicaid expenditures increase by a minimum of \$14,045,025 (91% general funds, 9% federal funds) in fiscal 2015 to reflect the midyear rate adjustment for managed care organizations and the establishment of a new supplemental payment for Hepatitis C therapy.

**Regulation of COMAR Affected**

**Department of Health and Mental Hygiene:**

Medical Care Programs: Maryland Medicaid Managed Care Program: Managed Care Organizations: COMAR 10.09.65.19

---

**Legal Analysis**

**Summary of Regulation**

COMAR 10.09.65.19B(4)(a) through (d) provides the rate tables for monthly payments to managed care organizations for services to families and children (paragraph (a)), services to disabled individuals (paragraph (b)), supplemental payments for delivery/newborn (paragraph (c)), and services to the childless adult population (paragraph (d)). The existing rates are for the period from January 1, 2014 through December 31, 2014.

The proposed changes update the rates under paragraphs (a) through (d). The updated rates are effective from July 1, 2014 through December 31, 2014. Rates under paragraph (a) and (d) are slightly reduced. Some rates for services to disabled individuals under paragraph (b) are increased while others are decreased. The rates under paragraph (c) are increased, and rates for Hepatitis C therapy services are added to this rate table.

**Legal Issue**

The proposed change to the regulation presents no potential legal issues of concern.

## **Statutory Authority and Legislative Intent**

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-102.3, and 15-103 of the Health – General Article and §§ 15-112, 15-605, and 15-1008 of the Insurance Article as legal authority for the regulation. 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 15-102.3 provides that §§ 15-112, 15-605, and 15-1008 of the Insurance Article apply to managed care organizations in the same manner as they apply to carriers.

Section 15-112(a)(4) of the Insurance Article defines “carrier” as: an insurer; a nonprofit health service plan; a health maintenance organization; a dental plan organization; or any other person that provides health benefit plans subject to regulation by the State. The remainder of § 15-112 governs the relationship between a carrier and the health care providers contracted to provide services under the health care plan. Section 15-605 governs pharmacy repositories that accept donated prescription drugs and medical supplies. Section 15-1008 governs the retroactive denial of reimbursement to a health care provider by a carrier. Managed care organizations are included in the definition of “carrier.”

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

## **Fiscal Analysis**

Medicaid expenditures increase by a minimum of \$14,045,025 (91% general funds, 9% federal funds) in fiscal 2015 to reflect the midyear rate adjustment for managed care organizations and the establishment of a new supplemental payment for Hepatitis C therapy.

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

The regulation implements the midyear rate adjustment for Medicaid managed care organizations and establishes a new supplemental payment for Hepatitis C therapy. The department advises that the rate adjustment will result in a net increase in Medicaid expenditures of \$14,045,025 (50% general funds, 50% federal funds) in fiscal 2015. The Department of Legislative Services concurs with this estimate but notes that the fund split will instead be approximately 91% general funds, 9% federal funds.

The Department of Legislative Services notes that this estimate *does not* include the additional cost of a supplemental payment for Hepatitis C therapy, which is intended to cover Sovaldi, a recently approved Hepatitis C drug. The Hilltop Institute estimates that the total cost to Medicaid of covering the new drug could be \$60 million for calendar 2014 and \$72 million for calendar 2015, with a fund split of 30% general funds, 70% federal funds. No funding for the supplemental payments is included in the fiscal 2015 budget. Medicaid was able to accrue some fiscal 2014 funding to cover a portion of calendar 2014 costs, but the amount accrued is significantly less than the estimated total cost.

## **Impact on Budget**

Medicaid expenditures increase by \$14,045,025 (91% general funds, 9% federal funds) in fiscal 2015 to reflect the midyear rate adjustment for managed care organizations. Establishment of a supplemental payment for Hepatitis C therapy is estimated to cost an additional \$60 million to \$72 million in total funds (\$18 million to \$21.6 million in general funds) for calendar 2014 and 2015, respectively. While Medicaid was able to accrue some funds in fiscal 2014 to partially cover the cost of the midyear rate adjustment and supplemental payments, it is insufficient to cover the estimated full cost and will require a fiscal 2015 deficiency appropriation.

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

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

## **Additional Comments**

In December 2013, the U.S. Food and Drug Administration approved the prescription drug Sovaldi, which has been touted as a “turning point” in the treatment of Hepatitis C with a cure rate of well over 90% in clinical trials and fewer side effects than prior therapies. However, a 12-week course of treatment with the drug costs \$84,000. While to date some other state Medicaid programs have not approved the use of Sovaldi, Maryland Medicaid has done so. However, as the cost of this newly approved drug was not factored into the actuarially determined managed care organization rates for calendar 2014, a supplemental payment to cover the cost of the drugs is being established.

## **Contact Information**

**Legal Analysis:** Phillip S. Anthony – (410) 946/(301) 970-5350

**Fiscal Analysis:** Jennifer B. Chasse – (410) 946/(301) 970-5510