

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 15-042)**

Overview and Legal and Fiscal Impact

The regulations update the method of determining charges for health services under programs that are operated by the Department of Health and Mental Hygiene or supported wholly or partly by funds administered by the department

The regulations present no legal issue of concern.

The regulations have minimal fiscal impact on State agencies. However, there is a potential increase in revenues for local health departments from updated and clarified billing procedures, which likely result in increased reimbursement for services provided.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Division of Reimbursements: Charges for Services Provided through the Department of Health and Mental Hygiene: COMAR 10.02.01.01-.11

Legal Analysis

Background

According to the Department of Health and Mental Hygiene, the purpose of the regulations is to (1) reflect the current standard and customary methods used by health care providers in their communities; (2) ensure that, in order to maintain long term fiscal integrity, charges for health services provided by local health departments will be regularly updated to match national and regional standards for reimbursement; (3) update and ensure uniformity in the method of determining whether to grant fee reductions at local health departments in the case of hardship; and (4) update and clarify definitions.

Summary of Regulations

Purpose

The regulations clarify the intent of COMAR 10.02.01. The intent of the chapter is that (1) the cost of care of a recipient of services be determined in accordance with the charges for health services set under the chapter and (2) there be a single, if appropriate, bundled charge for

each health service rendered to an individual, including an individual in a group session or family group session.

Definitions

The regulations alter the definition of “charge” (1) to include the dollar amount set by the Secretary of Health and Mental Hygiene for each procedure; (2) by substituting the term “recipients of service” for “persons”; (3) by deleting language “before the application of an ability-to-pay determination or the elimination of disallowed costs by any third party-payer or insurer”; and (4) adding the term “chargeable persons” to whom a single rate may be charged. The regulations clarify that a “chargeable person” means (1) any responsible relative of a recipient of services; (2) except for a recipient of services, any other person who is legally responsible for the cost of care of the individual; and (3) any person who maintains a policy of health insurance under which a recipient of services is insured. The name of the Division of Program Cost and Analysis is changed to the Cost Accounting and Reimbursement Division (division). The definition of “fee” is changed to mean the charge or that part of the charge after an ability-to-pay determination or the elimination of disallowed costs by any third-party payer or insurer. The definition of “health service” is altered to include any service for which a charge is established that is provided by a grantee which is deemed appropriate to the care and treatment of an individual under its care or enrolled in its program. The definition of “provider” is altered to mean a facility operated by the Department of Health and Mental Hygiene, a local health department, or a private provider.

The regulations add definitions of “local health department,” “medical assistance,” “out-of-network services,” and “third-party payor or disallowance.” The regulations delete definitions of “non-eligible cost,” “overhead cost,” “program area,” “public health cost,” “service specific-based charge,” and “unit.”

Setting of Charges for Local Health Departments

The regulations require the Secretary to approve a Schedule of Charges for a local health department containing the current procedural terminology (CPT) based charges for health services provided by the local health department. Each health service for which payment is sought is required to be assigned an applicable CPT code. The CPT based charge is required to be equivalent to 150% of the Medicare participating provider fee allowance for the corresponding CPT code in the most recent Medicare Physician’s Fee Schedule for Maryland or the Washington, D.C. suburbs, as appropriate, which is updated annually in the Federal Register. For any health service performed by a local health department for which a rate is not assigned in the applicable Medicare Physicians Fee Schedule, the CPT based charge is required to be equivalent to 150% of the Maryland Medical Assistance participating provider fee allowance for the corresponding CPT code in the current Maryland Medical Assistance Program, Physicians’ Services Provider Fee Manual. For any health service performed by a local health department for which a rate is not assigned on the applicable Medicare Physicians Fee Schedule or in the current Maryland Medical Assistance Program, Physicians’ Services Provider Fee Manual, the CPT based charge is required to be equivalent to the average hourly rate of the employees providing the service to the recipients of services, calculated based on current fiscal year salaries and fringe benefits, multiplied by the projected time of service with the recipients of services, plus 20% for indirect costs. The Secretary is required to approve revisions and modifications to a Schedule of Charges. Any revisions and modifications to a Schedule of Charges are required to be approved by the Secretary in accordance with instructions issued by the division, provided

that a Schedule of Charges for each local health department is required to be updated and approved by the Secretary as least annually. The division is required to retain each approved Schedule of Charges, with all revisions and modifications. Each local health department where health services are provided is required to prominently post the Schedule of Charges.

Setting of Charges for State-operated Inpatient Facilities

For each fiscal year, a charge of physician services provided at a Medicare-eligible State-operated inpatient facility is required to be determined by utilizing the most recent Facility Medicare Physicians fee schedule for Maryland or Washington, D.C. suburbs, as appropriate, which is updated annually in the Federal Register. For each fiscal year, a charge for ancillary services provided at a Medicare-eligible State-operated inpatient facility is required to be determined by utilizing the most recent Facility Medicare Physicians Fee schedule for Maryland or Washington, D.C. suburbs, as appropriate, which is updated annually in the Federal Register.

Setting of Charges for Laboratories Administration

COMAR 10.02.01.07 establishes charges for administration of laboratories. Notwithstanding these procedures for determining a laboratory service charge, the regulations authorize the Secretary to adjust the Schedule of Charges if deemed to be in the best interest of public health.

Determination of Ability to Pay and Fees to be Collected

For inpatient care rendered in facilities operated by the Department of Health and Mental Hygiene, COMAR 10.02.01.01.08 requires fees to be established in conformity with applicable statutory requirements and regulations issued by the Secretary. For outpatient and community based services, all recipients of services and chargeable persons are liable for payments of the charges as set forth in the Schedule of Charges, subject to the following (1) for uninsured recipients of services, a waiver or reduction of charges may be granted on a case-by-case basis, following an individual determination of financial need, based on specified criteria and (2) for insured, in network recipients of services, liability for payment will be reduced to account for any contractually agreed upon third party payer disallowance. The Secretary is required to issue and revise annually an ability-to-pay method and schedule for use in making an individualized determination of financial need of a recipient of services or chargeable person. All local health departments and other providers are required to use the uniform method of determining ability to pay as set forth by the Secretary.

Billing and Collection of Charges and Fees

The regulations authorize the Secretary to require each local health department and other providers to submit for approval or modification a plan for billing and collection of insurance benefits. The plan is required to establish the procedures to be followed in applying the ability-to-pay determination method and schedule and the procedure to write off unpaid amounts due as appropriate.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 16-201 through 16-407 of the Health – General Article as legal authority for the regulations. Section 16-201 requires the Secretary to adopt regulations that set charges for services that the department provides for the physically ill, aged, mentally disordered, intellectually disabled, and developmentally disabled and other recipients of services in or through State-operated (1) clinics; (2) day care, day treatment, and day hospital care; (3) group homes and small residential homes; (4) inpatient care in regional and State hospitals and centers; and (5) inpatient and outpatient care of any other kind. Section 6-201.1 requires the Secretary to adopt regulations establishing the ability-to-pay schedule for prenatal and infant care services offered through local health agencies. Subject to the limitations of the State budget, § 16-201.2 requires the department to adjust for inflation the fees paid to a community developmental disabilities services provider and a community mental health services provider for approved services rendered to an eligible individual. Section 16-202 establishes procedures for the department to determine the ability to pay for the cost of care of a recipient of services. Section 16-203 requires the determination of the cost of care of a recipient of services to be determined in accordance with the charges for services set under § 16-201. With certain exceptions, § 16-204 requires that all payments for services provided through a facility or program of the department be (1) made to and collected by the department; and (2) accounted for and paid into the General Fund of the State by the department. Instead of the requirements of Title 16, Subtitle 2 of the Health – General Article, § 16-205 authorizes the department to accept those requirements that are set out in the Maryland Medical Assistance Plan or the federal laws and regulations under Title XIX of the Social Security Act and that govern the investigation of financial condition, standards of eligibility, and legal responsibility of recipients of services, their responsible relatives, legal representatives and estates, or other chargeable persons. For specified juvenile screening and treatment services provided by a unit of the department, § 16-206 requires the department to bill and collect the cost of care as provided in Title 16, Subtitle 2 of the Health – General Article and as if the recipient of services was not a ward of the State. The Department of Juvenile Services is required to pay for juvenile screening and treatment services that any person other than the department provides under a specified provision of the Human Services Article. The department is required to later bill and collect the cost of care. Section 16-207 requires the department to bill and collect the fee for a service of a public health and clinical laboratory as provided in Title 16, Subtitle 2 of the Health – General Article. Section 16-208 requires, to the extent practicable, the regulations enforcing the provisions of law relating to the establishment of charges for services to be applied uniformly to all individuals who receive services under programs that either are operated by the department or supported wholly or partly by State or federal funds administered by the department.

Except as otherwise provided in specified provisions of law, § 16-301 applies Title 16, Subtitle 2 of the Health – General Article to a recipient of services under the Maryland Mental Hygiene Law. If an individual is examined under a court order by a representative of the Behavioral Health Administration, § 16-302 requires the State to assume the reasonable cost of the examination. If the examination is requested by the individual being examined, the individual is responsible for payment of the appropriate fee. Section 16-303 establishes procedures for the disposition of the property of an individual admitted under the Maryland Mental Hygiene Law that remains in the custody of a public facility for one year after the death or escape of the individual. Section 16-304 requires that State funding for specified provisions

relating to recipient of services under the Maryland Mental Hygiene Law be as provided in the budget.

Except as otherwise provided in specified provisions of law, § 16-401 applies Title 16, Subtitle 2 of the Health – General Article to a recipient of services under Maryland Developmental Disabilities Law. When an individual enters a facility for comprehensive evaluation and when an individual with an intellectual disability is admitted to a public facility, § 16-402 requires that each proponent of the admission be advised in writing of specified provisions of law that apply to the individual. Section 16-403 requires the amount to be charged to chargeable persons for services received by a recipient of services under the Maryland Developmental Disabilities Law to be as provided in Title 16, Subtitle 4 of the Health – General Article. If there is any insurance, group health plan, or prepaid medical care coverage for part or all of the cost of the care provided, § 16-404 requires the department to seek to collect the proceeds of the insurance plan or coverage to the full extent required to pay for the charges for services. Section 16-404 also provides that the liability of a chargeable person for services provided to an individual with an intellectual disability may not exceed the greater of a specified sum or the lesser of a specified amount. Section 16-405 requires the liability of a chargeable person to be determined in accordance with either of two schedules, at the option of the chargeable person. If an individual is examined under a court order by a representative of the Developmental Disabilities Administration, § 16-406 requires the cost of the examination to be assumed by the State. If an examination is requested by the individual being examined, the individual is responsible for payment of the appropriate fee. Section 16-407 establishes procedures for the disposition of property of an individual with an intellectual disability that remains in the custody of a public facility for one year after the death or release of the individual with an intellectual disability.

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

Fiscal Analysis

The regulations have minimal fiscal impact on State agencies. However, there is a potential increase in revenues for local health departments from updated and clarified billing procedures, which likely result in increased reimbursement for services provided.

Agency Estimate of Projected Fiscal Impact

The regulations clarify and update provisions related to the method of determining charges for health services under programs that are operated or supported by the department. The department advises that, although the regulations have minimal fiscal impact on State agencies, the regulations make significant changes to billing procedures for local health departments that allow reimbursement for services provided, particularly from health care insurance providers. Thus, the regulations likely allow for an increase in revenues from reimbursement for services provided by local health departments. The Department of Legislative Services concurs.

Impact on Budget

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

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.

Contact Information

Legal Analysis: Lynne Blume Rosen – (410) 946/(301) 970-5350

Fiscal Analysis: Kathleen P. Kennedy – (410) 946/(301) 970-5510