Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Health and Mental Hygiene

(DLS Control No. 15-122)

Overview and Legal and Fiscal Impact

The regulations increase the reimbursement rates for residential and day programs and community supported living arrangements for individuals with developmental disabilities.

The regulations present one legal issue of concern: the regulations establish rates for two new types of services that are not defined.

Expenditures for the Developmental Disabilities Administration (DDA) increase by an estimated $28.4 million in fiscal 2016 (including $15.8 million in general funds) to provide a rate increase to community services providers as required under Chapter 262 of 2014. These expenditures have already been assumed under the fiscal and policy note for Chapter 262 and are included in the fiscal 2016 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

Background

Chapter 262 of 2014, the Maryland Minimum Wage Act of 2014, required the Governor's proposed budget for fiscal 2016 through 2019 to include an annual 3.5% rate increase for Developmental Disabilities Administration (DDA) community services providers over the funding provided in the prior year's legislative appropriation. The Governor's proposed budget for fiscal 2016 included language reducing the required 3.5% rate increase to 1.75%, contingent on enactment of a provision in the Budget Reconciliation and Financing Act. The General Assembly struck the contingency language and instead cut the community services budget, allowing for a 3.0% rate increase.

Summary of Regulations

The regulations repeal the reimbursement rates for residential and day programs and community supported living arrangements and establish new rates, effective on July 1, 2015, for the services. The rates in the existing regulations have been in effect since fiscal 2014. Each

rate increases by approximately 5%, reflecting the 3% increase provided in the legislative appropriation for fiscal 2016, as well as a 2% increase that took effect in January 2015.

As in the existing regulations, the rates for licensed residential and day programs include an individual component, a provider component, and an add-on component. An "add-on component" is defined as one or more units of service, each of which includes funding for direct service and other nondirect costs not covered by the sum of the provider and individual components. The existing regulations establish, under each of the three components, rates for residential, day, and supported employment programs, which are all defined in regulation. The proposed regulations establish rates not only for residential, day, and supported employment programs, but also for two new services: "community learning services" and "employment discovery and customization". These new services are not defined in regulation. Department staff advise that the new services are defined in the Community Pathways Home and Community-Based Services waiver approved by the federal Centers for Medicare and Medicaid Services.

Legal Issue

The regulations present one legal issue of concern. As noted above, the regulations establish rates for two new services: "community learning services" and "employment discovery and customization" which are not defined. Although the services are defined in the Community Pathways waiver, a definition in the regulations is needed to provide a clear link between the reimbursement rates and the services funded in the rates. The department recently has been cited in a federal audit, because of a discrepancy in the language in the State regulation and the Community Pathways waiver. To avoid such problems in the future, the regulatory and waiver language needs to be the same.

Statutory Authority and Legislative Intent

The 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 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 7-306.1 requires DDA to develop and implement a funding system for the distribution of State funds to private providers that are under contract with DDA to provide community-based services to individuals with disability in accordance with the State plan. Funds received for services that are fee-for-service or that have rates set by regulation are subject to recovery by DDA only for client attendance, client fees, or sanctions allowed through regulations. (Note: Chapter 648 of 2014 repeals § 7-306.1, effective on the date the regulations establishing a new payment system for community-based services take effect.) Section 7-714 requires the Secretary to adopt regulations for Community Supported Living Arrangements.

In addition to the above-cited sections, the department should have cited § 7-307 of the Health – General Article as authority for the regulations. As enacted by Chapter 262 of 2014 and described above, § 7-307 requires the department to increase the rate of reimbursement for community services providers each fiscal year by the amount of the rate increase included in the State budget for that fiscal year. Section 7-307 also requires the Governor's proposed budget for

fiscal years 2016 through 2019 to include a rate increase of 3.5% over the funding provided in the previous year's legislative appropriation.

The remaining sections cited as authority for the regulations are not relevant. Section 7-910(c) establishes penalties for certain false statements. Section 15-105 requires the department to adopt rules and regulations for the reimbursement of providers under the Maryland Medical Assistance Program. Section 15-107 authorizes the department to require facilities that participate in the Maryland Medical Assistance Program to submit cost reports within the time set by the department. Section 16-201 requires the Secretary to adopt rules and regulations that set charges for services the department provides through certain State-operated programs and facilities.

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

Fiscal Analysis

Expenditures for the Developmental Disabilities Administration (DDA) increase by an estimated $28.4 million in fiscal 2016 (including $15.8 million in general funds) to provide a rate increase to community services providers as required under Chapter 262 of 2014. These expenditures have already been assumed under the fiscal and policy note for Chapter 262 and are included in the fiscal 2016 budget.

Agency Estimate of Projected Fiscal Impact

Chapter 262 requires the Governor, in fiscal 2016 through 2019, to include in DDA's proposed budget an annual 3.5% rate increase for community services providers. The Governor's proposed fiscal 2016 budget included language reducing the required 3.5% rate increase to 1.75%, contingent on enactment of a provision in the Budget Reconciliation and Financing Act of 2015. The General Assembly struck the contingency language and instead cut the community services budget, allowing for a 3.0% rate increase. The regulations show a total rate increase of 5.0%, which reflects a 2.0% increase that took effect January 2015, and the 3.0% increase provided in the legislative appropriation for fiscal 2016.

The department advises that the regulations increase DDA expenditures by a total of $28.4 million in fiscal 2016 (including $15.8 million in general funds) to provide the 3.0% rate increase. The Department of Legislative Services concurs, but notes that such expenditures have already been assumed in the fiscal and policy note for Chapter 262. The fiscal and policy note assumed increased expenditures of $32.7 million ($18.3 million in general funds) to provide a rate increase of 3.5% in fiscal 2016.

Impact on Budget

The regulation's expenditures are included in the fiscal 2016 budget; thus, there is no additional 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, but notes that there is no *additional* impact on small businesses resulting from the regulations beyond that already assumed in the fiscal and policy note for Chapter 262. Community services providers will receive an additional $28.4 million in reimbursement under the rate increase.

Contact Information

Legal Analysis: Linda L. Stahr – (410) 946/(301) 970-5350
Fiscal Analysis: Nathan W. McCurdy – (410) 946/(301) 970-5510