Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Health and Mental Hygiene

(DLS Control No. 15-125)

Overview and Legal and Fiscal Impact

The regulations repeal residential rehabilitation services for children in certain out-of-home placements as eligible for Medicaid reimbursement in order to align the regulations with the Medicaid State Plan. As part of the follow-up from a federal audit, Maryland agreed to remove Medicaid services from the bundled rate for these services effective July 1, 2015. Providers will continue to be paid for these services through the Department of Human Resources (DHR) and the Department of Juvenile Services (DJS).

The regulations present no legal issue of concern.

Medicaid federal fund revenues and expenditures for residential rehabilitation services for children in certain out-of-home placements decline by approximately $23.0 million in fiscal 2016. Conversely, general and federal fund expenditures for DHR and DJS may increase by as much as $23.0 million annually beginning in fiscal 2016 to backfill funding for such services. Actual expenditures will depend on caseloads.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services: COMAR 10.09.23.04

Residential Rehabilitation for Children in Certain Out-of-Home Placements: COMAR 10.09.28.01-.11

Legal Analysis

Background

As part of the follow-up from a federal audit, Maryland agreed to remove the Medicaid services in the bundled provider rate for certain out-of-home placement services effective July 1, 2015. The Department of Health and Mental Hygiene has indicated that services provided on or before June 30, 2015, will receive federal reimbursement in accordance with negotiations with the federal government. Providers will continue to be paid for services through DHR and DJS, but Medicaid services that had been included in the bundled provider rates will no longer be eligible for federal reimbursement. Loss of federal reimbursement is estimated at $23 million, which will result in DHR and DJS absorbing those costs.

Federal reimbursement may be provided by carving out Medicaid eligible services from the bundled rates and allowing providers to bill as a Medicaid provider on a fee-for-service basis. If that were to occur, it is anticipated it would be achieved by lowering the provider rates paid by DHR and DJS, with the expectation that providers would make up the difference through billing Medicaid for Medicaid eligible services. The department did not have any information on the status of any plans under consideration by DHR and DJS to address this matter.

Summary of Regulations

The regulations repeal COMAR 10.09.28.01-.11. This chapter establishes program administration and covered services for residential rehabilitation for children in out-of-home placement. The regulations repeal COMAR 10.09.23.04D(2)(i), which provides Medicaid coverage for children for out-of-home placements under 10.09.28.05.

Legal Issue

The regulation repealing COMAR 10.09.23.04D(2)(i) is silent on when exactly services will no longer be eligible for Medicaid reimbursement. The department's statement of purpose indicates that services will no longer be eligible for reimbursement effective July 1, 2015. However, the regulation simply repeals paragraph D(2)(i) without clarifying a cutoff date for when services will no longer be eligible for reimbursement. The department has indicated that services rendered on or before June 30, 2015, will remain eligible for reimbursement.

Although the repeal of eligible services under paragraph D(2)(i) could have been made clearer, the statement of purpose accompanying the regulations is clear that the changes affect services rendered on or after July 1, 2015, and the regulations present no legal issue of concern.

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

Medicaid federal fund revenues and expenditures for residential rehabilitation services for children in certain out-of-home placements decline by approximately $23.0 million in fiscal 2016. Conversely, general and federal fund expenditures for DHR and DJS may increase by as much as $23.0 million annually beginning in fiscal 2016 to backfill funding for such services. Actual expenditures will depend on caseloads.

Agency Estimate of Projected Fiscal Impact

This action repeals regulations regarding residential rehabilitation services for children in certain out-of-home placements in order to align with revisions to the Medicaid State Plan. Providers will continue to be paid for such services, but with general and/or federal funds from DHR and DJS rather than Medicaid federal matching funds. Medicaid currently contributes approximately $23.0 million in federal funds annually for these services. The department advises that the net impact of the regulations is $23.0 million in Medicaid savings and $23.0 million in increased expenditures for DHR and DJS. The Department of Legislative Services concurs that the action represents a fund swap due to loss of the ability to use Medicaid federal funds for these services.

The Department of Legislative Services further notes that, due to a significant decline in the number of children served by DJS who require residential rehabilitation services, DJS likely has sufficient funding in the fiscal 2016 budget to absorb the loss in Medicaid federal funding. However, DHR's fiscal 2016 budget included $16.4 million for this purpose that can no longer be claimed. DHR is working with the Department of Budget and Management to determine if and how much additional general and/or federal funds will be necessary to cover the cost of these services. The amount of any additional funding will depend on the number of children served by DHR that require residential rehabilitation services.

Impact on Budget

Medicaid federal fund revenues and expenditures for residential rehabilitation services for children in certain out-of-home placements decline by approximately $23.0 million in fiscal 2016. Conversely, general and federal fund expenditures for DHR and DJS may increase by as much as $23.0 million annually beginning in fiscal 2016 to fund such services, depending on caseloads.

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.

Additional Comments

In response to federal audit findings, Maryland is no longer allowed to reimburse for residential rehabilitation as a Medicaid service. Thus, Maryland agreed to remove the bundled rate for these services effective July 1, 2015. Funding for such services must now be backfilled using general and/or other federal funds by DHR and DJS.

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