Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 15-154)

Overview and Legal and Fiscal Impact

The regulations implement calendar year 2015 rates for Medicaid managed care organizations (MCOs) participating in the HealthChoice program. The regulations also clarify the calculation of any interim rate adjustments and update the Rural Access Incentive amount.

The regulations present no legal issues of concern. However, they may not comply with legislative intent.

Medicaid expenditures decrease by a net of approximately $381.9 million ($125.4 million in general funds, $256.5 million in federal funds) in fiscal 2016 due to implementation of calendar year 2015 Medicaid MCO rates, including an increase in the Rural Access Incentive allocation. Any fiscal impact is already reflected in the fiscal 2016 budget.

Regulations 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 and .19-3

Legal Analysis

Background

MCO rates are typically adjusted on a calendar year basis, taking into account medical care inflation and other factors. The fiscal 2016 budget included a calendar year 2015 rate reduction for the MCOs of 9.5%, or $489.9 million, compared to calendar 2014 rates. According to the budget analysis prepared by the Department of Legislative Services, the reduction was intended to represent the maximum reduction allowed under the calendar 2015 rate-setting process. However, the analysis indicated that the Department of Health and Mental Hygiene was modifying the budget reduction (1) by not implementing the full reduction on certain eligibility groups and (2) to stay within the actuarial range required by law. The net impact of the modifications was a rate reduction of 8.6%, or $437.9 million, compared to calendar 2014. MCO rates were also reduced to effect the transfer of substance abuse treatment services from HealthChoice to the Behavioral Health Administration. The transfer amounted to an additional reduction of 4.1%. These reductions were partially offset by an increase in rural access payments from $12 million to $22 million. The rural access payments provide an incentive for MCOs to enroll individuals who reside in rural areas of the State.

Summary of Regulations

The regulations:

- repeal the calendar year 2014 MCO rates and establish new lower rates for calendar year 2015;
- alter the requirements for adjusting MCO rates mid-year to reflect service cost changes that result from hospital inpatient and outpatient rate changes; and
- alter the Rural Access Incentive payments, by:
  - increasing the total funds available from $12 million to $22 million;
  - after distributing funds to MCOs accepting new members in rural counties, requiring any outstanding funds to be distributed to all statewide MCOs and, only if there are no statewide MCOs, requiring the outstanding funds to be distributed to all MCOs; and
  - deleting Calvert, Charles, and St. Mary's counties from the list of rural counties eligible for incentive payments.

Notably, the regulations do not reduce the rates for different eligibility groups uniformly. For instance, the rates for a normal newborn are reduced by 3-5%, depending on the county in which the individual resides. However, the rates for childless adults, who represent the expansion population under the federal Affordable Care Act, are reduced by 13-38%, depending on the age of the individual and the county in which the individual resides. Also, whereas the calendar 2014 rate table for childless adults provided separate rates for Baltimore City and the rest of the State, the calendar 2015 rate table provides separate rates for (1) Baltimore City; (2) Allegany, Frederick, Garrett, Montgomery, Prince George's, and Washington Counties; and (3) the rest of the State. A new HIV rate category is established for childless adults.

Legal Issues

The regulations present no legal issues of concern. However, they may not comply with legislative intent because they establish rates that are different from the rates anticipated by the General Assembly, as described below.

Statutory Authority and Legislative Intent

The department cites §§ 15-112, 15-605, and 15-1008 of the Insurance Article and §§ 2-104, 15-102.3, and 15-103 of the Health – General Article as statutory authority for the regulations. Section 15-112 of the Insurance Article establishes requirements for insurance carriers, including MCOs that use provider panels. Section 15-605 requires each MCO to submit an annual report and a report showing the financial condition of the MCO to the Maryland Insurance Commissioner. Section 15-1008 establishes requirements for retroactive denial of reimbursement to a health care provider. These sections of the Insurance Article are

relevant to certain existing Medicaid Managed Care Program regulations, but not to the regulations.

Section 2-104 of the Health – General Article 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 15-102.3 makes certain provisions of the Insurance Article applicable to MCOs. Section 15-103 authorizes the Secretary to establish a managed care program for enrollees of the Maryland Medical Assistance Program. Section 15-103(b)(18) requires the department to make capitation payments to each MCO. In consultation with the Insurance Commissioner, the department must (1) set capitation payments at a level that is actuarially adjusted to the benefits provided and (2) actuarially adjust the capitation payments to reflect the relative risk assumed by the MCO.

This authority is correct and complete. However, it is not clear that the regulations comply with legislative intent.

As described above under "Background", the budget approved by the General Assembly during the 2015 legislative session incorporated a 9.5% rate reduction for the MCOs proposed by the Governor. The DLS budget analysis advised that the department intended to modify that rate reduction, resulting in a rate reduction of 8.6% compared to calendar 2014 rates. The regulations do not reflect either a 9.5% or an 8.6% reduction. Therefore, the MCO rates established in the regulations are different from those the General Assembly anticipated. The department has been paying the MCOs the new rates established in the proposed regulations since January 2015. However, the department intends to submit additional regulations that include a mid-year rate reduction for the MCOs, as well as the higher rate reduction contemplated during the legislative session.

Fiscal Analysis

Medicaid expenditures decrease by a net of approximately $381.9 million ($125.4 million in general funds, $256.5 million in federal funds) in fiscal 2016 due to implementation of calendar year 2015 Medicaid MCO rates, including an increase in the Rural Access Incentive allocation. Any fiscal impact is already reflected in the fiscal 2016 budget.

Agency Estimate of Projected Fiscal Impact

The regulations implement calendar year 2015 rates for Medicaid MCOs and alter the Rural Access Incentive by clarifying the calculation of any interim rate adjustments and increasing the allocation. The department advises that the regulations decrease Medicaid expenditures by a net of $32.5 million (50% general funds, 50% federal funds) in fiscal 2016. According to the department, MCO rates decline by a total of 11.7%, including a 4.1% shift of substance use disorder services to Medicaid fee-for-service (due to carve-out of these services) and a 7.6% medical trend reduction. The maximum allocation for the MCO Rural Access Incentive is increased from $6 million to $11 million (for a total increase of $10 million, including federal matching funds).

The Department of Legislative Services disagrees with this estimate and instead estimates that the full fiscal 2016 impact of the regulations' 7.6% rate reduction is $391.9 million

($130.4 million in general funds, $261.5 million in federal funds). Shifting 4.1% in MCO rates to Medicaid fee-for-service has no net fiscal impact. However, increasing the Rural Access Incentive offsets these savings by a total of $10 million (50% general funds, 50% federal funds).

Impact on Budget

Medicaid expenditures decrease by approximately $391.9 million ($130.4 million in general funds, $261.5 million in federal funds) in fiscal 2016 due to implementation of calendar year 2015 Medicaid MCO rates. This decrease is offset by an increase in rates of $10 million (50% general funds, 50% federal funds) to reflect a greater Rural Access Incentive allocation. Any fiscal impact is already reflected in the fiscal 2016 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.

Additional Comments

This action reflects the rate for calendar 2015, thereby affecting both fiscal 2015 and 2016. As noted earlier, the Governor's proposed fiscal 2016 budget reduced Medicaid MCO rates by a total 9.5%; however, that level of reduction did not meet required actuarial standards. Thus, the final fiscal 2016 budget includes an 8.6% MCO rate reduction. As this action reflects only a 7.6% rate reduction, it is assumed that a mid-year rate adjustment (to be proposed in separate regulations) will reflect the full 8.6% rate reduction encompassed in the fiscal 2016 budget.

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