

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 16-122)**

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**Overview and Legal and Fiscal Impact**

The regulations extend by two years the period of time during which certain incentives are available to primary care practices for the adoption of electronic health records. The regulations also extend by two years a requirement that certain health insurance carriers submit annual reports to the Maryland Health Care Commission (MHCC) concerning electronic health record adoption incentives.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Maryland Health Care Commission: Electronic Health Record Incentives:  
COMAR 10.25.16.01 and .06

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**Legal Analysis**

**Background**

Under § 19-143 of the Health – General Article, certain health insurance carriers that issue or deliver health benefit plans in the State must offer incentives to providers to adopt electronic health records (EHRs). In 2009, when the legislation establishing the EHR requirements was enacted, only 19% of Maryland office-based physicians had adopted an EHR, which trailed national adoption by approximately 3%. MHCC worked with the six largest health insurance carriers and provider representatives to establish an incentive program.

The State incentive program requires certain State-regulated carriers (referred to as “payors” in statute and regulations) to provide incentives to primary care practices (family, general, geriatric, internal medicine, pediatric, or gynecologic practices), including nurse practitioner-led practices. Primary care practices are eligible to qualify for an incentive of up to \$15,000 per carrier, calculated at \$25 per member. The current State incentive program enables primary care physician practices that meet select criteria to receive a financial incentive. In order to qualify, the practice must demonstrate that it either (1) has attested to the current meaningful use requirements under the Medicare or Medicaid EHR Incentive Program

(federal incentive programs) or (2) participates in any MHCC-approved patient centered medical home (PCMH) program, and has achieved recognition from the National Committee for Quality Assurance (NCQA) for meeting NCQA's 2011 or later standards for at least level two PCMH recognition.

MHCC evaluated the State EHR incentive program in 2013 and determined that the program had been impactful, but that its performance trailed when compared to practice participation in the federal incentive program. Only 4% of eligible primary care physician practices had received a State incentive whereas 29% had received a payment under a similar federal program. To improve the participation rate in the State program, MHCC made changes to better align the requirements of the Maryland program with the requirements of the federal program and took measures to raise awareness regarding the availability of the incentives under the State program.

According to a MHCC report in August 2015, adoption of EHR among office-based physicians in Maryland has grown to 64%, a rate of adoption that exceeds the national average by approximately 10%. MHCC has observed an increase in the number of payments made to eligible practices since aligning the Maryland incentive program with the federal incentive program. Meaningful use is a requirement of both programs and MHCC anticipates that nearly 1,289 (80%) practices eligible for participation in the State incentive program to attest to meaningful use by 2018.

## **Summary of Regulations**

The regulations extend by two years, to December 31, 2018, the time period during which State-regulated health insurance carriers must provide an incentive payment to each primary care practice that adopts and reaches an approved level of use of EHRs. The regulations also extend by two years, through calendar year 2018, a requirement that a carrier submit an annual report to MHCC that includes, among other information, the number of EHR adoption payment requests received and processed by the carrier.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

MHCC cites §§ 19-103(c)(2)(i) and (ii), 19-109(a)(1), and 19-143(d)(1), (2), (3), and (4) and (i) of the Health – General Article as statutory authority for the regulations. Section 19-103(c)(2)(i) and (ii) specify that the purpose of MHCC is to promote the development of a health regulatory system that provides, for all Marylanders, a financial and geographic access to quality health care services at reasonable cost by advocating policies and systems to promote the efficient delivery of and improved access to health care services and enhancing the strengths of the current health care service delivery and regulatory system. Section 19-109(a)(1) authorizes MHCC to adopt regulations to carry out provisions of law relating to MHCC and health care planning and systems regulation.

Section 19-143(d)(1) requires MHCC to adopt regulations, on or before September 1, 2011, that require State-regulated payors to provide incentives to health care providers to promote the adoption and meaningful use of EHRs. Under subsection (d)(2) of that section, the incentives required under the regulations must meet certain requirements, including having monetary value, facilitating the use of EHRs by health care providers in the State, and take into account incentives provided to health care providers under Medicare and Medicaid, as well as any grants or loans that are available to health care providers from the federal government. Subsection (d)(3) of that section specifies that the regulations need not require incentives for the adoption and meaningful use of EHRs for specified health care providers, such as a hospital or freestanding medical facility. Subsection (d)(4) of that section requires the regulations to apply to entities that self-insure their health benefit plans to the same extent to which they apply to State-regulated payors if federal law is amended to allow the State to regulate payments made by entities that self-insure their health benefit plans.

Section 19-143(i) requires, on and after a specified date, each health care provider using an EHR that seeks payment from a State-regulated payor to use EHRs that are certified by a national certification organization designated by MHCC and capable of connecting to and exchanging data with the health information exchange designated by MHCC. The section also specifies that the EHR incentives State-regulated payors must provide to health care providers may include reductions in payments to health care providers that do not use EHRs that meet the requirements above.

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

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

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

Under current regulations, State-regulated payors (specified health insurance carriers) are required to make incentives available to primary care practices for the adoption and use of electronic health records. The incentives are currently available through December 31, 2016. The proposed regulations extend the existing incentives (and the associated annual reporting by payors) through December 31, 2018. The Maryland Health Care Commission advises that the regulations have no impact on State or local governments. 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 Maryland Health Care Commission advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services disagrees. Small business primary care practices may receive incentives during the extended period.

### **Contact Information**

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