Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Department of Health and Mental Hygiene

(DLS Control No. 16-145)

Overview and Legal and Fiscal Impact

The regulation implements annual indexing of Medicaid reimbursement rates for nursing services provided for individuals younger than 21 years old, and also makes changes conforming to a federal policy clarification that allows Medicaid providers to bill for services that are provided free of charge to other patients.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Early and Periodic Screening, Diagnosis, and Treatment: Nursing Services for Individuals Younger than 21 Years Old: COMAR 10.09.53.07

Legal Analysis

Background

The Centers for Medicare and Medicaid Services (CMS) sent a letter dated December 15, 2014, to state Medicaid directors providing guidance regarding the application of a "free care" policy. The letter explained that the historic CMS guidance on free care generally prohibited Medicaid payment for a service that was available without charge to a beneficiary, with specified statutory and policy exceptions. In response to a challenge to the "free care" policy, the CMS Departmental Appeals Board concluded that the policy was not an "interpretation of either the Medicaid statute or existing regulations." The letter explained that "the free care policy as previously applied effectively prevented the use of Medicaid funds to pay for covered services furnished to Medicaid eligible beneficiaries when the provider did not bill the beneficiary or any other individuals for the services." According to CMS, the "goal of this new guidance is to facilitate and improve access to quality healthcare services and improve the health of communities."

Summary of Regulation

Payment rates for nursing services provided on or after July 1, 2016, are established under COMAR 10.09.53.07B(2)-(8). Section E requires the rates under section B(2)-(8) to be adjusted annually by the percentage of the annual increase in the previous July in the Consumer Price Index for All Urban Consumers, medical care component, Washington-Baltimore, from the U.S. Department of Labor, Bureau of Labor Statistics.

Section D of the regulation allows a provider to charge Medicaid for services if the service is provided for free to individuals not covered by Medicaid, consistent with federal policy.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 2-104(b), 15-103, and 15-105 of the Health – General Article as statutory 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.

This authority is correct and complete. The regulation complies 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

The regulation updates the fee schedule for private duty nursing provided to individuals in the Medicaid Early and Periodic Screening, Diagnosis, and Treatment program to reflect current practice and specifies that, effective July 1, 2017, the fee schedule must be adjusted annually by the percentage of the annual increase in the previous July Consumer Price Index for All Urban Consumers, medical care component, Washington-Baltimore. The department advises that, as the regulation does not alter the established rates for fiscal 2017, there is no impact on State or local governments. The change is intended to ensure that the amount of the applicable inflationary rate will be known at the time that the Medicaid budget is developed. The regulation also updates language to reflect repeal of the previous prohibition against providers billing Medicaid for services provided free of charge to other patients. This conforms to a recent change in federal policy and allows Medicaid to reimburse providers for services given at no charge to the public;

services that are not currently reimbursable. Given that few providers deliver services at no charge, any fiscal impact from this change is anticipated to be minimal. 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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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