

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 16-159)**

Overview and Legal and Fiscal Impact

The regulations extend the Interim Working Capital Fund, provide for a rate increase for nursing facility providers, modify factors used in making certain calculations, and make technical corrections.

The regulations present no legal issues of concern.

Medicaid expenditures increase by \$23.2 million (50% general funds, 50% federal funds) in fiscal 2017 due to a 2% rate increase for nursing home providers. General fund revenues decline by \$133,959 in fiscal 2017 from lost interest revenues associated with extension of the Interim Working Capital Fund.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Medical Care Programs: Nursing Facility Services:

COMAR 10.09.10.07-1, .07-2, .10-1, .11-2, 11-7, .11-8, .15-1, and .25

Legal Analysis

Summary of Regulations

COMAR 10.09.10.07-II extends the Interim Working Capital Fund for two years to May 1, 2017. The Interim Working Capital Fund provides funding to nursing facility providers on a temporary basis that shall be repaid to the Department of Health and Mental Hygiene. Under the regulation, all outstanding allotments must be repaid to the department by May 1, 2017.

The regulations establish final nursing facility rates for the period July 1, 2016 through December 31, 2016 under COMAR 10.09.10.07-2L, and rates for January 1, 2017 through June 30, 2017 under section M.

Under COMAR 10.09.10.10-1B(c), when determining capital cost rates, if a cost report covering the date of valuation has not been filed by the facility, the closest match to the date of valuation available two months before the period being calculated is used.

The regulations alter the method for calculating a facility's average acuity when determining a facility's staffing for pay-for-performance under COMAR 10.09.10.11-2B(4). Under subsection B(2), the regulations alter a cross reference which would result in a one percentage point reduction in its applicable rental rate when a facility does not provide salary and hours of work data under subsection B(1), instead of the percentage of staff receiving seasonal influenza vaccination under subsection G(1). The regulations add new data sets under COMAR 10.09.10.25C, which are used in the calculation under regulation .11-2B(4).

COMAR 10.09.10.11-7C(5) provides the method for calculating nursing service rates for years between the periods when prices are rebased. The regulations update a cross reference under regulation .11-8C.

COMAR 10.09.10.15-1D(2)(a)(iii) adds a requirement that an indemnity bond required when there is a change in provider ownership include an amount equal to 10% of billings for the most recent annual fiscal period. The regulations also update cross references to section D.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department 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 within 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 regulations comply with the legislative intent of the law.

Fiscal Analysis

Medicaid expenditures increase by \$23.2 million (50% general funds, 50% federal funds) in fiscal 2017 due to a 2% rate increase for nursing home providers. General fund revenues decline by \$133,959 in fiscal 2017 from lost interest revenues associated with extension of the Interim Working Capital Fund.

Agency Estimate of Projected Fiscal Impact

The regulations, among other changes, extend the Interim Working Capital Fund through May 1, 2017, and provide a 2% rate increase for nursing home providers. The department advises

that extension of the Interim Working Capital Fund reduces interest revenues by \$133,959 in fiscal 2017. The Department of Legislative Services concurs.

The department further advises that the 2% rate increase results in additional Medicaid expenditures of \$41,628,157 in fiscal 2017. This estimate is based on a projected number of Medicaid days and the average reimbursement rate for nursing facility services (projected to be \$250.84 in fiscal 2017 with the 2% increase). The Department of Legislative Services disagrees. Using the actual average cost paid (which reflects any patient contribution) inflated by 2% (estimated to be \$209.37 in fiscal 2017) and actual Medicaid patient days, a 2% rate increase is estimated to cost \$23,192,191 (50% general funds, 50% federal funds) in fiscal 2017.

Impact on Budget

Medicaid expenditures increase by an estimated \$23,192,191 (50% general funds, 50% federal funds) in fiscal 2017 to provide a 2% rate increase to nursing home providers. Funding for the rate increase is included in the fiscal 2017 budget. General fund revenues decline by \$133,959 in fiscal 2017 from lost interest revenues associated with extension of the Interim Working Capital Fund.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses in the State as eight nursing homes qualify as small businesses. The Department of Legislative Services concurs.

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