Overview and Legal and Fiscal Impact

The regulations repeal the moratorium on full rate applications, establish the process for filing a full rate application with the Health Services Cost Review Commission, identify the methodologies to be used in approving permanent rates, alter the annual update factor, and require compliance with the All–Payer Model contract.

The regulations present no legal issues of concern.

There is an indeterminate fiscal impact on both Medicaid expenditures (general and federal funds) and revenues (federal funds only). To the extent that a hospital applies for a full rate review and adjustments to hospital rates are approved, Medicaid expenditures and revenues may increase or decrease accordingly. There is no fiscal impact on local agencies.

Regulations of COMAR Affected

Maryland Department of Health:
Health Services Cost Review Commission:
Rate Application and Approval Procedures: COMAR 10.37.10.03 - .11

Legal Analysis

Background

Effective January 1, 2014, Maryland entered into a contract with the federal government to replace the State’s 36-year-old Medicare waiver with the Maryland All-Payer Model contract. Under the waiver, Maryland’s success was based solely on the cumulative rate of growth in Medicare inpatient per admission costs. Under the model contract, however, the State limits inpatient, outpatient, and Medicare per beneficiary hospital growth and has shifted hospital revenues to a population-based system with the goal of reducing both hospital readmissions and potentially preventable complications.

Under the contract, all hospitals were transitioned to Global Budget Revenue (GBR) and Total Patient Revenue agreements by the end of 2015. According to the Health Services Cost Review Commission, the moratorium on full rate reviews was established in 2015 after the commission had converted 96% of the hospital revenue to GBR. Since 2015, hospitals have been
allowed to file partial rate applications (when they add a service or change a service line) but not full rate applications.

**Summary of Regulations**

The regulations repeal the moratorium on the filing of full rate applications with the commission that was implemented in 2015. The regulations reauthorize hospitals to file a full rate applications and provide that commission staff (not the commission) shall provide the template for full rate applications. The regulations alter some of the requirements for a full rate application by requiring that the application:

- include a description of the rate adjustments that are being requested in the full rate application;

- include specific detail and substantiation of any circumstances the applicant hospital cites as unique to its facility, which would require revenue in excess of the amount currently provided in its approved regulated revenue;

- describe in detail what the applicant hospital has specifically done consistent with the All-Payer Model to reduce or eliminate unnecessary or potentially avoidable utilization;

- provide estimates for the next five years of reductions in utilization that will be accomplished through care redesign initiatives; and

- provide a history of denials for the most recent three years, including any year-to-date figures. The regulations also provide that commission staff may request additional information that bears directly on the hospital’s request for rate relief and its financial condition.

Commission staff may waive the requirements to provide specified documentation and the information listed above with the full rate application if the application applies only to:

- a request filed for a change in the applicant hospital’s uncompensated care allowance;

- a request for rates to cover government-mandated or similar action affecting more than one previously approved rate for which the required supported documentation or information is not necessary; or

- a request for rates associated with a Certificate of Need–approved capital project. The regulations strike language related to Medicaid day limits.

The regulations require, rather than authorize, the commission to use an Inter–hospital Cost Comparison (ICC) methodology that compares the costs of the hospital to those costs, including adjustments for reasonableness and efficiency, of its peer hospitals, with appropriate adjustments to reflect changes in the hospital’s volume since the beginning of the All–Payer Model
Agreement and the inception of the hospital’s revenue agreement, as the foundation of its review of the full rate application. The regulations provide that the ICC analysis does not constitute a strict, unalterable methodology and that the analysis shall be modified as needed to give proper attention to the particular circumstances of the hospital. The regulations require the commission to consider the specific circumstances of the applicant hospital and to make the key contents, analytic steps and findings of the reviews available to all hospitals and the public. The requirements for the final permanent rate structure approved for nonprofit hospitals and proprietary profit–making hospitals are set forth in the regulations, and the approved rates must be consistent with the All–Payer Model approved by the federal Center for Medicare and Medicaid Innovation.

The regulations repeal references to case target methodology and replace those provisions with the Global Budget Revenue (GBR) methodology, which was implemented by the commission on January 1, 2014 and establishes reasonable revenue levels for hospitals. The regulations set forth the factors that the commission may include in setting reasonable revenue levels. The GBR must be implemented through a written agreement entered into by the commission and each hospital and the regulations require an automatic annual renewal of the agreement that sets forth specified relevant provisions. A hospital that enters into a GBR agreement is required to submit the agreement to the commission’s offices within 60 days after it is initially approved by the Commission, and failure to submit the signed GBR agreement may subject the hospital to certain penalties. A hospital that disagrees with a proposed GBR may file a full rate application.

The regulations alter the mechanism through which the annual update factor is applied from the case target update to the GBR mechanism. By July 1 of each year, the commission must establish an annual update factor for the purpose of adjusting the GBR revenue of each hospital which must include certain allowances and adjustments. The regulations authorize the commission to adjust the update factor in future years if a hospital (or hospitals collectively) exceeds their approved revenue or falls below their approved revenue.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites §§ 19–207, 19–219, and 19–222 of the Health–General Article as statutory authority for the regulations. Section 19–207 authorizes the commission to adopt regulations to carry out Title 19, Subtitle 2 of the Health–General Article. Section 19–219(c) provides that, consistent with Maryland’s all–payer model contract approved by the federal Center for Medicare and Medicaid Innovation, the commission may establish hospital rate levels and rate increases in the aggregate or on a hospital–specific basis. Section 19–222(a) provides that a facility may not change any rate schedule or charge of any type or class unless the facility files with the commission a written notice of the proposed change that is supported by any information that the facility considers appropriate.

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

The commission requests emergency status beginning October 31, 2017 and expiring February 1, 2018. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The commission indicates the emergency status is necessary because the current regulatory moratorium on full rate applications is due to expire on November 1, 2017.

Fiscal Analysis

There is an indeterminate fiscal impact on both Medicaid expenditures (general and federal funds) and revenues (federal funds only). To the extent that a hospital applies for a full rate review and adjustments to hospital rates are approved, Medicaid expenditures and revenues may increase or decrease accordingly. There is no fiscal impact on local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations repeal the moratorium on hospitals filing a full rate application, originally put in place in November 2015, and authorize the Health Services Cost Review Commission (HSCRC) to adjust hospital rates based on requirements consistent with the new Maryland All-Payer Model contract. The regulations further alter the required contents of the application and update the methodology used by HSCRC to evaluate a request while allowing significant flexibility for HSCRC to further modify its methodology as needed based on a variety of factors. The department advises that the processing of any full rate review applications can be handled with existing resources. However, the effect of any change in rates charged by a hospital will impact the rates paid by Medicaid. Because it is unknown:

- how many hospitals will file a full rate application;
- what methodology will be applied by HSCRC when evaluating an application;
- whether a hospital will receive a rate increase or decrease as a result of any rate review; and
- what the magnitude of any rate changes will be in light of the performance requirements associated with the All-Payer Model contract, the department advises that the total impact of the regulations cannot be determined at this time. The Department of Legislative Services concurs.
Impact on Budget

Medicaid expenditures and revenues may increase or decrease by an indeterminate amount based on the results of any full rate application review conducted by HSCRC. For the reasons stated above, the precise impact of the regulations cannot be calculated at this time.

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.

Contact Information

Legal Analysis: Erin R. Hopwood – (410) 946/(301) 970-5350
Fiscal Analysis: Nathan W. McCurdy – (410) 946/(301) 970-5510