PUBLIC WELFARE CODE - MEDICAID MANAGED CARE ORGANIZATION ASSESSMENTS AND INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED PERSONS ASSESSMENTS

Act of Jul. 4, 2004, P.L. 528, No. 69 **Cl. 67**

Session of 2004

No. 2004-69

HB 1039

AN ACT

Amending the act of June 13, 1967 (P.L.31, No.21), entitled "An act to consolidate, editorially revise, and codify the public welfare laws of the Commonwealth," providing for Medicaid managed care organization assessments, for intermediate care facilities for the mentally retarded persons assessments, for administration of assessments by the Department of Public Welfare, for enforcement and for a report on certain pharmaceutical programs.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, is amended by adding articles to read:

ARTICLE VIII-B

MEDICAID MANAGED CARE ORGANIZATION ASSESSMENTS

Section 801-B. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assessment percentage." The rate assessed pursuant to this article on every Medicaid managed care organization.

"Assessment period." The time period identified in the contract.

"Assessment proceeds." The State revenue collected from the assessment provided for in this article, any Federal funds received by the Commonwealth as a direct result of the assessment and any penalties and interest received under section 810-B.

"Contract." The agreement between a Medicaid managed care organization and the Department of Public Welfare.

"County Medicaid managed care organization." A county, or an entity organized and controlled directly or indirectly by a county or a city of the first class, that is a party to a Medicaid managed care contract with the Department of Public Welfare.

"Department." The Department of Public Welfare of the Commonwealth.

"Medicaid." The program established under Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).

"Medicaid managed care organization." A Medicaid managed care organization as defined in section 1903(m)(1)(A) of the

Social Security Act (49 Stat. 620, 42 U.S.C. § 1396b(m)(1)(A)) that is a party to a Medicaid managed care contract with the Department of Public Welfare. The term shall include a county Medicaid managed care organization and a permitted assignee of a Medicaid managed care contract but shall not include an assignor of a Medicaid managed care contract.

"Secretary." The Secretary of Public Welfare of the Commonwealth.

"Social Security Act." 49 Stat. 620, 42 U.S.C. § 301 et seq.)

Section 802-B. Authorization.

The department shall implement an assessment on each Medicaid managed care organization, subject to the conditions and requirements specified in this article.

Section 803-B. Implementation.

The assessment shall be implemented on an annual basis, through periodic submissions not to exceed five times per year by Medicaid managed care organizations, as a health care-related fee as defined in section 1903(w)(3)(B) of the Social Security Act, or any amendments thereto, and may be imposed and is required to be paid only to the extent that the revenues generated from the assessment qualify as the State share of program expenditures eligible for Federal financial participation.

Section 804-B. Assessment percentage.

(a) Amount.--The assessment percentage shall be uniform for all Medicaid managed care organizations, determined in accordance with this section and implemented by the department as approved by the Governor after notification to and in consultation with the Medicaid managed care organizations. The assessment percentage shall be subject to the maximum aggregate amount that may be assessed pursuant to 42 CFR 433.68(f)(3)(i) (relating to permissible health care-related taxes after the transition period) or any subsequent maximum established by Federal law.

(b) Notice.--Subject to the provisions of subsection (c), the department shall notify each Medicaid managed care organization of a proposed assessment percentage. Medicaid managed care organizations shall have 30 days from the date of the proposed assessment percentage notice to provide written comments to the department regarding the proposed assessment. Upon expiration of the 30-day comment period, the department, after consideration of the comments, shall provide each Medicaid managed care organization with a second notice announcing the assessment percentage. Once effective, an assessment percentage will remain in effect until the department notifies each Medicaid managed care organization of a new assessment percentage in accordance with the notice provisions contained in this section.

(c) Initial assessment.--The initial assessment percentage may be imposed retroactively to the beginning of an assessment period beginning on or after July 1, 2004. Once effective, the initial assessment percentage will remain in effect until the department notifies each Medicaid managed care organization of a new assessment percentage in accordance with the notice

provisions contained in this section.

Section 805-B. Calculation and payment.

Using the assessment percentage established under section 804-B, each Medicaid managed care organization shall calculate the assessment amount for each assessment period on a report form specified by the contract and shall submit the completed report form and total amount owed to the department on a due date specified by the contract. The Medicaid managed care organization shall report net operating revenue for purposes of the assessment calculation as specified in the contract.

Section 806-B. Use of assessment proceeds.

No Medicaid managed care organization shall be guaranteed a repayment of its assessment in derogation of 42 CFR 433.68(f), provided, however, in each fiscal year in which an assessment is implemented, the department shall use the assessment proceeds to maintain actuarially sound rates as defined in the contract for the Medicaid managed care organizations to the extent permissible under Federal and State law or regulation and without creating a guarantee to hold harmless, as those terms are used in 42 CFR 433.68(f) (relating to permissible health care-related taxes after the transition period).

Section 807-B. Records.

Upon written request by the department, a Medicaid managed care organization shall furnish to the department such records as the department may specify in order to determine the amount of assessment due from the Medicaid managed care organization or to verify that the Medicaid managed care organization has calculated and paid the correct amount due. The requested records shall be provided to the department within 30 days from the date of the Medicaid managed care organization's receipt of the written request unless required at an earlier date for purposes of the department's compliance with a request from a Federal or another State agency.

Section 808-B. Payment of assessment.

In the event that the department determines that a Medicaid managed care organization has failed to pay an assessment or that it has underpaid an assessment, the department shall provide written notification to the Medicaid managed care organization within 180 days of the original due date of the amount due, including interest, and the date on which the amount due must be paid, which shall not be less than 30 days from the date of the notice. In the event that the department determines that a Medicaid managed care organization has overpaid an assessment, the department shall notify the Medicaid managed care organization in writing of the overpayment, and, within 30 days of the date of the notice of the overpayment, the Medicaid managed care organization shall advise the department to either authorize a refund of the amount of the overpayment or offset the amount of the overpayment against any amount that may be owed to the department by the Medicaid managed care organization.

Section 809-B. Appeal rights.

A Medicaid managed care organization that is aggrieved by a determination of the department relating to the assessment may file a request for review of the decision of the department by

the Bureau of Hearings and Appeals within the department, which shall have exclusive primary jurisdiction in such matters. The procedures and requirements of 67 Pa.C.S. Ch. 11 (relating to medical assistance hearings and appeals) shall apply to requests for review filed pursuant to this section except that, in any such request for review, a Medicaid managed care organization may not challenge the assessment percentage determined by the department pursuant to section 804-B.

Section 810-B. Enforcement.

In addition to any other remedy provided by law, the department may enforce this article by imposing one or more of the following remedies:

(1) When a Medicaid managed care organization fails to pay an assessment or penalty in the amount or on the date required by this article, the department may add interest at the rate provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, to the unpaid amount of the assessment or penalty from the date prescribed for its payment until the date it is paid.

(2) When a Medicaid managed care organization fails to submit a report form concerning the calculation of the assessment or to furnish records to the department as required by this article, the department may impose a penalty against the Medicaid managed care organization in the amount of $1,000 per day for each day the report form or required records are not submitted or furnished to the department. If the $1,000 per day penalty is imposed, it shall commence on the first day after the date for which a report form or records are due.

(3) When a Medicaid managed care organization fails to pay all or part of an assessment or penalty within 30 days of the date that payment is due, the department may deduct the unpaid assessment or penalty and any interest owed from any capitation payments due to the Medicaid managed care organization until the full amount is recovered. Any deduction shall be made only after written notice to the Medicaid managed care organization.

(4) Upon written request by a Medicaid managed care organization to the secretary, the secretary may waive all or part of the interest or penalties assessed against a Medicaid managed care organization pursuant to this article for good cause as shown by the Medicaid managed care organization.

Section 811-B. Time periods.

The assessment authorized in this article shall not be imposed or paid prior to July 1, 2004, or in the absence of Federal financial participation as described in section 803-B. The assessment shall cease on June 30, 2008, or earlier if required by law.

ARTICLE VIII-C
INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED PERSONS ASSESSMENTS

Section 801-C. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assessment." The fee implemented pursuant to this article on every intermediate care facility for mentally retarded persons.

"Department." The Department of Public Welfare of the Commonwealth.

"Intermediate care facility for mentally retarded persons" or "ICF/MR." A public or private facility defined in section 1905 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1905).

"Medicaid." The program established under Title XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.).

"Medical assistance program" or "program." The medical assistance program as administered by the Department of Public Welfare.

"Secretary." The Secretary of Public Welfare of the Commonwealth.

"Social Security Act." 49 Stat. 620, 42 U.S.C. § 301 et seq.

Section 802-C. Authorization.

In order to generate additional revenues for medical assistance program recipients to have access to medically necessary mental retardation services, the department shall implement a monetary assessment on each ICF/MR subject to the conditions and requirements specified in this article.

Section 803-C. Implementation.

The ICF/MR assessments shall be implemented on an annual basis as a health care-related tax as defined in section 1903(w)(3)(B) of the Social Security Act, or any amendments thereto, and may be imposed and is required to be paid only to the extent that the revenues generated from the assessment will qualify as the State share of program expenditures eligible for Federal financial participation.

Section 804-C. Amount.

The assessment rate shall be determined in accordance with this article and implemented on an annual basis by the department, as approved by the Governor, upon notification to and in consultation with the ICFs/MR. In each year in which the assessment is implemented, the assessment rate shall equal the amount established by the department subject to the maximum aggregate amount that may be assessed pursuant to the 6% indirect guarantee threshold set forth in 42 CFR 433.68(f)(3)(i) (relating to permissible health care-related taxes after the transition period) or any other maximum aggregate amount established by law.

Section 805-C. Administration.

(a) Notice of assessment.--The secretary, before implementing an assessment in any fiscal year, shall publish a notice in the Pennsylvania Bulletin that specifies the amount of the assessment being proposed and an explanation of the assessment methodology and amount determination that identifies the aggregate impact on ICFs/MR subject to the assessment. Interested parties shall have 30 days in which to submit comments to the secretary. Upon expiration of the 30-day comment period, the secretary, after consideration of the comments, shall publish a second notice in the Pennsylvania Bulletin announcing the rate of the assessment.

(b) Review of assessment.--Except as permitted under section

809-C, the secretary's determination of the aggregate amount and the rate of the assessment pursuant to subsection (a) shall not be subject to administrative or judicial review under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action) or any other provision of law. No assessment implemented under this article nor forms or reports required to be completed by ICFs/MR pursuant to this article shall be subject to the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, or the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 806-C. Calculation.

Using the assessment rate implemented by the secretary pursuant to section 804-C, each ICF/MR shall calculate the assessment amounts it owes for a calendar quarter on a form specified by the department and shall submit the form and the amount owed to the department no later than the last day of that calendar quarter or 30 days from the date of the department's second notice published pursuant to section 805-C(a), whichever is later.

Section 807-C. Purposes and uses.

No ICF/MR shall be directly guaranteed a repayment of its assessment in derogation of 42 CFR 433.68 (relating to permissible health care-related taxes after the transition period), provided, however, in each fiscal year in which an assessment is implemented, the department shall use the State revenue collected from the assessment and any Federal funds received by the Commonwealth as a direct result of the assessment to fund services for persons with mental retardation.

Section 808-C. Records.

Upon request by the department, an ICF/MR shall furnish to the department such records as the department may specify in order to determine the assessment rate for a fiscal year or the amount of the assessment due from the ICF/MR or to verify that the ICF/MR has paid the correct amount due. In the event that the department determines that an ICF/MR has failed to pay an assessment or that it has underpaid an assessment, the department shall notify the ICF/MR in writing of the amount due, including interest, and the date on which the amount due must be paid, which shall not be less than 30 days from the date of the notice. In the event that the department determines that an ICF/MR has overpaid an assessment, the department shall notify the ICF/MR in writing of the overpayment and, within 30 days of the date of the notice of the overpayment, shall either authorize a refund of the amount of the overpayment or offset the amount of the overpayment against any amount that may be owed to the department by the ICF/MR.

Section 809-C. Appeal rights.

An ICF/MR that is aggrieved by a determination of the department as to the amount of the assessment due from the ICF/MR or a remedy imposed pursuant to section 810-C may file a request for review of the decision of the department by the Bureau of Hearings and Appeals within the department, which

shall have exclusive jurisdiction in such matters. The procedures and requirements of 67 Pa.C.S. Ch. 11 (relating to medical assistance hearings and appeals) shall apply to requests for review filed pursuant to this section except that, in any such request for review, an ICF/MR may not challenge the assessment rate determined by the secretary, but only whether the department correctly determined the assessment amount due from the ICF/MR using the assessment rate in effect for the fiscal year.

Section 810-C. Enforcement.

In addition to any other remedy provided by law, the department may enforce this article by imposing one or more of the following remedies:

(1) When an ICF/MR fails to pay an assessment or penalty in the amount or on the date required by this article, the department may add interest at the rate provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, to the unpaid amount of the assessment or penalty from the date prescribed for its payment until the date it is paid.

(2) When an ICF/MR fails to file a report or to furnish records to the department as required by this article, the department may impose a penalty against the ICF/MR in the amount of $1,000 per day for each day the report or required records are not filed or furnished to the department.

(3) When an ICF/MR fails to pay all or part of an assessment or penalty within 60 days of the date that payment is due, the department may terminate the ICF/MR from participation in the medical assistance program and/or deduct the unpaid assessment or penalty and any interest owed thereon from any payments due to the ICF/MR until the full amount is recovered. Any such termination or payment deduction shall be made only after written notice to the ICF/MR.

(4) The secretary may waive all or part of the interest or penalties assessed against an ICF/MR pursuant to this article for good cause as shown by the ICF/MR.

Section 811-C. Time periods.

The assessment authorized in this article shall not be imposed prior to July 1, 2003, and shall cease on June 30, 2009, or earlier if required by law.

Section 2. Within one year of the effective date of this act, the Department of Public Welfare shall provide a report to the Public Health and Welfare Committee of the Senate and the Health and Human Services Committee of the House of Representatives on pharmaceutical programs available within this Commonwealth that benefit residents with significant pharmaceutical costs, including those receiving medical assistance. The report shall include recommendations as to how the department and the Commonwealth may maximize the effectiveness of such programs and how the department and the Commonwealth may enhance the ability of Pennsylvanians to participate in such programs. The report may include recommendations on the following:

(1) Outreach to Pennsylvanians who may take advantage of

such programs.

(2) Eligibility requirements.

(3) Copayments.

(4) Notifications to affected groups and agencies.

Section 3. This act shall take effect immediately.

APPROVED--The 4th day of July, A. D. 2004.

EDWARD G. RENDELL