

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	05/22/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/11/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

10 07 03 01-.17

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator Telephone Number
Michele Phinney 410-767-5623

Mailing Address

201 W. Preston Street

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5. Name of Person to Call About this Document Telephone No.
Christina Vogeley 410-402-8002

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6. Check applicable items:
 New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: December 15, 2013.

X- Repeal of Existing Regulations

X- Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes **X-** No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Paul Ballard, Assistant Attorney General, (telephone #410-767-6918) on April 30, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joshua M. Sharfstein, M.D.

Title

Secretary

Date

May 21, 2014

Telephone No.

41-767-6500

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

10.07.03 Health Care Staff Agencies

Authority: Health-General Article, Title 19, Subtitle 20, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—.04; repeal Regulation .05; amend and recodify Regulation .06 to be Regulation .05, Regulations .09 and .10 to be Regulations .08 and .09, and Regulations .16 and .17 to be Regulations .15 and .16; recodify Regulations .07 and .08 to be Regulations .06 and .07, Regulations .11—.15 to be Regulations .10—.14 and Regulation .18 to be Regulation .17 under COMAR 10.07.03 Health Care Staff Agencies.

Statement of Purpose

The purpose of this action is to adopt regulations implementing Chapter 340 of the 2013 Session Laws that amended the nursing staff agencies licensing statute by expanding its scope to include a health care staff agency providing or referring health care practitioners to a health care facility in addition to licensed practical nurses, registered nurses, and certified nursing assistants.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

Each provider seeking a license would be required to submit a \$150 licensing fee. Because it is unknown how many providers would seek health care staging agency licensure, it is difficult to determine the economic impact on OHCQ. The estimate is based on surveyors needed and related expenses.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$152,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude

	Cost (-)
D. On regulated industries or trade groups:	(+)
E. On other industries or trade groups:	NONE
F. Direct and indirect effects on public:	NONE

\$150+

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. This action will increase expenditures by \$152,000 (general funds) for FY 2015, and will be offset for the most part by revenues from licensing fees. There will be a \$150 annual licensing fee, but it is unknown how many health care staff agencies exist in the State, therefore unknown how much the cost will be offset.

D. See A above.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through August 11, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2015

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General funds

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

\$150 annual licensing fee per agency.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

10.07.03 [Nursing] *Health Care Staff Agencies*

Authority: Health-General Article, Title 19, Subtitle 20, Annotated Code of Maryland

10.07.03.01 (December 15, 2013)

.01 Purpose.

A. The purpose of this chapter is to set minimum standards for licensure of [nursing] *health care* staff agencies providing services in Maryland.

B. The regulations of this chapter do not preclude a [nursing] *health care* staff agency from operating with independent contractors.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Agency" means a [nursing] *health care* staff agency.

(3) *Allied Health Care Field.*

(a) "*Allied health care field*" means a healthcare professional subject to licensure under the *Health Occupations Article*.

(b) "*Allied health care field*" does not include the healthcare profession of practicing as a physician assistant.

[(3)] (4) "Board" means [the Maryland Board of Nursing] a *health occupation licensing board* authorized to license, certify, and discipline a *health care practitioner* in accordance with the *Health Occupations Article*.

[(4)] "Certified nursing assistant" means an individual certified by the Board as a nursing assistant.]

(5) "Client facility" means a health care facility that contracts with a [nursing] *health care* staff agency for the referral of [nursing personnel] *health care practitioners*.

(6) "Deficiency" means any failure of the [nursing] *health care* staff agency to meet the requirements of Health-General Article, Title 19, Subtitle 20, Annotated Code of Maryland, or any rule or regulation that the Secretary adopts under that subtitle.

(7) (text unchanged)

[(8)] "Exploitation of individual's funds" means the misappropriation of a resident's funds, assets, or income, including spending the resident's assets or income:

(a) Against or without the resident's consent, or if the resident is incapable of giving consent and has no agent with authority to give consent, if the expenditure is not necessary for the direct and immediate benefit and welfare of the resident; or

(b) For the use and benefit of a person other than the resident, if the resident or agent has not consented to the expense.

(9) "Geriatric nursing assistant" means a certified nursing assistant certified by the Board as a geriatric nursing assistant.]

[(10)] (8) (text unchanged)

(9) *Health Care Practitioner.*

(a) *Except as provided in §B(9)(b) of this regulation, "health care practitioner" means any individual licensed or certified under the Health Occupations Article who practices in an allied health care field.*

(b) "Health care practitioner" does not include:

- (i) An acupuncturist;
- (ii) A dentist;
- (iii) A nurse anesthetist;
- (iv.) A nurse midwife;
- (v) A nurse practitioner;
- (vi) A pharmacist;
- (vii) A physician; or
- (viii) A podiatrist.

[(11)] (10) "Initially providing or referring" means the first time [an agency provides or refers a particular licensed practical nurse, registered nurse, or certified nursing assistant to a health care facility] a *health care staff agency provides or refers a particular health care practitioner to a health care facility.*

[(12)] (11) (text unchanged)

[(13)] "Misconduct" means a commission or omission of an act or behavior that may cause physical, emotional, or psychological harm to another.]

[(14)] (12) (text unchanged)

[(15)] "Nursing personnel" means any individual licensed or certified by the Board as a:

- (a) Licensed practical nurse;
- (b) Registered nurse; or
- (c) Certified nursing assistant.]

[(16)] (13) [Nursing] *Health Care Staff Agency.*

(a) "[Nursing] *Health care staff agency*" means any person, firm, corporation, partnership, or other business entity engaged in the business of referring [nursing personnel] *health care practitioners* as employees or independent contractors to render temporary [nursing] *health care services* at a health care facility in the State.

(b) "[Nursing] *Health care staff agency*" does not include:

(i) A [nursing] *health care staff agency* operated by a health care facility *or its affiliates* solely for the purpose of procuring, furnishing, or referring temporary or permanent [nursing personnel] *health care practitioners* for employment at that health care facility *or its affiliates*;

(ii) (text unchanged)

(iii) Any [nursing personnel] *health care practitioner* procuring, furnishing, or referring their own services to a health care facility without the direct or indirect assistance of a [nursing] *health care staff agency.*

[(17)] (14) (text unchanged)

[(18)] (15) "Responsible party" means the individual at a [nursing] *health care staff agency* who controls the day-to-day operation of the [nursing] *health care staff agency.*

[(19)] (16) (text unchanged)

.03 License Required.

A. A person, firm, corporation, partnership, or other business entity may not maintain or operate a [nursing] *health care staff agency* in this State without first obtaining a license from the Secretary and complying with the regulations of this chapter.

B.—C. (text unchanged)

.04 Restrictions of License.

A. A person operating an agency may not use the term "[nursing] *health care staff agency*" in its advertising without first obtaining a license from the Secretary.

B.—C. (text unchanged)

[.06] .05 Licensing Procedure.

A. Application for Licensure.

(1) A person desiring to refer [nursing personnel] a *health care practitioner* to a health care facility to render temporary [nursing] *health care services* in this State shall file an application with the Secretary, on a form provided by the Secretary.

(2) (text unchanged)

(3) Along with the application, the applicant shall submit a:

(a) (text unchanged)

(b) Copy of the agency's policies and procedures as specified in Regulation [.09] .08 of this chapter.

B.—E. (text unchanged)

F. *Nursing Staff Agency Licensees.*

(1) *Effective on the date of these amendments, a person holding a nursing staff agency license who is in good standing and refers only nursing personnel shall be deemed to meet the requirements for issuance of a health care staff agency license.*

(2) *A person holding a nursing staff agency license who wishes to expand their referrals to other health care practitioners in addition to nursing personnel shall first obtain a new health care staff agency license.*

[F.] G. Rights of Applicant if License is Revoked or Denied.

(1)—(2) (text unchanged)

(3) A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing consistent with Regulation [.18] .17 of this chapter.

[.07] .06—[.08] .07 (text unchanged)

[.09] .08 Administration.

A. (text unchanged)

B. Policies and procedures shall include, but are not limited to:

(1) Selecting and verifying the credentials of [nursing personnel] *a health care practitioner* referred by the agency;

(2) Validating the experience of [nursing personnel] *a health care practitioner* prior to referral by the agency;

(3) (text unchanged)

(4) Reporting of an action or condition performed by [nursing personnel] *a health care practitioner* as required under Regulation [.10C] .09C of this chapter;

(5) Verifying the following:

(a) [That nursing personnel] *A health care practitioner* referred by the agency [are] *is* of satisfactory health status and [have] *has* received the necessary testing and immunization as required or requested by the client facility;

(b) [Before initial referral of nursing personnel to a client facility by the agency, drug] *Drug* screening of [nursing personnel referred] *a health care practitioner is performed before referral* by the agency, if the client facility requires drug screening for facility employees;

(c) [If] *Drug testing of a health care practitioner referred by the agency is performed, if there is probable cause to perform a drug test or if a client facility requests a drug test[, drug testing of nursing personnel referred by the agency];*

(d) [Before initial referral of nursing personnel to a client facility by the agency, criminal] *Criminal* background checks of [nursing personnel referred] *a health care practitioner are performed before referral* by the agency, if the client facility requires criminal background checks for facility employees;

(e) The references of [personnel] *a health care practitioner* referred by the agency;

(f) [That nursing personnel] *A health care practitioner* referred by the agency [have] *has* I-9 status that permits them to legally work in the United States; and

(g) [That personnel have] *A health care practitioner has* active licensure or certification with the Board; and

(6) (text unchanged)

[.10] .09 Referral and Reporting [Nursing Staff Personnel] *Health Care Practitioners*.

A. An agency may not knowingly provide or refer [nursing personnel] *a health care practitioner* to render temporary [nursing] services who [are] *is* not authorized under Health Occupations Article, [Title 8,] Annotated Code of Maryland, to practice their respective professions in Maryland.

B. An agency and client facility shall ensure that the scope of practice of the referred [nursing personnel] *health care practitioner* is consistent with [:] *the Health Occupations Article*.

[(1) Health Occupations Article, Title 8, Annotated Code of Maryland;

(2) COMAR 10.27; and

(3) COMAR 10.39.]

C. If an agency is aware of an action or inaction by a [licensed individual] *health care practitioner* who is provided or referred by the agency that may be grounds for action under the Health Occupations Article [, §8-316, Annotated Code of Maryland], the agency shall report the action or condition to the appropriate Board and the Office immediately when the action or condition is known by the agency.

D.—E. (text unchanged)

[.11] .10 —[.15] .14 (text unchanged)

[.16] .15 Emergency Suspensions.

A.—D. (text unchanged)

E. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation [.18] .17 of this chapter.

F. The Office of Administrative Hearings shall conduct a hearing as provided in Regulation [.18] .17 of this chapter and issue a proposed decision within 10 business days of the close of the hearing record. Exceptions may be filed by an aggrieved person pursuant to COMAR 10.01.03. The Secretary shall make a final decision pursuant to COMAR 10.01.03.

G. (text unchanged)

[.17] .16 Denial or Revocation of License.

A. Denial or Revocation of License. The Secretary, for cause shown, may notify the agency of the decision to revoke or deny the license. Except as provided in Regulation [.16] .15 of this chapter, the denial or revocation shall be stayed if a hearing is requested.

B. (text unchanged)

C. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation [.18] .17 of this chapter.

[.18] .17 (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.

Secretary of Health and Mental Hygiene