

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-260)**

Overview and Legal and Fiscal Impact

The regulations establish awareness and prevention training and reporting requirements regarding inappropriate sexual behavior that a covered program is required to fulfill in order to be (1) licensed by the Department of Health and Mental Hygiene or any of its administrations or (2) approved by the department or any of its administrations to receive funding to provide services in the State.

The regulations prohibit inappropriate sexual behavior in the following covered programs: (1) psychiatric State facilities licensed under COMAR 10.07.01; (2) forensic residential centers licensed under COMAR 10.07.13; (3) intermediate care facilities for individuals with intellectual disabilities licensed under COMAR 10.07.20; (4) State-operated residential treatment centers for emotionally disturbed children and adolescents licensed under COMAR 10.07.04; (5) vocational and day services programs licensed by the Developmental Disabilities Administration under COMAR 10.22.07; (6) psychiatric rehabilitation programs for adults licensed by the Behavioral Health Administration (BHA) under COMAR 10.21.21; (7) residential rehabilitation programs licensed by BHA under COMAR 10.21.22; (8) mental health vocational programs licensed by BHA under COMAR 10.21.28; and (9) psychiatric rehabilitation programs for minors licensed by BHA under COMAR 10.21.29.

The regulations present no legal issue of concern.

There is minimal fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Procedures: Sexual Abuse Awareness and Prevention Training:
COMAR 10.01.18.01-.08

Legal Analysis

Summary of Regulations

Covered Program Policies

The regulations require a covered program to ensure that the program has adopted and enforces policies that (1) are approved in the course of licensing the program; (2) prohibit inappropriate sexual behavior; (3) require reporting of inappropriate sexual behavior, regardless

of where it occurs; and (4) provide training of staff members and individuals receiving services on the meaning of “inappropriate sexual behavior” and the policies required under the regulations, including all reporting requirements. Staff training is required to be completed during new employee orientation, updated on an annual basis, and documented in personnel training files. Training for individuals receiving services is required to be (1) offered in language and terms, and using methods, appropriate to the ability of the individual being served to understand; (2) provided to an individual served by a covered program in two specified stages; (3) updated on an annual basis; and (4) documented in the individual’s plan.

Training Requirements

The regulations require a covered program to include awareness and prevention training on inappropriate sexual behavior as part of the orientation process for program staff, including volunteers and students, and individuals receiving services. The training is required to be pre-approved by the Director of the Developmental Disabilities Administration (DDA) or the Director of BHA, or their designees, as applicable. In addition, the regulations require the training to include, but not be limited to, an overview of inappropriate sexual behavior, types and characteristics of inappropriate sexual behavior, individuals’ rights and responsibilities regarding inappropriate sexual behavior, crisis intervention, referral resources and methods, and peer training, unless disapproved by an individual’s treatment team. The training is also required to be provided according to the individual’s abilities.

Mandatory Reporting

A covered program is required to comply with the reporting requirements of COMAR 07.02.16.04 (reporting of vulnerable adult to local department of social services), COMAR 07.02.07.04 (reporting of suspected child abuse or neglect), and these regulations. A staff member who observes, receives a complaint regarding, or otherwise has reason to believe that an individual has been subjected to inappropriate sexual behavior is required to file a report with the program director within a specified timeframe. On receipt of a report, the director is required to immediately ensure (1) the safety, security, privacy, and emotional support of the individual or individuals involved; and (2) the provision of any medically appropriate and necessary care to the individual or individuals involved. The director is also required to report the incident within a specified timeframe to the BHA, the DDA, or both, as applicable; the Office of Health Care Quality; the State’s Designated Protection and Advocacy System; and if the results indicate a violation of criminal law, law enforcement authorities.

Internal Complaint Process

The regulations require a covered program to adopt and maintain a written internal complaint process and provide a copy of the process to each individual receiving services from the program during the individual’s orientation and at any time upon an individual’s request. A covered program is required to develop and maintain a form to report inappropriate sexual behavior and have available a staff member who is not involved in the alleged behavior to assist in completing the form. The regulations require the internal complaint process to (1) include procedures for making a complaint; (2) permit an individual to use the program’s grievance process to address an alleged incident; (3) include procedures for investigating a complaint; (4) require that the investigation of a complaint be completed within seven calendar days after the initiation of the investigation; (5) allow participation by specified individuals; (6) ensure the participation of staff members who have the authority to implement corrective action; (7) require

specified documentation; and (8) required written notification of the covered program's determination to specified individuals. Any staff member determined to have engaged in inappropriate sexual behavior is required to be permitted to use the program's internal grievance process in any disciplinary action based on the determination.

Confidentiality

The regulations provide that State and federal confidentiality laws and regulations govern the re-disclosure of information disclosed in all actions taken upon a report or complaint of inappropriate sexual behavior.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites § 2-104 of the Health – General Article as legal authority for the regulations. Section 2-104 authorizes the Secretary of Health and Mental Hygiene to adopt regulations to carry out the provisions of law that are within the jurisdiction of the Secretary.

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

Fiscal Analysis

There is minimal fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations prohibit inappropriate sexual behavior in regulated psychiatric State facilities and establish requirements for sexual abuse awareness and prevention training for all staff members at these facilities. The regulations also establish reporting requirements and required procedures for staff members who receive allegations of inappropriate sexual behavior.

The department advises that the regulations have minimal or no State fiscal impact because, although affected State facilities must implement new sexual harassment training and response policies, the department will provide each facility with training materials free of charge. Further, the department advises that State facilities already have training in place for both patients and staff in this subject area. Thus, although the material is different, the changes should not have a significant fiscal impact. The Department of Legislative Services concurs.

The department advises, and the Department of Legislative Services concurs, that the department will incur a minimal increase in expenditures to hire a consultant to develop the training materials. These expenditures can be absorbed within the department's existing budgeted resources.

Impact on Budget

There is no material impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that small businesses incur increased expenditures as a result of the required annual training for all individuals employed in a covered program. This includes both contractual and permanent employees. The department was unable to provide an estimate of how long the training will take, but it does advise that the training will be available online and at no cost to the covered programs (so long as a program chooses to use the department-provided training).

The Department of Legislative Services concurs that expenditures increase for small businesses. The Department of Legislative Services adds that, since there is no travel associated with the training modules and since it is likely that many of the affected facilities already have sexual harassment training in place, the cost to small businesses is likely to be minimal. However, to the extent that the training takes longer than a few hours or small businesses do not have a training program in place, the impact may be more significant.

Contact Information

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