

MARYLAND REGISTER

Proposed Action on Regulations

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

1. Desired date of publication in Maryland Register: 10/31/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

10 01 18 01-.08

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

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 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 Kathleen Morse, Assistant Attorney General, (telephone #410-767-1866) on August 25, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joshua M. Sharfstein, M.D.

Title

Secretary

Telephone No.

401-767-6500

Date

September 12, 2014

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 01 PROCEDURES

10.01.18 Sexual Abuse Awareness and Prevention Training

Authority: Health-General Article, §2-104, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.08 under a new chapter COMAR 10.01.18 Sexual Abuse Awareness and Prevention Training.

Statement of Purpose

The purpose of this action is to outline the sexual abuse awareness and prevention training and reporting requirements that a covered program shall fulfill to be licensed or approved by the Department.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The Behavioral Health Administration does not foresee an economic impact on the State or local governments, but does anticipate an economic impact on covered programs for costs associated with implementing the regulations. That impact is indeterminable.

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

D. On regulated industries or trade groups: (-) Indeterminable

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

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

D. The Behavioral Health Administration is planning to create and offer, at no cost, an online training module for covered programs. Any additional or supplemental training provided by covered programs will have a cost associated with it, both directly and indirectly. The actual cost of the training module will have a direct cost associated with it, whether it is in the purchase cost of a group training module, or on a per-individual basis. The indirect costs associated with providing training, such as the hours required for staff to complete the training module and any back-up staff needed to back-fill the position while in training. Since training costs can vary due to several factors, including the size of a program, the cost is indeterminable.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Covered programs that operate as small businesses would incur an economic impact if they provide a training module that has a cost associated with it. Since training costs can vary due to several factors, including the size of a program, the cost is indeterminable.

Impact on Individuals with Disabilities

The proposed action has an impact on individuals with disabilities as follows: By requiring the training specified by this chapter, it is anticipated that individuals with disabilities will be provided with information regarding sexual abuse awareness and prevention as well as mandatory reporting requirements, which should help certain individuals to advocate on their own behalf.

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 West 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 December 1, 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?

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

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.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 01 PROCEDURES

10.01.18 Sexual Abuse Awareness and Prevention Training

Authority: Health-General Article, §2-104, Annotated Code of Maryland

.01 Scope.

This chapter:

A. Prohibits inappropriate sexual behavior in covered programs; and

B. Adopts awareness and prevention training and reporting requirements regarding inappropriate sexual behavior that a covered program shall fulfill in order to be licensed by the Department or any of its Administrations, or approved by the Department or any of its Administrations to receive funding to provide services in Maryland.

.02 Definitions.

A. The following terms have the meanings stated for this chapter.

B. Terms Defined.

(1) Abusive Sexual Act.

(a) "Abusive sexual act" means any sexual act, as defined in §B(8) of this regulation, that is made or threatened to be made without consent of the individual who is the recipient of the action.

(b) "Abusive sexual act" includes sexual harassment, sexual assault, and any other sexual action prohibited by State or federal law.

- (2) "Covered program" means any of the following facilities and programs:
- (a) State facility – Psychiatric, licensed under COMAR 10.07.01;
 - (b) Forensic Residential Centers (FRCs), licensed under COMAR 10.07.13;
 - (c) Intermediate Care Facilities for Individuals with Intellectual Disabilities, licensed under COMAR 10.07.20;
 - (d) State-Operated Residential Treatment Centers for Emotionally Disturbed Children and Adolescents, licensed under COMAR 10.07.04;
 - (e) Vocational and Day Services Programs, licensed by Developmental Disability Administration (DDA) under COMAR 10.22.07;
 - (f) Psychiatric Rehabilitation Programs for Adults, licensed by Behavioral Health Administration (BHA) under COMAR 10.21.21;
 - (g) Residential Rehabilitation Programs licensed by BHA under COMAR 10.21.22;
 - (h) Mental Health Vocational Programs licensed by BHA under COMAR 10.21.28; and
 - (i) Psychiatric Rehabilitation Programs for Minors licensed by BHA under COMAR 10.21.29.
- (3) "Inappropriate sexual behavior" means:
- (a) Any sexual act between any staff member, as defined in §B(9) of this regulation, and any individual receiving services from the covered program; and
 - (b) Any abusive sexual act, as defined in §B(1) of this regulation, between any individual served by the covered program and any other individual, including another individual served by the program.
- (4) "Internal complaint process" means a written policy and procedure for a covered program's handling and investigation of reports of inappropriate sexual behavior, as defined in §B(3) of this regulation, and appropriate actions in response to verified incidents of inappropriate sexual behavior, occurring within the covered program.
- (5) "Licensed" means being licensed by the Department or approved by the Department to receive funding to provide services in Maryland.
- (6) "Peer training" means awareness and prevention training regarding inappropriate sexual behavior that is provided by a peer of the individual receiving services.
- (7) "Program director" means the individual who is responsible for the daily operations of a covered program as outlined in the chapter under the appropriate subtitle that delineates the requirements for a specific program.
- (8) "Sexual act" means any of the following, if it is performed for the purpose of arousing sexual thoughts or feelings, or sexual dominance or power, and not for purposes related to the provision of care:
- (a) Intentional physical contact, either directly or through clothing, between the genitals, finger or fingers, hand or hands, or mouth of one individual and the genitals, groin, inner thigh, buttocks, anus, breast, or mouth of another;
 - (b) Intentional physical contact between the tongue or mouth of one individual and any part of the body of another individual;
 - (c) Attempt to make physical contact between the genitals, finger or fingers, hand or hands, or mouth of one individual and the genitals, groin, inner thigh, buttocks, anus, breast, or mouth of another individual;
 - (d) Attempt to make physical contact between the tongue or mouth of one individual and any part of the body of another individual;
 - (e) The following non-physical contacts:
 - (i) The intentional exposure by a individual to another of the individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (ii) The intentional exposure by an individual to another of photographs of an individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (iii) The intentional observation by an individual of another individual's naked genitals, groin, inner thigh, buttocks, anus, or breast;
 - (iv) Verbal or written description of, questions or suggestions regarding, or requests for any of the physical contacts described in §B(8)(a) and (b) of this regulation;
 - (v) Photographing, drawing, transmitting an image of, or recording the naked body or body parts of another individual;
 - (vi) Intentionally exposing an individual to photographs, pictures, drawings, diagrams, or other graphic depictions of naked body or body parts of an individual;
 - (vii) Intentionally causing another individual to make or attempt any of the physical contacts described in §B(8)(a) and (b) of this regulation; and
 - (f) Other intentional acts directed to another individual and performed for the purpose of arousing sexual thoughts or feelings and not for purposes related to the provision of care.
- (9) "Staff member" means any individual employed by a covered program, whether contractually or permanently, and any individual who volunteers with, is a contractor for or consultant to, works as an intern or resident for, or otherwise is engaged by, the covered program at any facility or location in which services are provided to individuals.

.03 Covered Program Policies.

- A. A covered program shall ensure that the covered program has adopted and enforces policies that:
- (1) Are approved in the course of licensing the program;
 - (2) Prohibit inappropriate sexual behavior that occurs:
 - (a) Anywhere, between a staff member and an individual served by the covered program; and
 - (b) On the premises of the covered program or at any off-premises activity sponsored by the covered program, between:
 - (i) Individuals served by the covered program; or
 - (ii) An individual served by the covered program and another individual.
 - (3) Require reporting of inappropriate sexual behavior, regardless of where it occurs; and
 - (4) Provide for training of staff members and individuals receiving services on the:
 - (a) Meaning of “inappropriate sexual behavior”; and
 - (b) Policies required by this chapter, including all reporting requirements.
- B. Staff training conducted in accordance with this chapter shall be:
- (1) Completed during new employee orientation;
 - (2) Updated on an annual basis; and
 - (3) Documented in the staff members’ personnel training files.
- C. Training conducted in accordance with this chapter for individuals receiving services shall 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 stages, as follows:
 - (a) Key facts regarding identifying inappropriate sexual behavior and how to report it shall be provided within 5 days after initiation of services to the individual; and
 - (b) Comprehensive training as set out in this regulation shall be provided to the individual as soon as practical but no later than 6 months after initiation of services to the individual;
 - (3) Updated on an annual basis, and
 - (4) Documented in the individual’s plan.

.04 Training Requirements.

- A. A covered program shall include awareness and prevention training on inappropriate sexual behavior as part of the established orientation process for:
- (1) Program staff, including volunteers and students; and
 - (2) Individuals receiving services.
- B. The inappropriate sexual behavior awareness and prevention training module may be provided by the covered program or its contractor.
- C. The inappropriate sexual behavior awareness and prevention training module shall:
- (1) Be pre-approved by the Director of the Developmental Disabilities Administration, or of the Director of the Behavioral Health Administration, or their designees, as applicable;
 - (2) Include, but not be limited to:
 - (a) An overview of inappropriate sexual behavior, including:
 - (i) Types and definitions of inappropriate sexual behavior; and
 - (ii) Trauma of inappropriate sexual behavior and its long-range effects;
 - (b) Types and characteristics of inappropriate sexual behavior, including:
 - (i) Signs and symptoms of inappropriate sexual behavior;
 - (ii) Mandated reporting procedures regarding inappropriate sexual behavior; and
 - (iv) Confidentiality of information as it applies to inappropriate sexual behavior;
 - (c) Individuals’ rights and responsibilities with regard to inappropriate sexual behavior;
 - (d) Crisis intervention, as appropriate;
 - (e) Referral resources and methods; and
 - (f) An element of peer training, unless disapproved by an individual’s treatment team for reasons that are documented in the individual’s treatment plan; and
 - (3) Be tailored to the individual’s abilities.

.05 Mandatory Reporting.

- A. A covered program shall comply with the reporting requirements of:
- (1) COMAR 07.02.16.04;
 - (2) COMAR 07.02.07.04; and
 - (3) This chapter.
- B. Any staff member who observes, receives a complaint regarding, or otherwise has reason to believe that an individual has been subjected to, inappropriate sexual behavior shall file a report with the program director promptly, but in no circumstances more than 1 working day, after becoming aware of the situation.
- C. Upon the receipt of a report made under §B of this regulation, the program director shall:
- (1) Immediately ensure:
 - (a) The safety, security, privacy, and emotional support of the individual or individuals involved; and

- (b) That any medically appropriate and necessary care is provided to the individual or individuals involved;*
- (2) Report the incident within 1 working day after receiving the report to:*
 - (a) The Behavioral Health Administration or the Developmental Disabilities Administration, or both, as applicable;*
 - (b) The Office of Health Care Quality; and*
 - (c) The State's Designated Protection and Advocacy System; and*
- (3) Report the incident immediately, and in no circumstances more than 1 working day, after receiving the report to the appropriate law enforcement authorities if the reported inappropriate sexual behavior violates or may violate the law.*
- D. The report made under §B(2) of this regulation shall be made using the form required by the Department.*
- E. Promptly after completing an investigation of a report or complaint of inappropriate sexual behavior, the Program Director shall report the results of the investigation to:*
 - (1) The Behavioral Health Administration or the Developmental Disabilities Administration, or both, as applicable;*
 - (2) The Office of Health Care Quality;*
 - (3) The State's Designated Protection and Advocacy System; and*
 - (4) If the results indicate a violation of criminal law, law enforcement authorities.*

.06 Internal Complaint Process.

- A. A covered program shall:*
 - (1) Adopt and maintain an internal complaint process as defined in this chapter;*
 - (2) Provide a copy of the covered program's written internal complaint process to each individual receiving services from the covered program:*
 - (a) During the individual's orientation; and*
 - (b) At any time upon an individual's request; and*
 - (3) Prominently display, in accessible, centralized locations, the covered program's internal complaint process.*
- B. A covered program shall:*
 - (1) Develop and maintain a form to use to report inappropriate sexual behavior; and*
 - (2) At the request of the individual making the complaint, have available a staff member who is not involved in the alleged inappropriate sexual behavior to assist in completing the reporting form.*
- C. The internal complaint process shall:*
 - (1) Provide procedures for making a complaint of inappropriate sexual behavior;*
 - (2) Permit an individual alleging that the individual was subjected to inappropriate sexual behavior to use the covered program's grievance process to address the alleged incident;*
 - (3) Include procedures for investigating a complaint of inappropriate sexual behavior;*
 - (4) Require that the review and investigation of a complaint of inappropriate sexual behavior be initiated immediately by the covered program after the program manager's receipt of the complaint;*
 - (5) Require that the investigation of a complaint of inappropriate sexual behavior be completed within 7 calendar days after the investigation is initiated;*
 - (6) Allow participation by:*
 - (a) Representatives of, and as designated by, the individual who allegedly was subjected to the inappropriate sexual behavior; and*
 - (b) Any individual who is alleged to have committed the inappropriate sexual behavior;*
 - (7) Allow information to be presented to support the position of:*
 - (a) The individual who allegedly was subjected to the inappropriate sexual behavior; and*
 - (b) Any individual who is alleged to have committed the inappropriate sexual behavior;*
 - (8) Ensure the participation of the covered program staff members who have the authority to implement corrective action;*
 - (9) Require that the substance of the complaint and any actions taken in response to the complaint be documented; and*
 - (10) Require written notification of the covered program's determination to:*
 - (a) The individual who allegedly was subjected to the inappropriate sexual behavior;*
 - (b) Any individual who is alleged to have committed the inappropriate sexual behavior; and*
 - (c) Appropriate covered program staff members or other individuals as necessary to take disciplinary or corrective action, or both.*
- D. Any staff member determined to have engaged in inappropriate sexual behavior shall be permitted to make use of the covered program's internal grievance process in any disciplinary action based upon the determination.*

.07 Confidentiality.

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

.08 Effective Date.

This chapter is effective January 1, 2015.

JOSHUA M. SHARFSTEIN, M.D.

Secretary of Health and Mental Hygiene