

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 15-163)**

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**Overview and Legal and Fiscal Impact**

The regulations establish licensing procedures for limited private inpatient facilities.

The regulations present no legal issue of concern.

There is no material fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Hospitals: Limited Private Inpatient Facilities: COMAR 10.07.16.01-.22

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**Legal Analysis**

**Summary of Regulations**

The regulations define a limited private inpatient facility as a private inpatient treatment facility that provides mental health evaluation and treatment to adults 24 hours per day. A limited private inpatient facility does not include a facility licensed to provide mental health services under authority of a statute other than §§ 10-501 through 10-511 of the Health – General Article or a facility that bills for reimbursement under the Medical Assistance Program.

The regulations set forth the requirements that must be met by an individual to be eligible for limited private inpatient facility services. The regulations also require a facility to obtain a license from the Department of Health and Mental Hygiene before providing services and outline the initial and renewal licensure process.

The initial application filed with the department must include documentation of (1) fire, liability, and hazard insurance coverage on the building in which the facility is located; (2) compliance with certain relevant federal, State, or local laws; and (3) accreditation as a limited private inpatient facility or comparable facility by The Joint Commission under its Standards for Behavioral Health Care. A facility is subject to an initial survey to determine compliance with all appropriate statutes or regulations and the investigation of complaints by the department. A facility is also required to submit a specified facility service plan that must be reviewed by its governing body and updated at least every three years and pay certain fees.

An application for renewal of a license shall be made by an accredited facility within 30 calendar days of the exit date of the triennial survey conducted by The Joint Commission. In the event of the loss of accreditation and the conclusion of all appeals to The Joint Commission, the facility may continue to be licensed only until the facility promptly arranges for the safe discharge of each resident to another facility or to appropriate outpatient services.

A facility that submits documentation showing the facility has applied to The Joint Commission for accreditation but has not yet been accredited at the time of application but otherwise meets the requirements for licensure shall be issued a provisional license for a period of not greater than one year from issuance.

A separate license is required for facilities maintained on separate premises, even if both facilities are operated under the same management. A separate license is not required for separate buildings on the same grounds.

The regulations set forth the standards for inspections and require a facility to be open to inspection by the department at all times and for the facility's administrative and medical records to be available for review and copying by the department. A facility that is issued a provisional license is subject to inspection by the department every six months to determine compliance with the regulations and the Standards for Behavioral Health Care.

The regulations also address complaint investigations. For complaints that allege the existence of a non-life-threatening deficiency, the department is required to refer the complaint directly to the facility. The facility is then required to conduct an internal investigation into the complaint and submit the results of the investigation to the department within 30 days of receipt of the complaint. If the department determines that the facility has not satisfactorily addressed the referred complaint or if the complaint alleges the existence of a serious or life-threatening deficiency, the department must conduct an investigation using the standards of The Joint Commission or standards adopted by the Secretary.

The regulations provide that each facility must have certain required staff including a facility director, a clinical director, a multidisciplinary licensed mental health professional staff, a licensed nurse, other direct care employees to provide for the treatment and monitoring of residents as required by the resident's individual treatment plan, a physician, and maintenance and housekeeping staff. Staff are required to receive orientation and annual training in crisis intervention and de-escalation techniques, suicide prevention, the facility's disaster and fire safety plan, first aid, CPR, emergency medical procedures, and individual rights as set forth in Title 10, Subtitle 7 of the Health – General Article.

The regulations set forth the physical environment requirements to be met by a facility including standards for the building, areas within the building, bedrooms, and toilet and bathing facilities. The facility must also provide for personal privacy in all bathroom and multiple occupancy bedrooms unless otherwise determined in the resident's individual treatment plan.

A program is required to develop a specified emergency plan and procedures to be followed in the event of an emergency. The facility must also have an emergency evacuation

procedure that is explained to the residents and practiced by residents and staff at least once every three months.

The regulations require a facility to ensure a sufficient number of trained staff to meet the nutritional needs of the residents. In addition, a facility must provide a resident with three meals in a common dining area and additional snacks during each 24-hour period, seven days a week. A facility must also provide specified menus and include a specified dining area and kitchen.

A facility is required to explain to each resident their rights stated in the Health – General Article and to provide written information to each resident regarding their rights.

The regulations require a facility to establish a record for each resident that is maintained in a certain manner to ensure confidentiality. In addition, the administrative head of the facility is required to submit a written report to the department within five working days of the death of an individual in the facility.

The regulations authorize the Secretary of Health and Mental Hygiene to deny or revoke the license of a facility under certain circumstances. In addition, if the Secretary determines that serious or life threatening resident care deficiencies exist at the facility or the facility fails to take necessary corrective action, the Secretary may impose certain sanctions, including civil money penalties of not more than \$10,000 per instance or per day. The Secretary may immediately suspend a license on a finding that the public health, safety, or welfare requires emergency action. The regulations set forth the circumstances under which the Secretary may revoke the license of a facility and the procedure to be followed by the Secretary when seeking to revoke a license. Finally, the regulations provide for the hearing procedure to be followed by a facility if the facility contests a disciplinary action made by the Secretary.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 10-501 through 10-511 of the Health – General Article as statutory authority for the regulations. More specifically, § 10-502 requires the Secretary of Health and Mental Hygiene to adopt regulations for licensing private, inpatient facilities. Section 10-504 provides that to qualify for a license, an applicant shall have a certificate of accreditation from the Joint Commission on Accreditation of Hospitals for the private inpatient facility to be operated, or meet the requirements adopted by the Secretary. Section 10-509 requires the department to inspect facilities and keep a report of each inspection and provides for complaint investigations of facilities.

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

## **Fiscal Analysis**

There is no material fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The regulations establish licensing procedures for limited private inpatient facilities (facilities that provide mental health evaluation and treatment to adults 24 hours per day but do not meet the criteria for acute or community-based behavioral health services). Each private inpatient facility is subject to a \$500 provisional license fee (valid for up to one year) and a \$1,500 license fee per accreditation period (valid for up to three years). The department may also impose a civil money penalty of up to \$10,000 per instance per day on a limited private inpatient facility for serious or life-threatening resident care deficiencies. The department advises that, at this time, only one facility will be subject to the regulations. As this facility is already licensed by the department under another category of licensure at the same fee amount, the regulations have no material impact on State or local governments. The Department of Legislative Services concurs. To the extent any additional facilities seek licensure under the regulations, general fund revenues increase by a minimal amount.

### **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 the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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