

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	07/28/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 9/4/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

10 07 16 01-.22

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 Paul Ballard, Assistant Attorney General, (telephone #410-767-6918) on June 19, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Van T. Mitchell

Title

Secretary

Telephone No.

410-767-6500

Date

July 28, 2015

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 07 HOSPITALS

10.07.16 Limited Private Inpatient Facilities

Authority: Health-General Article, §§10-501—10-511, 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—.22 under a new chapter, COMAR 10.07.16 Limited Private Inpatient Facilities.

Statement of Purpose

The purpose of this action is to establish licensing procedures for limited private inpatient facilities which do not meet the criteria for acute behavioral health services or community based behavioral health services.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

Limited private inpatient facilities are licensed under more stringent regulations; however this proposed regulation would provide a more appropriate form of licensure for existing facilities that fall within the scope. Currently, only one facility falls under this regulation. There is no change in the licensing fee incurred by the facility.

Revenue (R+/R-)

II. Types of Economic Impact. Expenditure (E+/E-) Magnitude

A. On issuing agency:	(R+)	\$2,000 per 3 year accreditation period
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B. On other State agencies:	NONE	
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C. On local governments:	NONE	
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Benefit (+)	Magnitude
Cost (-)	

- D. On regulated industries or trade groups: (-) \$2,000 per 3 year accreditation period
- 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.)

A. Revenue gain to the General Fund of approximately \$2,000 results from the cost of obtaining the provisional license and accreditation. The \$2,000 will be transferred into the General Fund. Accreditation is valid for 3 years. The Department estimates that 1 license would be issued or renewed every 3 years.
 $\$500 + \$1,500 = \$2,000$

D. Revenue loss to the sole regulated industry of approximately \$2,000 per 3 year accreditation period is a result of the cost for a provisional license and accreditation. The sole regulated facility is required to pay the provisional license fee of \$500 and upon accreditation an additional \$1,500 per 3 year accreditation period. $\$500 + \$1,500 = \$2,000$

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 West Preston Street, Room 512, Baltimore, MD 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 October 5, 2015. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2016
- 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.

Any new limited private inpatient facility would be subject to the licensing fee required by these regulations. The licensing fee includes the cost of a provisional license (\$500) and upon accreditation an additional (\$1,500) per 3 year accreditation period, payable to the Department.

G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

10.07.16 Limited Private Inpatient Facilities

Authority: Health-General Article, §§10-501—10-511, Annotated Code of Maryland

.01 Scope.

The purpose of this chapter is to:

A. *Outline the licensing, site, and staffing requirements for a provider of limited private inpatient facility services;*
and

B. *Provide a flexible model of service delivery and oversight.*

.02 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *"Administration" means the Behavioral Health Administration.*

(2) *"Department" means the Maryland Department of Health and Mental Hygiene or its designee.*

(3) *"Facility" means a limited private inpatient facility.*

(4) *"Facility service plan" means a statement of the facility's mission, vision, scope, and purpose, as well as all specific requirements detailed under Regulation .10 of this chapter.*

(5) *"Individual treatment plan" means the plan prepared according to the requirements outlined in:*

(a) *Health-General Article, §10-706, Annotated Code of Maryland; and*

(b) *COMAR 10.21.03.*

(6) *"License" means a license issued by the Department to operate a limited private inpatient facility in this State.*

(7) *"Licensed nurse" means a practical nurse or registered nurse licensed by the Board of Nursing under the provisions of Health Occupations Article, Title 8, Annotated Code of Maryland.*

(8) *Limited Private Inpatient Facility.*

(a) *"Limited private inpatient facility" means a private inpatient treatment facility that provides mental health evaluation and treatment to adults 24 hours per day.*

(b) *"Limited private inpatient facility" does not include:*

(i) A facility licensed to provide mental health services under authority of a statute other than the Health-General Article, §§10-501—10-511, Annotated Code of Maryland; or

(ii) A facility that bills for reimbursement under the Medical Assistance Program.

(9) "Mental health professional" means an individual who is licensed, certified, or otherwise legally authorized to provide the mental health service:

(a) Under the Health Occupations Article, Annotated Code of Maryland; or

(b) In the state where the service is rendered.

(10) "Secretary" means the Secretary of Health and Mental Hygiene.

(11) "The Joint Commission" means a voluntary national healthcare accreditation service recognized for Medicare certification purposes by Public Law 89-97 and for Maryland State licensure purposes by Health-General Article, §19-2302, Annotated Code of Maryland.

(12) Usable Square Feet.

(a) "Usable square feet" means physical space that is available for resident use.

(b) "Usable square feet" does not include:

(i) Service areas;

(ii) Administrative offices;

(iii) Entrance ways including the space where a door swings open;

(iv) Closets, lockers, and wardrobes;

(v) Spaces where ceiling heights are less than acceptable for habitable space, as defined by the applicable local building code; or

(vi) Corridors.

.03 Incorporation by Reference.

A. In this chapter, the following is incorporated by reference.

B. Document Incorporated. "Standards for Behavioral Health Care, 2013 Edition, The Joint Commission, One Renaissance Blvd., Oakbrook Terrace, Illinois 60181".

.04 Eligibility.

A. An individual is eligible for limited private inpatient facility services if the individual:

(1) Requires 24-hour inpatient mental health evaluation and treatment services but does not require acute or long term psychiatric hospital services; and

(2) Has stated a willingness to comply with program rules.

B. An individual is not eligible for limited private inpatient facility services if the individual:

(1) Has a sole diagnosis of substance abuse, intellectual disability or dementia;

(2) Is in need of immediate involuntary inpatient psychiatric admission;

(3) Is medically unstable as determined by an individual authorized under Health Occupations Article, Annotated Code of Maryland, to make medical determinations; or

(4) Does not meet the eligibility criteria under §A of this regulation.

.05 Licensure Process.

A. An applicant shall obtain a license from the Department before providing services.

B. Initial and Renewal Licensure. In order to be licensed as a limited private inpatient facility, the facility shall:

(1) File an initial application with the Department that:

(a) Is on the form approved by the Department with the requirement that all questions are answered and all required documents are attached; and

(b) Includes documentation of:

(i) Fire, liability, and hazard insurance coverage on the building in which the facility is located;

(ii) Compliance with relevant federal, State, or local ordinances, laws, regulations, and orders, including zoning and safety; and

(iii) Accreditation as a limited private inpatient facility or comparable facility by The Joint Commission under its Standards for Behavioral Health Care; and

(2) Be subject to:

(a) An initial survey to determine compliance with all appropriate statutes or regulations related to zoning, construction, fire safety, food service, and any other applicable codes; and

(b) The investigation of complaints and incidents by the Department;

(3) Submit a facility service plan as required by Regulation .09 of this chapter; and

(4) Submit all required fees for licensure as specified in §I of this regulation.

C. An application filed on behalf of a corporation, association, or governmental unit or agency shall:

(1) Be made by two officers of the corporation, association, or governmental unit or agency; and

(2) Include the:

(a) Names of all Board members;

(b) Names of persons holding 2 percent or more of the stock or assets; and

(c) Ownership of property, real estate, and equipment, if other than the licensee's.

D. Display of License. The facility shall visibly post the facility's license in a public area in the facility.

E. The facility shall immediately notify the Department in writing of any change in the information the licensee had submitted with the most recent application, including the program service plan.

F. To ensure the completion of any review or inspection by the Department of any major renovations, construction of resident care areas, or the establishment of a medical service as defined under Health-General Article, §19-120, Annotated Code of Maryland, that has not previously been provided by the facility, the facility shall notify the Department 60 days before the facility begins to accept occupancy or begins operation.

G. Renewal of License.

(1) An application for the renewal of the 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.

(2) The Department shall grant a renewal license to an applicant to operate if the applicant submits:

(a) A completed application for license renewal with the required fees as specified by the Joint Commission;

(b) A copy of the triennial survey report,

(c) A copy of the corrective actions taken for standards not met, and

(d) A copy of the certificate for accreditation by The Joint Commission.

H. Loss of Accreditation.

(1) 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. The facility shall cease operation upon the discharge of all residents.

(2) When performing surveys, whether based on loss of accreditation, complaints received, or incidents reported, the Department shall determine compliance or non-compliance based on:

(a) Applicable State and Federal law; and

(b) The Standards for Behavioral Health Care.

I. License Fees.

(1) A facility shall submit an application along with the fee established in this regulation.

(2) A facility that has filed an application for accreditation that meets the requirements for a provisional license shall:

(a) Submit a \$500 nonrefundable license fee payable to the Department; and

(b) On receiving accreditation, pay an additional \$1,500 nonrefundable license fee per accreditation period of 3 years, payable to the Department.

(3) A facility shall submit a \$1,500 nonrefundable license fee per accreditation period of 3 years, payable to the Department.

J. Provisional License.

(1) 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.

(2) The provisional license shall be issued for a period of not greater than one year from issuance.

(3) A facility issued a provisional license shall be subject to subsequent surveys by the Department to determine compliance with this chapter and applicable standards of The Joint Commission until accreditation is awarded.

(4) If The Joint Commission denies accreditation to a facility before the expiration of the provisional license, the facility shall cease operations upon the prompt and safe discharge of all residents.

.06 Duration of License.

A. The Secretary shall issue a license to an accredited facility for the term of the facility's accreditation.

B. The Secretary shall issue a provisional license to a non-accredited facility that otherwise meets the requirements for licensure for a term not to exceed 1 year with the requirement that the facility shall become accredited within that 1 year period or cease operations.

.07 Separate License Required.

A. A separate license is required for facilities maintained on separate premises, even though both facilities are operated under the same management.

B. A separate license is not required for separate buildings on the same grounds.

.08 Inspections.

A. A facility shall be open to inspection by the Department at all times for the purpose of quality oversight and investigation of complaints or incidents.

B. The facility's administrative and medical records shall be available for review and for copying by the Department.

C. New Facilities.

(1) A facility that is issued a provisional license shall be subject to inspections by the Department every 6 months and at any other time to determine compliance with:

(a) This chapter; and

(b) The Standards for Behavioral Health Care.

(2) If the facility has not attained accreditation by The Joint Commission within 1 year after beginning operations or has had its application for accreditation rejected, the facility shall:

(a) Cease operations; and

(b) Be subject to inspection to insure that all residents are receiving care and treatment in accordance with their needs as a safe discharge is arranged.

D. A facility shall be open to inspection by the Department to follow up on the findings identified in the accreditation report of The Joint Commission.

.09 Complaint Investigations.

A. To resolve expeditiously a complaint that alleges the existence of any non-life-threatening deficiency:

(1) The Department shall refer the complaint directly to the facility; and

(2) The facility shall:

(a) Conduct an internal investigation into the complaint; and

(b) Submit the investigation and supportive evidence to the Department within 30 days of the receipt of the complaint.

B. 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 shall conduct an independent investigation using the standards:

(1) Of The Joint Commission; or

(2) Adopted by the Secretary under this subtitle.

C. Issues relating to the practice of medicine or the licensure or conduct of a health professional shall be referred to the:

(1) Facility; and

(2) Appropriate licensure board for resolution.

.10 Facility Service Plan.

A. The limited private inpatient facility shall provide services in accordance with the facility service plan submitted to and approved by the Department.

B. A written facility service plan shall include at a minimum:

(1) The rationale for the facility including discussion of the organization's mission, vision, and philosophy for provision of services;

(2) The range of services that the facility will provide;

(3) The populations to be served, including age groups and other relevant characteristics, and the number of individuals that the program expects to serve;

(4) The composition of the facility's governing body, board of directors, or advisory committee, whichever applies;

(5) A description of staff or care providers necessary to provide the planned services and any necessary training requirements;

(6) The facility's goals, objectives, and expected outcomes; and

(7) A detailed scope or description of services offered.

C. The administrative head of the licensee shall assure that the facility service plan is reviewed by its governing body and updated at least every 3 years.

D. If the licensee makes any changes to its facility service plan, the licensee shall submit its revised facility service plan for the Department's approval before implementation of the changes.

.11 Staffing.

A. Required Staff. The facility director shall ensure that the facility's staff is sufficient in numbers and qualifications to provide clinically appropriate services to the individuals served and includes, at a minimum:

(1) A facility director that is responsible for the programmatic and administrative services of the facility under the direction of the governing body;

(2) A clinical director who:

(a) Is a psychiatrist or psychologist who receives medical supervision by a psychiatrist; and

(b) Has overall responsibility for clinical services, including, at a minimum:

(i) Establishing and maintaining appropriate standards for diagnosis and treatment, including therapeutic modalities and prescribing practices;

(ii) Medical aspects of quality management; and

(iii) Ensuring adequate clinical supervision of treatment staff;

(3) A multidisciplinary licensed mental health professional staff that:

(a) Provides evaluation and treatment services; and

(b) Is in addition to the limited private inpatient facility psychiatrist;

(4) A licensed nurse to provide for medication management, treatments and other health care needs;

(5) Other direct care employees to provide for the treatment and monitoring of residents as required by the resident's individual treatment plan;

(6) A physician to provide somatic medical services as required by the clients; and
(7) Maintenance and housekeeping staff who are trained and qualified to provide a well maintained, safe and sanitary environment for residents served by the program.

B. *Staff Training.* Before providing services to residents, staff shall receive orientation and annual training as designated by the facility service plan including, at a minimum, training in:

- (1) Crisis intervention and de-escalation techniques;
- (2) Suicide prevention, including but not limited to identification of warning signs and symptoms;
- (3) The facility's disaster and fire safety plan;
- (4) First aid, CPR, and emergency medical procedures; and
- (5) Individual rights, as set forth in Health-General Article, Title 10, Subtitle 7, Annotated Code of Maryland.

.12 Physical Environment Requirements.

A. A limited private inpatient facility shall have a building that:

- (1) Meets all relevant federal, State, or local ordinances, laws, regulations, and building codes and
- (2) Provides sufficient space for group and individual therapies; dining equipped with tables and chairs for resident meal service; and administrative services.

B. The areas of the facility shall:

- (1) Be well lit and adequately ventilated;
- (2) Be easily accessible;
- (3) Be maintained in good repair, safe, clean and free of insects and rodents and hazards;
- (4) Provide a central heating system that can maintain the facility at a comfortable temperature;
- (5) Be furnished with sufficient, appropriate, and functional furnishings, equipment, supplies, and utensils for use

by the residents;

(6) Be equipped with working smoke detectors and fire extinguishers and meets all requirements of the Maryland State Fire Code;

(7) Provide a secure storage area for medications if a resident has been determined capable of self-administration of medication and for residents' funds and valuables;

(8) Have a telephone in the residence where residents can make calls and speak privately;

(9) Provide a space where residents may visit privately with friends and family; and

(10) Provide adequate general use space for therapy, activities and recreation.

C. *Bedroom Area.* The facility shall ensure that a bedroom has:

(1) A minimum of:

(a) 80 usable square feet for a single bedroom; and

(b) 180 usable square feet for a double occupancy bedroom;

(2) A door;

(3) Closet space and two drawers in a chest or dresser per resident;

(4) Window coverings for privacy;

(5) A bed with a clean mattress and pillow;

(6) A locked drawer or other secured storage for resident's personal belongings; and

(7) No more than two residents per bedroom.

D. *Toilet and Bathing Facilities.* The facility shall ensure that the facility provides easily accessible and conveniently located toilet and bathing areas that allow for individual privacy and that:

(1) Are supplied with hand soap, toilet tissue and hand towels or an electric hand dryer;

(2) Provide hot and cold running water with hot water being a minimum of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit;

(3) Are equipped with operable mechanical exhaust ventilation; and

(4) Provide at least:

(a) One hand sink and one toilet for every 8 residents; and

(b) One tub or shower for every 12 residents.

E. The facility shall ensure that a resident is provided per week, or more frequently if necessary or if requested by the resident, with at least:

(1) Two sets of linens;

(2) Two towels; and

(3) Two washcloths.

F. The facility shall provide for personal privacy in all bathrooms and in multiple occupancy bedrooms unless otherwise determined in the resident's individual treatment plan.

.13 Emergency Procedures.

A. The program shall develop an emergency plan and procedures that shall be followed in the event of an internal or external emergency.

B. The emergency plan and procedures shall:

(1) Be updated annually; and

(2) Include:

- (a) Easily accessible emergency telephone numbers posted at or near a telephone for:
 - (i) Fire;
 - (ii) Police;
 - (iii) Ambulance;
 - (iv) Poison control; and
 - (v) The program's on call staff;
- (b) An emergency evacuation procedure that is explained to the residents and practiced by residents and staff on all shifts at a minimum of once every 3 months;
- (c) Provisions for emergency lighting and fire detection and suppression systems operable during loss of power as required by the Maryland State Fire Code;
- (d) A 3 day emergency food and water supply; and
- (e) A relocation plan in the event that the facility is partially or entirely vacated, which shall include:
 - (i) A plan for transportation of the residents, at the facility's expense, to relocate the residents;
 - (ii) A process for transfer of the medical records information for the residents in a manner to protect the residents' privacy;
 - (iii) A system to track where and how the resident was transported;
 - (iv) How families will be notified, if desired by the resident; and
 - (v) Provisions that provide for any other associated costs at the facility's expense.

.14 Dietary Services.

A. The facility shall ensure sufficient numbers of trained and qualified staff to meet the nutritional needs of residents served by the facility.

B. Nutritional Needs. The facility shall ensure that:

- (1) A resident is provided three meals in a common dining area and additional snacks during each 24-hour period, 7 days a week;
- (2) Meals and snacks are well-balanced, varied, palatable, properly prepared, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the preferences and needs of each resident;
- (3) All food is prepared in accordance with all State and local sanitation and safe food handling requirements;
- (4) Food preparation areas are maintained in accordance with all State and local sanitation and safe food handling requirements;
- (5) Residents have access to snacks during the evening hours; and
- (6) Staff prepares or arranges for the provision of therapeutic or special diets as ordered by the resident's physician or as needed by the resident's condition.

C. The facility shall ensure that menus are:

- (1) Written at least 1 week in advance with portion sizes to meet the resident's dietary needs; and
- (2) Maintained on file, as served, for 2 months.

D. Dining Room. A facility shall provide a well-lit, adequately ventilated, and appropriately furnished dining area.

E. Food Service.

- (1) A facility shall have a kitchen that has adequate:
 - (a) Storage, refrigerator, and freezer space for perishable and nonperishable foods;
 - (b) Food preparation area or areas with cleanable surfaces;
 - (c) Equipment to deliver foods at safe and palatable temperatures;
 - (d) Space and equipment to wash, sanitize, and store utensils;
 - (e) Space to store and clean garbage cans;
 - (f) Ice-making capabilities;
 - (g) Equipment for the preparation of food; and
 - (h) Equipment for serving and distributing food to residents.
- (2) A facility's dietary services shall be licensed by the local health department and comply with the requirements of COMAR 10.15.03.

.15 Resident's Rights.

A facility shall:

A. Explain to a resident their rights as set forth in Health-General Article, Title 10, Subtitle 7, and Title 4, Subtitle 3, Annotated Code of Maryland;

B. Provide, in writing, information regarding an individual's rights as outlined in §A of this regulation to a resident; and

C. Prominently display, in accessible centralized locations, the individual's rights as outlined in §A of this regulation.

.16 Records.

A. The facility shall, either manually or electronically:

- (1) Establish a record for an resident; and

(2) Ensure that entries in the record are dated, signed, and include the signer's degree or license, or if the signer has no degree or license, the signer's staff position.

B. The facility shall ensure that residents' records are:

(1) Maintained in a manner that is consistent with the medical records confidentiality and disclosure requirements of:

(a) Maryland Confidentiality of Medical Records Act, Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland; and

(b) Relevant federal statutes and regulations, including the Health Insurance Portability Act, 42 U.S.C. §1320D et seq., and implementing regulations at 45 CFR Parts 160 and 164;

(2) Located so that the records are convenient and available to designated staff;

(3) Managed by a designated staff member who is responsible for appropriate records control, including storage, security, and indexing of records; and

(4) Subject to the requirements of confidentiality laws and regulations, are made available to the Department as necessary to carry out required activities.

.17 Reporting of Deaths.

Upon the death of an individual in the facility, the administrative head of the facility shall:

A. Submit a written report to the Department within 5 working days of the death; and

B. Use the form required by the Administration.

.18 Denial or Revocation of Approval.

A. The Secretary may deny or revoke the license of a limited private inpatient facility that:

(1) Does not comply with:

(a) Health-General Article, §§10-501—10-511, Annotated Code of Maryland;

(b) Health-General Article, §§10-701—10-713; or

(c) The provisions of this chapter;

(2) Loses accreditation by The Joint Commission; or

(3) Fails to be awarded accreditation within 1 year of the issuance of a provisional license by the Department.

B. A person aggrieved by a decision of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .20 of this chapter.

C. A facility that has lost or been denied accreditation by The Joint Commission may operate pending appeal only as permitted by this chapter.

.19 Sanctions.

A. If the Secretary determines serious or life threatening resident care deficiencies exist at the limited private inpatient facility or that the facility fails to take the necessary corrective action, the Secretary may:

(1) Revoke or place restrictions on the license;

(2) Impose a civil money penalty of not more than \$10,000 per instance or per day;

(3) Impose a directed plan of correction; or

(4) Impose appropriate operating conditions.

B. When considering whether to impose a civil money penalty and the amount of the penalty, the Secretary shall consider the following factors:

(1) The number, nature, and seriousness of the violations;

(2) The extent to which the violation or violations are part of an ongoing pattern during the preceding 24 months;

(3) The degree of risk, caused by the violation or violations, to the health, life, or safety of the patients of the facility;

(4) The efforts made by, and the ability of, the licensee to correct the violation or violations in a timely manner; and

(5) Such other factors as justice may require.

C. A person aggrieved by the action of the Secretary under §A of this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .22 of this chapter.

.20 Emergency Suspension.

A. The Secretary may immediately suspend a license on a finding that the public health, safety, or welfare requires emergency action.

B. The Department shall deliver a written notice to the licensee:

(1) Informing the licensee of the emergency suspension;

(2) Giving the reasons for the action and the regulation or regulations with which the licensee has failed to comply that forms the basis for the emergency suspension; and

(3) Notifying the licensee of the licensee's right to request a hearing and to be represented by counsel.

C. The filing of a hearing request does not stay the emergency action.

D. When a license is immediately suspended, the licensee shall:

- (1) Immediately return the license to the Department; and
- (2) Stop providing services immediately.

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 .22 of this chapter.

F. The Office on Administrative Hearings shall conduct a hearing as set forth in Regulation .22 of this chapter and issue a proposed decision. 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. If the Secretary's final decision does not uphold the emergency suspension, the licensee may resume operation.

.21 Revocation of License.

A. The Secretary, for cause shown, shall notify the licensee of the Secretary's decision to revoke the facility's license. The revocation shall be stayed if a hearing is requested.

B. The Secretary may revoke a license if the licensee:

- (1) Has been convicted of a felony that relates to Medicaid or Medicare or a crime involving moral turpitude;
- (2) Does not comply with the requirements of this chapter; or
- (3) Fails to comply with the standards for the operation of a limited private inpatient facility or comparable facility as set forth in the Standards for Behavioral Health Care.

C. The Secretary shall notify the licensee in writing of the following:

- (1) The effective date of the revocation;
- (2) The reason for the revocation;
- (3) The regulations with which the licensee has failed to comply that form the basis for the revocation;
- (4) That the licensee is entitled to a hearing if requested, and to be represented by counsel;
- (5) That the facility shall stop providing services on the effective date of the revocation if the licensee does not request a hearing;
- (6) That the revocation shall be stayed if a hearing is requested unless the license has been immediately suspended or the revocation is based upon the loss or denial of accreditation from The Joint Commission ; and
- (7) That the licensee is required to surrender the license to the Department if the revocation is upheld.

D. 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 .22 of this chapter

.22 Hearings.

A. A request for a hearing shall be filed with the Office of Administrative Hearings, with a copy to the Office of Health Care Quality of the Department, not later than 30 days after receipt of notice of the Secretary's action. The request shall include a copy of the Secretary's action.

B. A hearing requested under this chapter shall be conducted in accordance with State Government Article, §10-201 et seq., Annotated Code of Maryland, and COMAR 28.02.01 and 10.01.03.

C. The burden of proof is as set forth in COMAR 10.01.03.28.

D. Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in COMAR 28.02.01.

E. The aggrieved person may file exceptions as set forth in COMAR 10.01.03.35.

F. The Secretary shall issue a final decision in accordance with COMAR 10.01.03.35.

VAN T. MITCHELL

Secretary of Health and Mental Hygiene

FEE JUSTIFICATION FOR PROPOSED COMAR 10.07.16

(1) Explain/justify why an increase or decrease is necessary:

This is a new program, which did not have a fee prior to this regulation.

(2) How much money is needed to operate effectively or to eliminate an operating fund deficit?

A facility that has filed an application for accreditation that meets the requirements for a provisional license shall submit a \$500 nonrefundable license

fee payable to the Department and upon receiving accreditation shall pay an additional \$1500 nonrefundable license fee per accreditation period of 3 years, payable to the Department.

(3) In what year was the most recent fee increase?

N/A.

(4) Is the fee revenue retained by the Proposing Unit or passed through to a national organization that administers a uniform licensing exam?

Yes, the fee revenue retained from the regulated industry will go to the general fund.

(5) Describe any measures taken to mitigate the need for increased revenue:

N/A.

(6) Describe any special circumstances that have had an adverse impact on the Proposing Unit's operating expenses.

N/A.

(7) Describe any consideration given by the Proposing Unit as to the hardship a fee increase may have on the regulated profession.

Since these regulations currently affect only one facility which was licensed under a different set of regulations, it was decided that the licensure fee would be the same as what the facility is currently paying.

(8) Describe any efforts to solicit the opinions of licensees regarding the Proposing Unit's effectiveness and performance.

The facility which is affected by these regulations was engaged through various forms of contact and multiple meetings. The sole facility accountable to this license fully supports this regulation.