

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Health and Mental Hygiene  
(DLS Control No. 16-201)**

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**Overview and Legal and Fiscal Impact**

The regulation authorizes the Department of Health and Mental Hygiene to grant a waiver to a limited private inpatient facility from the physical environment licensure requirements.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**Department of Health and Mental Hygiene:**

Hospitals: Limited Private Inpatient Facilities: COMAR 10.07.16.23

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**Legal Analysis**

**Background**

A limited private inpatient facility is defined in COMAR 10.07.16.02 as a private inpatient treatment facility that provides mental health evaluation and treatment to adults 24 hours per day. It 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 Medicaid. COMAR 10.07.16.12 requires limited private inpatient facilities to meet certain physical environment requirements to be licensed.

According to the department, the regulations governing private inpatient treatment facilities were adopted in 2015. Following adoption of the regulations, the Office of Health Care Quality (OHCQ) reviewed the regulations with providers and became aware of the lack of a physical plant waiver. Physical plant waivers are found in other OHCQ programs. For example, the assisted living program has a “licensure standards waiver” in COMAR 10.07.14.09 which is similar to the regulation being proposed for limited private inpatient facilities. The department is proposing the regulation for consistency with other OHCQ programs.

**Summary of Regulation**

The regulation authorizes the department to grant a waiver to a limited private inpatient facility from the physical environment licensure requirements with or without conditions. The

facility must request the waiver on a form developed by the department and must provide in writing (1) the regulation from which a waiver is sought; (2) the reason the facility is unable to comply with the regulation; (3) the reason that compliance with the regulation will impose a substantial hardship; and (4) the reason that a waiver will not adversely affect residents. The department may grant a waiver request if the department determines that (1) compliance with the regulation from which the waiver is sought cannot be accomplished without substantial hardship and (2) a waiver will not adversely affect residents. If the department determines that the above conditions are not met, the department shall deny the request for a waiver. A denial of a waiver may not be appealed.

The regulation requires that the department issue and mail to the applicant a written decision on a waiver request within 45 days after receipt of the request. If the waiver is granted, the written decision shall include the waiver's duration and any conditions imposed by the department. If the facility violates any condition of the waiver, or if the Secretary determines that the health or safety of residents residing in the facility will be adversely affected by the continuation of the waiver, a waiver may be revoked. The revocation of a waiver may not be appealed.

### **Legal Issues**

The regulation presents no legal issues of concern.

### **Statutory Authority and Legislative Intent**

The department cites § 10-502 of the Health – General Article as statutory authority for the regulation. Section 10-502(a) requires the Secretary of Health and Mental Hygiene to adopt rules and regulations for licensing private, inpatient facilities, and § 10-502(b) requires that the rules and regulations ensure that care and treatment of individuals who have a mental disorder are provided in accordance with the policy stated in Title 10, Subtitle 1 of the Health – General Article. Section 10-102 of the Health – General Article provides that it is the policy of the State to the best of its ability, to foster and preserve the mental health of its citizens; and to that end, to provide without partiality care and treatment to citizens who have mental disorders.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

### **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

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

The regulation establishes the process for a limited private inpatient facility to request a waiver of certain licensure standards regarding physical environment. The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

### **Impact on Budget**

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

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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