

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 16-213)**

Overview and Legal and Fiscal Impact

The regulation designates the outpatient services provided at a freestanding medical facility that are subject to Health Services Cost Review Commission (HSCRC) rate regulation.

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:

Health Services Cost Review Commission: Rate Application and Approval Procedures:
COMAR 10.37.10.07-2

Legal Analysis

Background

Chapters 549 and 550 of 2005 established the category of “freestanding medical facility” and required licensure of such facilities by the Department of Health and Mental Hygiene. A “freestanding medical facility” was defined as a facility in which medical and health services are provided that is physically separate from a hospital or hospital grounds and is an administrative part of a hospital or related institution. Freestanding medical facilities must be open 24 hours a day, seven days a week, and, according to regulations issued by the department’s Office of Health Care Quality, provide stabilizing treatment to a patient presenting with an emergency medical condition regardless of a patient’s medical condition, insurance status, or ability to pay.

Chapters 549 and 550 also established a freestanding medical facility pilot project in Montgomery County. Chapter 574 of 2007 added a second freestanding medical facility pilot project, located in Queen Anne’s County.

Chapters 505 and 506 of 2010 required the HSCRC to set rates for hospital services provided at freestanding medical facilities issued a certificate of need (CON) by the Maryland Health Care Commission (MHCC) after July 1, 2015; a freestanding medical facility licensed prior to July 1, 2007; and freestanding medical facility pilot projects. Chapters 505

and 506 required all payers subject to the rate-setting authority of the HSCRC, including insurers, nonprofit health service plans, health maintenance organizations, managed care organizations, and the Medical Assistance Program, to pay the HSCRC rates for hospital services at a freestanding medical facility issued a CON after July 1, 2015, and at freestanding medical facility pilot projects. The law required that a freestanding facility receiving a CON after July 1, 2015, meet requirements for licensure as a freestanding medical facility and prohibited the licensure of any additional freestanding medical facilities before that date.

Chapter 420 of 2016 exempted, under specified criteria, the conversion of a licensed general hospital to a freestanding medical facility (and any related capital expenditures) from the requirement to obtain a CON and established the procedures for obtaining the exemption from MHCC. The department must issue a license to a freestanding medical facility that receives a CON or an exemption from obtaining a CON. Chapter 420 altered the definition of “hospital services” for purposes of rate setting to include (1) emergency services provided at a licensed freestanding medical facility and (2) outpatient services, as specified by HSCRC in regulation, provided at a licensed freestanding medical facility that has received a CON or an exemption from obtaining a CON.

Summary of Regulation

The regulation designates the outpatient services provided at a freestanding medical facility that are subject to HSCRC rate regulation. Under the regulation, the outpatient services that are considered “hospital services” for purposes of rate regulation are:

- emergency services;
- observation services; and
- associated ancillary services, such as laboratory, radiology, imaging, EKG, and medical/surgical supplies and drugs.

Also, a freestanding medical facility or a proposed freestanding medical facility that desires to provide a service not designated as a hospital service must receive HSCRC staff approval in order to charge a regulated rate for the service. In deciding whether the service constitutes a “hospital service” subject to HSCRC rate regulation, HSCRC staff must consider:

- the cost of the service;
- in consultation with MHCC staff, access to and need for the service in the community;
- the feasibility of providing the outpatient service in the community on an unregulated basis; and
- the impact of the service on the All-Payer Model including the Total Cost of Care limitations as prescribed in the All-Payer Model Agreement with the federal Center for Medicare and Medicaid Innovation.

HSCRC staff must make a determination on the request within a reasonable period of time, taking into account whether a CON request or a request for an exemption from CON is pending before MHCC.

A freestanding medical facility that fails to obtain, or violates, an HSCRC staff determination on the regulated status of a service may be subject to fines and paybacks.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

HSCRC cites §§ 19-201 and 19-211 of the Health – General Article as statutory authority for the regulation. Section 19-201 defines terms for purposes of HSCRC rate regulation. As indicated above, Chapter 420 altered the definition of “hospital services” for purposes of rate setting to include (1) emergency services provided at a licensed freestanding medical facility and (2) outpatient services, as specified by HSCRC in regulation, provided at a licensed freestanding medical facility that has received a CON or an exemption from obtaining a CON. Section 19-211, as amended by Chapter 420, requires HSCRC to set rates for hospital services provided at a freestanding medical facility pilot project and a licensed freestanding medical facility.

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 designates which outpatient services provided at a freestanding medical facility are subject to rate regulation by the Health Services Cost Review Commission (HSCRC) in accordance with recent legislation (Chapter 420 of 2016). The department advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

Chapter 420 of 2016 (Senate Bill 707) exempted the conversion of a licensed general hospital to a freestanding medical facility from the requirement to obtain a certificate of need (CON). Chapter 420 also altered the definition of “hospital services” for purposes of rate setting to include (1) emergency services provided at a licensed freestanding medical facility and (2) outpatient services provided at a licensed freestanding medical facility that has received a

CON or an exemption from obtaining a CON. A freestanding medical facility must have a license, instead of a CON issued after July 1, 2015, to have the facility's rates set by HSCRC.

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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