

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	09/15/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 10/14/2016**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 37 10 07-2

**3. Name of Promulgating Authority**

Health Services Cost Review Commission

**4. Name of Regulations Coordinator Telephone Number**

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**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
**Subtitle 37 HEALTH SERVICES COST REVIEW COMMISSION**

**10.37.10 Rate Application and Approval Procedures**

Authority: Health-General Article, Sections 19-201, and 19-211; Annotated Code of Maryland

**Notice of Proposed Action**

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The Health Services Cost Review Commission proposes to add Regulation .07-2 under COMAR 10.37.10 Rate Application and Approval Procedures.

This action was considered and approved for promulgation by the Commission at a previously announced open meeting held on September 14, 2016, notice of which was given pursuant to General Provisions Article, Section 3-302(c), Annotated Code of Maryland. If adopted, the proposed regulation will become effective on or about January 16, 2017.

**Statement of Purpose**

The purpose of this action is to designate those outpatient services provided at a freestanding medical facility that are subject to Health Services Cost Review Commission rate regulation in conformance with newly enacted law.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

The purpose of this action is to designate those outpatient services provided at a Freestanding Medical Facility that are subject to Commission rate regulation in conformance with newly enacted legislation.

**II. Types of Economic Impact.**

- A. On issuing agency:
- B. On other State agencies:
- C. On local governments:

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude

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NONE  
NONE  
NONE

	Benefit (+)	
	Cost (-)	Magnitude

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D. On regulated industries or trade groups:	NONE	
(1) Regulated Industries	(+)	Moderate
E. On other industries or trade groups:	NONE	
(2) Other Industries	(-)	Moderate
F. Direct and indirect effects on public:	NONE	
(3) Direct and Indirect on Public	(+)	Moderate

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

D(1). This assumption is based on the expectation that hospitals will receive Commission approved rates for the outpatient service(s) which are reasonably related to costs incurred

E(2). This assumption is based on payers not being able to negotiate rates for these services, but will be required to pay Commission approved rates, which will tend to be higher than rates negotiated.

F(3). This assumption is based on the expectation that the public will gain access to these services, and that the charges will be certified as reasonable, to be paid by all payers, by the HSCRC.

**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 Diana Kemp, Regulations Coordinator, Health Services Cost Review Commission, 4160 Patterson Avenue, Baltimore, MD 21215, or call 410-764-2576, or email to [diana.kemp@maryland.gov](mailto:diana.kemp@maryland.gov), or fax to 410-358-6217. Comments will be accepted through November 14, 2016. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

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

100% special funds - hospital assessments

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:

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## **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

### **Subtitle 37 HEALTH SERVICES COST REVIEW COMMISSION**

#### **Chapter 10 Rate Application and Approval Procedures**

Authority: Health-General Article, §§ 19-201, and 19-211; Annotated Code of Maryland

##### **.07-2 Outpatient Services – Freestanding Medical Facility**

A. Definition. In this regulation, “freestanding medical facility” means a freestanding medical facility licensed under Subtitle 3A of Title 19 of the Health-General Article.

B. The following outpatient services provided at a freestanding medical facility are considered “hospital services” under Health-General Article §19-201:

- (1) Emergency Services
- (2) Observation Services
- (3) Associated Ancillary Services, such as laboratory, radiology, imaging, EKG, and Medical/Surgical Supplies and Drugs

C. In accordance with Health-General Article §19-201, Annotated Code of Maryland, the Commission’s rate setting jurisdiction extends to those outpatient services provided at a freestanding medical facility, as designated by the Commission.

D. A freestanding medical facility or a proposed freestanding medical facility that desires to provide a service not designated in paragraph B above (an “undesignated service”) must receive a determination under the provisions of this regulation.

E. Commission Approval.

(1) A freestanding medical facility may not charge a Commission-approved rate for an undesignated service without prior Commission staff approval.

(1) A freestanding medical facility may not open a new outpatient service, relocate an existing outpatient service, or convert an existing outpatient service from regulated or unregulated status without a prior determination from the Commission’s staff as to whether the service constitutes a hospital service subject to Commission rate regulation. A request for determination shall be made in writing at least 60 days before the contemplated action.

F. Upon request for a determination, the Commission’s staff shall:

- (1) Review the information presented;
- (2) Consult with appropriate parties;
- (3) Visit the site of the service as it considers necessary; and
- (4) Notify the freestanding medical facility of its determination as soon as practicable.

G. In deciding whether the service constitutes a “hospital service” subject to Commission rate regulation, Commission staff shall consider, among other things, the following criteria:

- (1) Cost of the service;

(2) In consultation with Maryland Health Care Commission (MHCC) staff, access to and need for the service in the community;

(3) Feasibility of providing the outpatient service in the community on an unregulated basis; and

(4) Impact of the service on the All-Payer Model including, but not limited to, the Total Cost of Care limitations as prescribed in the All-Payer Model Agreement with the Center for Medicare and Medicaid Innovation.

H. Based on the consideration of the criteria stated in §G of this regulation, the Commission staff shall make its determination on the request made under §E of this regulation within a reasonable period of time, taking into account, among other things, whether either a Certificate of Need application to establish a freestanding medical facility or a request for exemption from Certificate of Need to convert a licensed general hospital to a freestanding medical facility is pending before the MHCC and, if so, the time frame for staff to comment to MHCC on the financial feasibility of the proposed project.

I. A freestanding medical facility that fails to obtain, or violates, a staff determination on the regulated status of a given service may be subject to fines for inaccurate reporting under COMAR 10.37.01.03R and paybacks for inappropriate charges made during the time a staff determination on an outpatient service was not obtained or adhered to.

**NELSON SABATINI**

**Chairman**

**Health Services Cost Review Commission**