Overview and Legal and Fiscal Impact

The regulations alter requirements for community-based behavioral health (CBH) programs and authorize the Department of Health and Mental Hygiene to exempt a CBH program from certain regulatory requirements under certain circumstances.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:
- Community-Based Behavioral Health Programs and Services: Requirements for All Licensed Programs: COMAR 10.63.01.02, .04, and .05
- Descriptions and Criteria for Programs and Services Required to have an Accreditation-Based License: COMAR 10.63.03.14, .18, and .19
- Additional Requirements for Accreditation-Based Licenses for Specific Residential Community-Based Behavioral Health Services: COMAR 10.63.04.03
- Application and Licensure Process: COMAR 10.63.06.10

Legal Analysis

Summary of Regulations

The regulations authorize the department to exempt a CBH program that meets specified criteria from requirements that apply to such programs under certain regulations and alter requirements for CBH programs and services.

Exempt Programs

Under the regulations, the department may exempt a CBH program from regulatory requirements that apply to such programs if the program (1) is a pilot project, a federal or State demonstration project, or does not fall within certain program descriptions set out in specified regulations and (2) demonstrates to the satisfaction of the department that it is subject to...
contractual provisions, conditions of a grant award, or other requirements that are comparable to the regulations that apply to such programs.

**Requirements for Licensed Community-Based Behavioral Health Programs**

Under current regulations, a CBH program must enter into an agreement to cooperate with the core service agency, the local addictions authority, and the licensed behavioral health authority that operates in the relevant county or Baltimore City. The proposed regulations require the agreement to cooperate to provide for coordination and cooperation in facilitating the transition of services if a CBH program discontinues a service.

**Descriptions and Criteria for Certain Programs and Services Required to Have an Accreditation-Based License**

The Behavioral Health Administration (BHA) uses the American Society of Addiction Medicine (ASAM) criteria for substance abuse treatment services. A level 3.7 program under the ASAM criteria is a level of care that provides medically monitored intensive inpatient services. The regulations require a residential-intensive level 3.7 program to employ a physician, nurse practitioner, or physician assistant who (1) assesses each patient in person within 24 hours of admission or earlier,(2) assesses each patient thereafter, and (3) is available to provide on-site monitoring of care and further evaluation on a daily basis.

Among other changes, the regulations also require a withdrawal management service that provides a certain level of care under the ASAM criteria to employ a physician, nurse practitioner, or physician assistant who obtains a comprehensive medical history and physical examination of the patient at admission and medically monitors each patient.

**Group Homes for Adults with Mental Illness**

The regulations require as a condition for licensure that a large group home for adults with mental illness provide a home-like, supportive residential license for more than 8 (instead of 9) individuals with a mental health disorder. In addition, the regulations prohibit a group home for adults with mental illness from providing services for individuals with a primary diagnosis of developmental disability.

**Discontinuation of Program Operations**

The regulations require the director of a licensed community-based behavioral health services program to provide immediate notification to specified agencies if the program intends to discontinue a service.

**Legal Issues**

The regulations present no legal issues of concern.
Statutory Authority and Legislative Intent

The department cites §§ 7.5-204, 8-402, 8-404, and 10-901 of the Health-General Article as statutory authority for the regulations. More specifically, § 7.5-204(c) requires the Director of BHA to do anything necessary to carry out the scope of provisions of law governing behavioral health programs, alcohol and drug abuse programs and facilities, and mental health programs and services. Section 8-402(b) authorizes BHA to develop pilot programs.

Although not cited by the department, § 7.5-205(a) of the Health-General Article requires BHA to provide oversight of community-based services for persons with behavioral health disorders. Section 7.5-205(d) of the Health-General Article requires the Secretary of Health and Mental Hygiene to adopt regulations to carry out the provisions of law governing behavioral health programs, alcohol and drug abuse programs and facilities, and mental health programs and services. Section 7.5-401(b) of the Health-General Article authorizes the Secretary to exempt specified persons from licensure requirements that apply to behavioral health programs, including a licensed health professional who is providing certain mental health or substance-related disorder services. Section 7.5-402 of the Health-General Article requires that regulations adopted under provisions of law governing behavioral health programs include requirements for licensure of a behavioral health program and a description of the programs that are required to be licensed.

The department incorrectly cites §§ 8-404 and 10-901 of the Health-General Article as these provisions of law were repealed by Chapter 469 of 2015.

With the addition of §§ 7.5-205(a) and (d), 7.5-401(b), and 7.5-402 of the Health-General Article and the omission of §§ 8-404 and 10-901 of the Health-General Article, the authority cited by the department is correct and complete. The regulations comply 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 regulations update licensure requirements for behavioral health programs and exempt specified programs from licensure requirements. The department advises that the regulations have no fiscal impact. 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 regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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