Proposed Action on Regulations

Transmittal Sheet

PROPOSED OR REPROPOSED Actions on Regulations

Date Filed with AELR Committee: 07/05/2017

TO BE COMPLETED BY DSD

Date Filed with Division of State Documents

Document Number

Date of Publication in MD Register

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2. COMAR Codification

Title Subtitle Chapter Regulation
10 63 07 01-.14

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator Telephone Number
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5. Name of Person to Call About this Document Telephone No.
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6. Check applicable items:
X- New Regulations
_ Amendments to Existing Regulations
   Date when existing text was downloaded from COMAR online: .
_ Repeal of Existing Regulations
Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:
   _ Yes  X- No

   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 General Provisions Article, §3-302(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 Kathleen A.
    Morse, Assistant Attorney General, (telephone #410-767-1866) on June 30, 2017. A written
    copy of the approval is on file at this agency.

Name of Authorized Officer
Dennis Schrader
Title Secretary of Health
Telephone No. 410-767-6500
Date July 5, 2017

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 63 COMMUNITY-BASED BEHAVIORAL HEALTH PROGRAMS AND SERVICES
10.63.07 Outpatient Civil Commitment (OCC) Pilot Program
Authority: Health-General Article, §7.5-205.1, Annotated Code of Maryland

Notice of Proposed Action

The Secretary of Health proposes to adopt new Regulations .01—.14 under a new chapter, COMAR 10.63.07 Outpatient Civil Commitment (OCC) Pilot Program. At this time, the Secretary of Health is also withdrawing the new Regulations .01—.12 under a new chapter, COMAR 10.63.07 Outpatient Civil Commitment (OCC) Pilot Program as proposed in the 44:1 Md.R. 43—46 (January 6, 2017).

Statement of Purpose

The purpose of this action is to establish a pilot program for outpatient civil commitment (OCC) to allow for the release of individuals who are involuntarily committed for inpatient treatment.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

It is anticipated that there will be an indeterminable impact for the Department to consult with the non-profit organization awarded the federal SAMHSA grant to implement the OCC pilot project. There will be an indeterminable increase in funding to select behavioral health programs regulated by the Department to provide services delivered under the OCC pilot program.

<table>
<thead>
<tr>
<th>II. Types of Economic Impact.</th>
<th>Revenue (R+/R-)</th>
<th>Expenditure (E+/E-)</th>
<th>Magnitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. On issuing agency:</td>
<td>(E+)</td>
<td>Indeterminable</td>
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<tr>
<td>B. On other State agencies:</td>
<td>NONE</td>
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<td>C. On local governments:</td>
<td>NONE</td>
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<tr>
<td>D. On regulated industries or trade groups:</td>
<td>(+)</td>
<td>Indeterminable</td>
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<tr>
<td>E. On other industries or trade groups:</td>
<td>NONE</td>
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</tbody>
</table>
III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The pilot program for outpatient civil commitment will be funded through federal funding from the Substance Abuse and Mental Health Services (SAMHSA). Federal funds from the SAMHSA award will be directed to select behavioral health programs regulated by the Department to provide services delivered under the OCC pilot program. Patients who might otherwise be served in psychiatric hospitals will be able to be served in the community.

D. See A. above.

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, Maryland Department of Health, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to mdh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through September 18, 2017. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2018

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.
The funds are grant based and directed to select behavioral health programs regulated by the Department.

G. Small Business Worksheet:

Attached Document:

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 63 COMMUNITY-BASED BEHAVIORAL HEALTH PROGRAMS AND SERVICES

10.63.07 Outpatient Civil Commitment (OCC) Pilot Program

Authority: Health-General Article, §7.5-205.1, Annotated Code of Maryland

.01 Scope.
   A. This chapter establishes a pilot program for outpatient civil commitment (OCC) to allow for the release of individuals who are involuntarily committed for inpatient treatment under Health General Article, §10-632, Annotated Code of Maryland, on the condition of admission to the OCC pilot program.
   B. This chapter is not intended to impose any exhaustion requirement on an individual as a prerequisite to the individual’s pursuing concurrently or in any order any legal remedy to obtain release from an inpatient facility.

.02 Definitions.
   A. In this chapter, the following terms have the meanings indicated.
   B. Terms Defined.
      (1) “Administration” means the Behavioral Health Administration and its agents or designees.
      (2) “Administrative law judge (ALJ)” means an individual in the Office of Administrative Hearings authorized under State Government Article, §9-1604, Annotated Code of Maryland, to conduct hearings under this chapter.
      (3) “Application” means the application made by the inpatient facility to the Administration, which seeks the voluntary or involuntary outpatient admission of an individual to the outpatient civil commitment pilot program.
      (4) “Baltimore City resident” means an individual that:
         (a) Has a current residence in Baltimore City; or
         (b) Is willing to establish a residence in Baltimore City.
      (5) “Department” means the Maryland Department of Health.
      (6) “Discharge” means the removal or withdrawal of an individual from the outpatient civil commitment pilot program and the termination of the outpatient civil commitment order.
      (7) “Federal grant program funding” means the funding awarded pursuant to the Substance Abuse Mental Health Services Administration’s Assisted Outpatient Treatment Grant Program for Individuals with Serious Mental Illness, established by the Protecting Access to Medicare Act of 2014, section 224.
      (8) “Inpatient facility” means a private inpatient hospital that provides, or purports to provide, treatment to individuals with mental disorders.
      (9) “Involuntary outpatient admission” means the admission of an individual into the outpatient civil commitment pilot program who shall be subject to conditions imposed by the Administration and ordered by an ALJ following a hearing as described in this chapter.
      (10) “Involuntary inpatient facility admissions” means that an individual has been admitted to an inpatient facility by an ALJ following an involuntary admission hearing pursuant to Health-General Article, §10-632, Annotated Code of Maryland.
      (11) “Legal service provider” means the entity that the Department designates to provide representation for an individual at the proceedings described in this chapter.
      (12) “Mental Disorder.”
         (a) “Mental disorder” means a behavioral or emotional illness that results from a psychiatric or neurological disorder.
(b) “Mental disorder” includes a mental illness that substantially impairs the mental or emotional functioning of an individual as to make care or treatment necessary or advisable for the welfare of the individual or for the safety of the individual or property of another.

c) “Mental disorder” does not include mental retardation or a primary diagnosis of alcohol or drug abuse.


(14) “Order” means the formal written order issued by an Administrative Law Judge committing an individual into the outpatient civil commitment pilot program.

(15) “Outpatient civil commitment (OCC) pilot program” means the program established by the Behavioral Health Administration to provide community-based treatment and supports to:

(a) Individuals involuntarily ordered by an ALJ to participate in the OCC pilot program as a condition of release from inpatient admission; or

(b) Individuals that choose to participate in the OCC pilot program voluntarily after a settlement conference with an ALJ, the legal service provider, and a representative of the inpatient facility.

(16) “Physician” means an individual licensed under Health Occupations Article, Title 14, Annotated Code of Maryland, to practice medicine in this State.

(17) “Psychiatric nurse practitioner” means an individual licensed to practice registered nursing in this State and certified to practice as an advanced practice registered nurse/psychiatric mental health (APRN/PMH) under Health Occupations Article, Title 8, Annotated Code of Maryland.

(19) “Psychiatrist” means a physician who:

(a) Is licensed by the Maryland Board of Physicians; and

(b) Is either:

(i) Certified in psychiatry by the American Board of Psychiatry and Neurology; or

(ii) Has completed the minimum educational and training requirements to be qualified to take the Board of Psychiatry and Neurology examination for certification in psychiatry.

(20) “Psychologist” means an individual who is:

(a) Licensed under Health Occupations Article, Title 18, Annotated Code of Maryland, to practice psychology; and

(b) Listed in the National Register of Health Service Providers in Psychology.

(22) “Voluntary outpatient admission” means the admission of an individual to the outpatient civil commitment pilot program described in this chapter voluntarily after a settlement conference with an ALJ, the legal service provider, and a representative of the inpatient facility.

.03 Pilot Program.

A. The Department authorizes the Administration to create a program to provide community-based treatment to individuals with mental disorders who were:

(1) Admitted involuntarily to an inpatient facility under Health-General Article, §10-632, Annotated Code of Maryland; and

(2) Released on condition of admission to the program pursuant to the requirements of this chapter.

B. The program shall be funded with money received from a federal government grant to conduct an outpatient civil commitment program.

C. The program shall be limited to Baltimore City residents.

D. Individuals shall be admitted to the program through voluntary outpatient admission or involuntary outpatient admission consistent with this chapter.

.04 Length of Time of the Pilot Program.

The program and the regulations under this chapter shall end on the expiration of the federal grant program funding.

.05 Admission Criteria.

A. To be involuntarily admitted to the program, an individual shall meet these criteria:

(1) Have a mental disorder;

(2) Be 18 years old or older;

(3) Be a resident of Baltimore City;

(4) Have had two or more involuntary inpatient facility admissions in the preceding 12 months, including the most recent admission before the application for admission into the program;

(5) Has a demonstrated history of refusing community treatment that has been a significant factor in contributing to the current involuntary inpatient admission;
(6) Has a treatment history and behavior that indicates the need for outpatient treatment to prevent deterioration after discharge that is substantially likely to result in the individual becoming a danger to self or others in the community in the foreseeable future;
(7) Has been offered, and refused, the opportunity to accept voluntary outpatient admission into the program on discharge from the inpatient facility;
(8) Is substantially likely to benefit from the outpatient treatment;
(9) Would not be a danger to self or others in the community if released to the program; and
(10) Treatment in the program is the least restrictive alternative appropriate for the individual.
B. To be voluntarily admitted into the program an individual shall:
(1) With the exception of §A(7) of this regulation, meet all criteria in §A of this regulation;
(2) Participate in a settlement conference with an ALJ, the legal service provider, and a representative of the inpatient facility; and
(3) Enter into a settlement agreement whereby the individual agrees to adhere to program recommendations including a treatment plan or support services, or both, as needed by the individual.

.06 Application for Admission.
A. The administrative head of an inpatient facility may submit an application to the Administration for admission to the program of an individual who is committed to the inpatient facility under Health-General Article, §10-632, Annotated Code of Maryland.
B. The Administration shall provide an application form that includes the following:
(1) The statutory authority for the application;
(2) The applicant’s:
   (a) Name;
   (b) Address; and
   (c) Telephone number;
(3) The name and address of the individual for whom the program is being requested;
(4) The criteria for admission into the program;
(5) The facts that support the applicant’s determination that the individual who is the subject of the application meets each criterion for admission to the program; and
(6) The signature and verification by a physician, psychiatrist, psychologist, or psychiatric nurse practitioner on behalf of the inpatient facility.
C. If the individual’s address is unknown, or the individual is homeless, the address of the inpatient facility may be used.
D. If an application does not include the information required under §B of this regulation, then the Administration may not consider the application.

.07 Application Approval and Development of Treatment Plan.
A. Within 3 business days from receiving an application for admission, the Administration shall:
   (1) Determine whether the individual meets the criteria for admission to the program;
   (2) Determine whether the program is appropriate to meet the individual’s needs; and
   (3) Provide written notice to the individual and to the administrative head of the inpatient facility of the Administration’s decision to approve or deny the application.
B. If the application is approved, the Administration shall oversee the development of the proposed program treatment plan.
C. If the application is denied, the individual may not be admitted into the program.

.08 Schedule of Hearing, Notice of Hearing, and Rights.
A. If the application for admission to the program has been approved, the inpatient facility staff shall:
   (1) Schedule a hearing with the Office of Administrative Hearings;
   (2) Notify the legal service provider that the hearing has been scheduled;
   (3) Provide the individual with a copy of the application and proposed treatment plan; and
   (4) Provide the individual with a copy of the Notice of Hearing and Rights.
B. The parent, guardian, or next of kin of an individual approved for admission to the program:
   (1) Shall be given notice of the hearing; and
   (2) May offer evidence and testify at the hearing.
C. The notice of hearing and rights shall be on the form provided by the Administration and shall include:
   (1) The date, time, and place that the hearing will be held;
   (2) The legal authority for and purpose of the hearing;
   (3) A short statement explaining why the individual’s admission to the program is being sought;
   (4) The criteria set forth in Regulation .06 of this chapter that govern whether the individual shall be admitted to the program;
   (5) The individual’s right to consult with an attorney of the individual’s choice and, if the individual is unable to afford an attorney, the availability of representation at the hearing through the legal service provider; and
The individual’s rights at the hearing as set forth in Regulation .09 of this chapter.

.09 Hearing.
A. Within 10 business days from the Administration’s approval of the program application, a hearing shall be held by the Office of Administrative Hearings to decide if the patient meets the program admission requirements of this chapter.

B. The hearing may be postponed for good cause for not more than 10 business days from date of the postponed hearing.

C. Burden of Proof. The Administration shall demonstrate by clear and convincing evidence that the individual meets each of the requirements set forth under Regulation .06 of this chapter.

D. Rights of Parties.
(1) At a hearing, the parties have the right to:
   (a) Be represented by counsel;
   (b) Present witnesses;
   (c) Cross-examine witnesses presented by the other party;
   (d) Present documentary or other relevant evidence;
   (e) Submit rebuttal evidence; and
   (f) Present summation and argument.

(2) In addition, an individual has the right to:
   (a) Wear the individual’s choice of clothes; and
   (b) Be present or waive the right to be present, if the waiver is:
      (i) Knowingly and intelligently made; and
      (ii) Witnessed by the individual’s counsel.

E. Findings and Conclusions. After the evidence and testimony are presented, and following summation and argument by the parties, the ALJ shall:
(1) Consider all evidence and testimony of record;
(2) Rule on issues raised by the individual that relate to the admission of the individual into the program;
(3) Order the individual released into the program if the inpatient facility has met its burden of proof establishing that the individual meets the program admission criteria under Regulation .06 of this chapter; and
(4) State on the record the:
   (a) Findings, including whether the individual waived the right to attend the hearing;
   (b) Conclusions of law on any issue presented; and
   (c) Right of the individual to judicial review of the decision of the ALJ under State Government Article, §10-222, Annotated Code of Maryland, and the procedure for requesting judicial review.

.10 Orders.
A. An order shall:
   (1) Specify that each of the admission criteria has been met;
   (2) Order the individual to adhere to program recommendations including a treatment plan or support services, or both, as needed by the individual; and
   (3) Specify the date on which the order shall expire.

B. An order issued under this chapter shall expire at the end of the 180-day period beginning with the individual’s initial inpatient commitment under Health-General Article, §10-632, Annotated Code of Maryland.

.11 Settlement Conference.
A. Before the hearing, if the individual elects to participate in the program voluntarily, the ALJ shall convene a settlement conference at the time, date and place designated for the hearing.

B. The settlement conference shall include the individual, the legal service provider, and a representative of the inpatient facility.

C. In order for the individual to be voluntarily admitted to the program, the individual shall sign the settlement agreement and agree to adhere to program recommendations including a treatment plan or support services, or both, as needed by the individual.

D. The settlement agreement shall be witnessed by the ALJ.

.12 Discharge from the Program.
A. Before Discharge. Before the expiration of the program order, the Administration shall ensure that a transition plan is in place which provides the outpatient services necessary to support the individual in the community.

B. Early Discharge. The Administration may discharge an individual from the program prior to the expiration of the program order upon finding that the individual is:
   (1) Not likely a danger to self or others without the order; and
   (2) Compliant with the treatment plan and is likely to remain compliant in the future without the order.

C. After Discharge. Following the discharge of a patient from the program, the Administration shall monitor the transition of the individual from the program to voluntary community services for 60 days.
.13 Relation to Other Admission Provisions.
   A. Nothing in this chapter prevents the admission to a hospital pursuant Health-General Article, §§10-601 et seq., Annotated Code of Maryland of an individual participating in the Program.
   B. An individual’s participation in the program does not prohibit the individual’s evaluation and involuntary admission under Health-General Article, §§10-601 et seq., Annotated Code of Maryland.

.14 Effective Date.
   This chapter is effective July 1, 2017.

DENNIS SCHRADE

Secretary of Health