

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 15-373)**

Overview and Legal and Fiscal Impact

The regulation repeals the requirement that an applicant for a license to operate a residential service agency submit a current criminal history background check and certain documentation of specified convictions of the applicant or other specified persons.

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: Residential Service Agencies: COMAR 10.07.05.04

Legal Analysis

Background

An Assistant Attorney General for the Department of Health and Mental Hygiene advised the department that the department does not have the authority to view criminal history record information in accordance with the regulation adopted by the Department of Public Safety and Correctional Services, COMAR 12.15.01.13, regarding the dissemination of criminal history record information to a noncriminal justice agency.

COMAR 12.15.01.13, in relevant part, prohibits the Central Repository from disseminating criminal history record information to a noncriminal justice State agency unless the recipient is expressly authorized by statute, ordinance, executive order, or court rule, decision, or order to (1) grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and (2) if the statute, ordinance, executive order, or court rule, decision, or order specifies the existence or nonexistence of a prior conviction or other criminal conduct as a condition to the grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege.

The department interprets this provision to prohibit the department from viewing the contents of a criminal history records check during the application process. However, the department does inquire of a licensed residential service agency whether the individuals the agency employs has received and reviewed a potential employee's criminal history record check.

Summary of Regulation

The regulation repeals the requirement that an applicant for a license to operate a residential service agency submit a current criminal history background check and certain documentation of specified convictions of the applicant or other specified persons.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites Title 19, Subtitle 4A of the Health – General Article a statutory authority for the regulation. More specifically, §§ 19-4A-03 and 19-4A-05 of the Health – General Article are statutory authority for the regulation. Section 19-4A-03 requires the department to adopt regulations that set standards for the care, treatment, health, safety, welfare, and comfort of individuals who receive health care services through a residential service agency. These regulations are required to provide for the licensing of residential service agencies and the renewal of licenses. Section 19-4A-05 sets forth requirements for a license to operate a residential service agency. The remaining cited authority is not relevant to the regulation.

The relevant cited authority is correct and complete. This 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 removes the requirement that an applicant for a residential service agency license from the Office of Health Care Quality submit a copy of a current criminal background check and related documentation with the application for licensure. The department advises that the criminal background check and verification of its completion is still required; thus, 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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