

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	12/07/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 12/28/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

10 24 16 01

3. Name of Promulgating Authority

Maryland Health Care Commission

4. Name of Regulations Coordinator

Julie Deppe

Telephone Number

(410) 764-3563

Mailing Address

4160 Patterson Avenue

City State Zip Code

Baltimore MD 21215

Email

julie.deppe@maryland.gov

5. Name of Person to Call About this Document

Suellen Wideman

Telephone No.

410-764-3326

Email Address

suellen.wideman@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation 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 State Government Article, §10-506(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 Suellen Wideman, Assistant Attorney General, (telephone #410-764-3326) on November 19, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Frances B. Phillips, RN, MHA

Title

Vice-Chair

Telephone No.

410-764-3460

Date

November 19, 2015

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 24 MARYLAND HEALTH CARE COMMISSION
10.24.16 State Health Plan for Facilities and Services: Home Health Agency Services
Authority: Health-General Article, §§19-109(a)(1), 19-118 and 19-120(f), Annotated
Code of Maryland

Notice of Proposed Action

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The Maryland Health Care Commission proposes to adopt new Regulations .01 under COMAR 10.24.16 State Health Plan for Facilities and Services: Home Health Agency Services.

This action was considered by the Commission at an open meeting held on November 19, 2015, notice of which was given through publication in the Maryland Register, under General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to replace the home health agency services portion of the State Health Plan Chapter on nursing home and home health agency services with a new Chapter focused solely on home health agency services. The new Chapter accounts for changes in the delivery and financing of home health agency services that have occurred since this portion of the State Health Plan was last updated in 2007. This Chapter includes: policies; need determination; use of multi-jurisdictional regions; Certificate of Need application acceptance rules; establishment of home health agency quality measures and performance levels for qualified applicants; Certificate of Need review standards; Certificate of Need preference rules in comparative reviews; rules for gradual entry of home health agency providers; rules for acquisition of home health agencies; and rules for merger or consolidation of home health agencies.

This Chapter will provide a policy blueprint for the Commission and affected industries to address issues related to the provision of home health agency services. It implements an approach to regulating the development and expansion of home health agency services in Maryland that is based on ensuring consumer choice of high quality providers in which better performance by home health agency providers is encouraged by development and expansion opportunities. This Chapter provides criteria for determining need for additional home health agency providers as well as certificate of need application acceptance rules and review standards to guide the Certificate of Need review process.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

This new Chapter of the State Health Plan for Facilities and Services: Home Health Agency Services provides planning policies, criteria for determining need for additional home health agency providers, as well as certificate of need application acceptance rules and review standards to guide the development of high quality home health agency services.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency: MHCC	(E+)	Within Budget
B. On other State agencies:		
(1) OHCQ	(E+)	Minimal
(2) Medicaid	(E+)	Minimal
C. On local governments:	(R-)	Minimal
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Moderate
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Significant

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

A. Maryland Health Care Commission (MHCC). The Commission accepts Certificate of Need (CON) proposals from qualified applicants when need has been identified. This new Chapter describes criteria for determination of need based on consumer choice of quality HHA providers. Opportunities for development as well as for expansion are created. A more streamlined approach for utilizing MHCC staff resources is established with these proposed new regulations by requiring applicants to meet qualifying factors prior to being considered for review. There may also be staff resources devoted to the review of proposed acquisitions, which do not require a certificate of need, but do require review of additional information regarding the proposed acquisition. Furthermore, there may be a greater number of proposed mergers or consolidations, which will also require some staff resources for review of the potential impact on existing agencies, but less intensive staff resources than for CON review for establishment of new agencies or expansion of existing agencies. Any anticipated CON reviews and staff efforts to support this Chapter can be accommodated by current staff within the Commission’s budget.

B(1). Office of Health Care Quality (OHCQ). Any new home health agency provider in Maryland approved by the Commission would need to be licensed and Medicare

certified by the Office of Health Care Quality (OHCQ). This requires OHCQ staffs' expertise in determining that the proposed new HHA would meet all applicable state and federal regulations, including conducting on-site surveys to confirm that Medicare's Conditions of Participation are appropriately addressed. However, it is anticipated that some of the identified need for additional HHA providers may be met by existing HHA providers seeking to expand their service area to serve in a new jurisdiction not currently authorized to serve. Under this scenario, such an HHA seeking to expand may do so using its existing license and Medicare certification number, without putting any extensive burden on OHCQ staff resources. Furthermore, with regard to acquisition of an existing licensed HHA which does not require CON review as long as the type or scope of services provided is not changed, this action typically permits the new provider to maintain the acquired agency's license and Medicare certification numbers. Such changes in ownership transactions would not require extensive OHCQ staff resources. Any gradual increase in establishment of new HHAs could be accommodated within OHCQ's budget.

B(2). Medicaid. Medicaid accounts for a very small proportion of home health agency care since it is primarily reimbursed under Medicare. In FY 2013, Medicaid was the payor for three percent of home health agency patients. Therefore, any development of Medicare-certified home health agencies should have minimal impact on the Medicaid program.

C. Local Governments. There are currently two home health agencies operated by local county health departments: Baltimore County and Garrett County. For FY 2013, Baltimore County Department of Health's home health agency had 425 admissions with a net operating revenue of \$195,033, and Garrett County Health Department's home health agency had 426 admissions with a net operating revenue of \$880,159. Baltimore County Department of Health's home health agency is one of 21 agencies operating to serve Baltimore County residents, while Garrett County Health Department's home health agency is one of two agencies serving Garrett County. Quality of patient care star ratings which summarize nine of the 29 quality measures reported on Center for Medicare and Medicaid's (CMS) Home Health Compare website provide a single indicator of an agency's performance compared to other agencies nationwide. Baltimore County Department of Health's HHA had 3 ½ stars, and Garrett County Health Department's HHA had 2 ½ stars (on a 5-star rating system). This indicates that quality performance scores were higher for Baltimore County Department of Health with a slightly higher than average performance compared to the national average of 3 stars, while Garrett County performed lower than the national average.

Proposed regulations promote consumer choice of high quality performing agencies, and policy recommendations suggest that each jurisdiction should have no fewer than three operating agencies. Therefore, while there appears to be a greater potential for development of new HHAs in Garrett County than in Baltimore County, it remains uncertain as to whether any applicants would propose to serve Garrett County. Furthermore, with the advent of CMS' proposed home health value-based purchasing model in Maryland anticipated to begin in January 2016 for Medicare payment tied to performance, there could be lower Medicare payment for lower performing agencies. Under the assumption that there would be no additional new providers in Baltimore

County, and perhaps one additional new provider in Garrett County, overall revenue could decline in Garrett County and potentially remain the same in Baltimore County. Therefore, the proposed regulations, combined with changes in the way Medicare proposes to pay agencies based on performance, may allow for revenue to continue to be generated by the respective local county health departments' home health agencies, but perhaps at a lower dollar amount for Garrett County Health Department.

D. Regulated Industries or Trade Groups. The proposed regulations are expected to have a positive impact on regulated industries. By providing clear policy direction on creating opportunities for development of new home health agencies and expansion of existing home health agencies, and developing standards and policies for CON review, the Commission is providing direction for future gradual growth to ensure consumer choice of high performing agencies. In addition, the Commission will continue to work with the industry in selecting quality measures and required performance levels for those quality measures that must be achieved by an applicant in order to be considered for a given review cycle.

F. Public. The proposed regulations are expected to have a positive impact on the public by focusing on ensuring consumer choice of quality home health agencies. The proposed regulations enhance public access to qualified home health agency providers and include a transparent process for consideration of HHA quality measures and performance levels. This process includes Commission staff publishing draft quality measures and performance levels for public review and comment prior to establishing the applicable HHA quality measures and performance levels to be achieved by an applicant in order to be considered in the CON review cycle.

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 Cathy Weiss, Program Manager, Center for Health Care Facilities Planning and Development, Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, MD 21215, or call 410-764-3339 TTY: 800-735-2258, or email to cathy.weiss@maryland.gov, or fax to 410-358-1236. Comments will be accepted through 4:30 pm on January 27, 2016. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Maryland Health Care Commission during a public meeting to be held on February 18, 2016 at 1:00 pm, at 4160 Patterson Avenue, Room 100, Baltimore, MD 21215 .

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2016
- 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:
Maryland Health Care Commission
Special Funds
- 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:

Incorporation by Reference APPROVAL FORM

Date: November 10, 2015
COMAR: 10.24.16

Julie Deppe
Administrative Officer
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215-2299

Dear Julie:

The document entitled "State Health Plan for Facilities and Services: Home Health Agency Services" is approved for incorporation by reference.

Please note the following special instructions: None.

Attach a copy of this approval form when submitting an emergency or proposed regulation to the AELR Committee and when submitting a proposed

regulation to DSD for publication in the Maryland Register. If submitting through ELF, include as part of the attachment.

Any future changes to the incorporated documents do not automatically become part of the regulation. If there are subsequent changes to the incorporated documents, and the agency wishes those changes to become a part of its regulations, the agency must amend the regulation incorporating the documents.

Please call us if you have any questions.

Sincerely,
Gail S. Klakring
Senior Editor