

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 15-403)**

Overview and Legal and Fiscal Impact

The regulation removes the home health agency services (HHA) portion of the existing State Health Plan (SHP) chapter that covers the certificate of need (CON) process for both nursing home and HHA services because a new chapter has been established that is focused solely on HHA services. See DLS Control No. 15-402. By removing the HHA services portion, the regulation establishes a chapter in the SHP that focuses solely on nursing home services.

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:

Maryland Health Care Commission: State Health Plan for Facilities and Services:
Nursing Home, Home Health Agency, and Hospice Services: COMAR 10.24.08.01

Legal Analysis

Background

The Maryland Health Care Commission (MHCC) has regulatory oversight for the development of certain health care facilities and services, including HHAs, through its CON program. MHCC has the responsibility to develop a SHP, which contains policies, a model for forecasting need, and CON review standards and criteria, to guide decision-making in the CON process. The SHP Plan was last updated in 2007, and since that time there have been changes in the delivery and financing of HHA services. In 2015, MHCC convened a Home Health Agency Advisory Group to review issues and a possible new regulatory approach outlined in a White Paper produced by MHCC entitled, “A New Approach for Planning and Regulatory Oversight of Home Health Agency Services in Maryland.”

Among other changes, the White Paper proposed a new conceptual approach for forecasting HHA need that promotes consumer choice of quality providers. The White Paper also recommended the incorporation of quality and performance measures in the SHP and CON review, the elimination of the specialty HHA designation, and implementation of new SHP regulations regarding acquisitions. Under current standards, a CON is required to establish a new HHA in

Maryland and to expand the service area of an existing agency to a new jurisdiction. However, a CON is not required for the acquisition of an existing HHA.

In the White Paper, MHCC recommended moving away from a strictly defined methodological approach for forecasting need to a more dynamic approach to create opportunities both for existing agencies to expand, as well as for a new entrant to establish an HHA. The new approach would involve a shift away from forecasting need based on utilization and quantity of HHA services and, instead, would place a greater emphasis on quality and performance measures to increase consumer choice of providers. The forecasting model would not only take into account market conditions of a jurisdiction, such as variations in population size and volume of HHA services provided, but would also take into account an applicant's proven record or its demonstrated capability to provide high quality HHA services.

Summary of Regulation

The regulation removes CON provisions relating to HHA services from the existing SHP chapter that covers the CON process for both nursing home and HHA services. With the relocation of these provisions to a new chapter focused solely on HHA services, the regulation alters the existing SHP chapter so that it focuses solely on nursing home services, incorporating by reference a document entitled, "State Health Plan for Facilities and Services: Nursing Home Services."

The CON provisions relating to HHA services, proposed in a regulation submitted in tandem with this regulation, incorporates into the new SHP chapter on HHAs the recommendations in the White Paper discussed above. See DLS Control No. 15-402.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

MHCC cites §§ 19-109(a)(1), 19-118, and 19-120(f) of the Health – General Article as statutory authority for the regulation. Section 19-109(a)(1) authorizes MHCC to adopt regulations to carry out provisions of law relating to health care planning and systems regulation. Section 19-118 requires MHCC to adopt a SHP that includes the methodologies, standards, and criteria for CON review. Under § 19-120(f), a CON is required before a new health care facility is built, developed, or established. The definition of health care facility, under § 19-114(d), includes a related institution and an HHA.

This authority is correct and complete. The 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 home health agency services from the chapter of the State Health Plan that currently regulates both home health agency services and nursing home services. No substantive changes are made to the provisions governing nursing home services. The commission advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs and notes that a new chapter regarding home health agency services is incorporated by reference under Control No. 15-402.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The commission advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Patrick D. Carlson – (410) 946/(301) 970-5350

Fiscal Analysis: Jennifer B. Chasse – (410) 946/(301) 970-5510