

MARYLAND REGISTER

# Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	11/18/2016	Date Filed with Division of State Documents
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**1. Desired date of publication in Maryland Register: 1/6/2017**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 63 07 01-.12

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

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**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations



**Subtitle 63 COMMUNITY-BASED BEHAVIORAL HEALTH PROGRAMS AND SERVICES**

**10.63.07 Outpatient Civil Commitment (OCC) Pilot Program**

Authority: Health-General Article, §10-632, State Government Article, §§9-1602 and 9-1604, Annotated Code of Maryland

**Notice of Proposed Action**

□

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.12 under a new chapter, COMAR 10.63.07 Outpatient Civil Commitment (OCC) Pilot Program.

**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 the 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.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	Indeterminate (federal funds)
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude

- |   |      |               |
|---|------|---------------|
| D. On regulated industries or trade groups: | (+)  | Indeterminate |
| E. On other industries or trade groups:     | NONE |               |
| F. Direct and indirect effects on public:   | NONE |               |

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

A. The pilot program for outpatient civil commitment will be funded though federal funding from the Substance Abuse and Mental Health Services Administration (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 A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through February 6, 2017. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2017

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:  
Federal 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.

It is anticipated that non-profit behavioral health providers in Baltimore City who would participate in this pilot program would have staffs exceeding 50 employees.

G. Small Business Worksheet:

Attached Document:

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## **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, §10-632, State Government Article, §§9-1602 and 9-1604, 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 is authorized under State Government Article, §9-1604, Annotated Code of Maryland, to conduct hearings under this chapter.

(3) "Admission" means an individual that has been admitted to the outpatient civil commitment pilot program involuntarily by an ALJ.

(4) "Application" means the application made by the inpatient facility to the Administration, which seeks the involuntary admission of an individual to the outpatient civil commitment pilot program.

(5) "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.

(6) "Department" means the Department of Health and Mental Hygiene.

(7) "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.

(8) "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.

(9) "Inpatient facility" means a private inpatient hospital that provides, or purports to provide, treatment to individuals with mental disorders.

(10) "Involuntary admission" means the admission of an individual into the Outpatient Civil Commitment pilot program described in this chapter.

(11) "Involuntary inpatient psychiatric facility admissions" means that an individual has been admitted to an inpatient facility by an ALJ following an IVA hearing pursuant to Health-General Article, §10-632, Annotated Code of Maryland.

(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.

(13) "Office of Administrative Hearings" means the office created under State Government Article, §9-1602, Annotated Code of Maryland.

(14) "Office of the Public Defender" means the office created under Criminal Procedure Article, Title 16, Annotated Code of Maryland.

(15) "Order" means the formal written order issued by an Administrative Law Judge committing an individual into the Outpatient Civil Commitment pilot program.

(16) "Outpatient civil commitment (OCC) pilot program" means the program established by the Behavioral Health Administration to provide community-based treatment and supports to individuals involuntarily ordered by an ALJ to participate in the OCC pilot program as a condition of release from inpatient admission.

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

(18) "Program" means the Outpatient Civil Commitment (OCC) pilot program.

(19) "Psychiatric nurse practitioner" means an individual licensed under Health-Occupations Article, Title 8, Annotated Code of Maryland, to practice nursing in this State as a certified registered nurse practitioner-psychiatric mental health (CRNP-PMH).

(20) "Psychiatrist" means a physician board certified in psychiatry by the Maryland Board of Physicians.

(21) "Psychologist" means an individual licensed under Health Occupations Article, Title 18, Annotated Code of Maryland and board certified in psychology.

(22) "Release" means the authorization for an individual who is confined in an inpatient facility under Health General Article, §10-632, Annotated Code of Maryland, to leave the inpatient facility on the condition of admission to the OCC pilot program.

### **.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 admitted to the program shall be subject to conditions imposed by the Administration and ordered by an ALJ following a hearing 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.**

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

A. Have a mental disorder;

B. Be 18 years old or older;

C. Be a resident of Baltimore City;

D. Has had two or more involuntary inpatient psychiatric facility admissions in the preceding 12 months, including the most recent admission before the application for admission into the program;

E. Has a demonstrated history of refusing community treatment that contributed to the current involuntary inpatient admission;

F. Has a treatment history and behavior that indicates the need for outpatient treatment to prevent deterioration after discharge that is likely to result in the individual becoming a danger to self or others in the community in the foreseeable future;

G. Has been offered, and refused, the opportunity to accept voluntary outpatient services on discharge from the inpatient facility.

H. Is likely to benefit from the outpatient treatment;

- I. Would not be a danger to self or others in the community if released to the program; and
- J. Treatment in the program is the least restrictive alternative appropriate for the individual.

**.06 Application for Involuntary Admission.**

A. The administrative head of an inpatient facility may submit an application to the Administration for the involuntary 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:
  - (i) Name;
  - (ii) Address; and
  - (iii) 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 33 business days from receiving an application for admission, the Administration shall:

- (1) Determine whether the individual meets the criteria for involuntary admission to the program;
- (2) Determine that 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 involuntary 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 Office of the Public Defender 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 involuntary 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 involuntary 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 involuntarily 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 Office of the Public Defender; and
- (6) The individual's rights at the hearing as set forth in Regulation .09 of this chapter.

**.09 Hearing.**

A. Within 1010 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. Burden of Proof. The Administration shall demonstrate by clear and convincing evidence that the

- (1) Individual meets the program admission requirements set forth under Regulation .06 of this chapter; and
- (2) Treatment plan is appropriate and necessary to maintain the patient safely in the community.

C. 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,
    - (ii) Witnessed by the individual's counsel, and
    - (iii) Witnessed by the ALJ.

*D. 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:
  - (a) Individual meets the program admission criteria under Regulation .06 of this chapter; and
  - (b) Proposed treatment plan is appropriate to meet the needs of the individual and to maintain the individual safely in the community;
- (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 appeal the decision of the ALJ under State Government Article, §§10-216 and 10-222, Annotated Code of Maryland, and the procedure for requesting an appeal.

**.10 Orders.**

- A. An order shall:
- (1) Specify that admission of the individual to the program is the least restrictive alternative and it is appropriate and feasible for the individual;
  - (2) Include a treatment plan;
  - (3) Order the individual to follow all recommendations in the treatment plan, including any modifications made to the treatment plan subsequently made by the provider of program services and approved by the Administration; and
  - (4) 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 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 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.

**.12 Relation to Other Admission Provisions.**

- A. Nothing in this chapter prevents the admission of an individual from admission to a hospital pursuant Health-General Article, §§10-601 et seq., Annotated Code of Maryland.
- B. Participation in the program does not prohibit evaluation and involuntary admission under Health-General Article, §§10-601 et seq., Annotated Code of Maryland.

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**