Overview and Legal and Fiscal Impact

The regulation update requirements for residential treatment centers for emotionally disturbed children and adolescents.

The regulations present 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: Related Institutions - Residential Treatment Centers for Emotionally Disturbed Children and Adolescents: COMAR 10.07.04.01-.10 and .12-.22

Legal Analysis

Summary of Regulation

The regulations update requirements for residential treatment centers for emotionally disturbed children and adolescents. To be licensed, a residential treatment center must submit evidence of current accreditation by the Joint Commission. A license expires three years, vs. the current one year, from the date of issuance. The Secretary:

- must deny a license to a person or revoke the license of a licensee convicted of a felony that relates to Medicaid or to a nursing home and

- may deny or revoke a license if the center does not meet the statutory or regulatory requirements relating to hospitals and related institutions.

A center that is licensed or proposed to be licensed must be open at all reasonable times to inspection by the Secretary, the Secretary’s designee, or other specified agencies.

The regulations update requirements for the physical plant; fire safety; cleanliness, maintenance, and furnishings; management; health services; staffing; and accommodations at
residential treatment centers. New regulatory requirements are added for restraints and seclusion, complaint investigations, reports, civil money penalties, hearings, notifications, and resident rights. The use of restraints and seclusion must be in compliance with federal regulations. Residential treatment centers must be open to inspections by the Department to investigate and resolve complaints. The regulations establish procedures for the investigations. Residential treatment centers must furnish reports to the Secretary on deaths, serious injuries, or unusual incidents, including suicide attempts, as well as on occurrences that threaten the welfare, safety, or health of residents. The centers must also comply with the reporting requirements of the placement agencies. They must report any serious occurrence involving a resident to both the State Medicaid agency and the State designated Protection and Advocacy system. Parents or legal guardians must be notified of a serious occurrence and the report must be documented in the resident’s record. The regulations prescribe the timing of and items that must be included in the reports.

The regulations authorize the Secretary to impose a civil money penalty on a person if:

- the person maintains or operates an unlicensed center; or
- a serious or life-threatening patient care deficiency exists and the center fails to correct the deficiency through immediate corrective action.

The regulations require the Secretary to consider specified factors in determining whether a civil money penalty is to be imposed. The regulations also establish a maximum penalty, which may be a maximum penalty per day or per instance, depending on the violation.

The regulations establish a process for a hearing. Additionally, the regulations require a center to attempt to notify a resident and a resident’s representative, family member, legal guardian, or custodian of a change in the resident’s condition, an adverse event that affected the resident, and if appropriate, the corrective action taken. The facility is required to post a list of resident rights, which are specified in the regulations.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 19-301, 19-305, 19-308, 19-309, and 19-360 as statutory authority for the regulations. Section 19-301 establishes definitions. Section 19-305 establishes requirements for residential treatment centers to notify residents and others about adverse events and changes in condition. Section 19-308 requires the Secretary of Health and Mental Hygiene to adopt reasonable rules and regulations that set standards of services for residential treatment centers in the following areas:

- the care of patients;
• the medical supervision of patients;
• the physical environment;
• disease control;
• sanitation;
• safety; and
• dietary matters.

The section also requires the Secretary to conduct inspections of residential treatment centers. Section 19-309 establishes a process for resolution of complaints relating to residential treatment centers. Section 19-360 establishes a process for corrective action following a patient care deficiency finding.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

Departmental staff were advised of the need for several technical changes to the regulations and the Statement of Purpose. In particular, the Statement of Purpose indicates that a purpose of the regulations is to require that the quantity of food served in the residential treatment center meet minimum daily requirements. However, the regulations make no mention of food meeting minimum daily requirements. The department plans to make the necessary changes.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations are updating and clarifying in nature, and align with existing statutory requirements and current practice; therefore, there is no fiscal impact. 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 regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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