



THE MARYLAND GENERAL ASSEMBLY  
ANNAPOLIS, MARYLAND 21401-1991

JOINT COMMITTEE ON ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW

**Memorandum**

**To:** Members of the AELR Committee  
Standing Committee Chairs

**From:** Marie H. Razulis, AELR Committee Counsel  
George H. Butler, Jr., AELR Committee Counsel  
Crystal L. Lemieux, AELR Committee Counsel

**Date:** October 21, 2016

**Re:** **Synopses of Regulations received from 10/7/2016 through 10/20/2016**

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Enclosed please find synopses of regulations received by the AELR Committee during the weeks noted above.

The Office of Policy Analysis prepares analyses of the regulations to determine if there are any problem areas, to ensure that the regulations comply with statutory authority and legislative intent, and to assess the fiscal impact of the regulations. If any regulation is of particular interest to you, please feel free to contact us at 410-946-5350 and we will supply you with a copy of the regulation along with the legal and fiscal analysis.

/chrr

cc: Victoria L. Gruber  
Alexandra M. Hughes

## **Elections, State Board of**

### **Proposed Regulation**

**DLS Control No. 16-248**

**Board of Elections:**

**Disclosure by Persons doing Public Business:**

**Contributions:** COMAR 33.20.06.01

According to the board, the purpose of this action is to codify State Board of Elections policy that contributions made by a political action committee sponsored by or identified with a person doing public business are made at the direction of the business entity.

### **Proposed Regulation**

**DLS Control No. 16-249**

**Board of Elections:**

**Administration of Public Financing Act:**

**Eligibility Requirements and Procedures:** COMAR 33.14.02.03

According to the board, the purpose of this action is to clarify the deadlines for private eligible contributions used for seed money certification. The use of a specific date for contribution mirrors the statute language for when contributions begin to be eligible for matching. A report deadline may be confusing due to different transaction period end dates.

### **Proposed Regulations**

**DLS Control No. 16-250**

**Board of Elections:**

**Campaign Financing:**

**Authority Line Requirements; Electronic Media:** COMAR 33.13.07.06

**Independent Expenditure Requirement:** COMAR 33.13.08.06, .07

**Prohibitions:** COMAR 33.13.10.02.03, .04

**Administrative Accounts:** COMAR 33.13.13.08

According to the board, the purpose of this action is to add “person” to the enforcement provisions of authority line requirements. Independent expenditures are conducted by a person, not a political committee, and are subject to the same penalties for lack of authority line on campaign material. The proposed regulations detail the procedures for an independent expenditure entity to request a waiver of late fees and the issuance of the civil citation. Moreover, in 2016, the General Assembly amended the prohibition on fundraising during session law. The proposed regulations reflect the legislative changes and provide specific activities that would constitute soliciting contributions by a legislator. The proposed additions to the prohibited expenditures by a political committee codify prior policy and advice. In addition, the proposed regulations add a new section regarding coordinated expenditures. This is a proactive measure before the 2018 Election will clarify activities that would constitute coordination between persons making independent expenditures and candidates and political parties. Finally, the proposed regulations

clarify the requirements of a legislative communication paid with administrative funds. Since administrative funds may not be used for electoral purposes, the communication may not contain any references to an election or political slogan.

**Health and Mental Hygiene, Department of**

**Proposed Regulations**

**DLS Control No. 16-238**

**Department of Health and Mental Hygiene:**

**Medical Care Programs:**

**Home/Community Based Services Waiver for Older Adults:** COMAR 10.09.54.13-.19 and .22

According to the department, the purpose of this action is to modify the indexing of rates in order to be consistent among home and community-based services programs and to ensure that the amount of the applicable index will be known during the time that the annual budget is developed. In addition, unnecessary definitions are being deleted.

**Proposed Regulations**

**DLS Control No. 16-252**

**Department of Health and Mental Hygiene:**

**Medical Care Programs:**

**Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services:**

COMAR 10.09.23.03

**Maryland Medicaid Managed Care Program: Managed Care Organizations:**

COMAR 10.09.65.19-3

**Maryland Medicaid Managed Care Program: Benefits:**

COMAR 10.09.67.01, .07 and .12

According to the department, the purpose of this action is to: (1) increase the minimum score requirement on Healthy Kids Program quality assurance reviews from 70 to 80 percent; (2) remove the requirement that an MCO be Statewide in order to receive a portion of any outstanding funds after the initial rural access incentive is paid; (3) clarify that MCOs must provide the services covered under the State Plan; and (4) increase from 30 to 90 the number of days an MCO is responsible for long term care admissions.

**Proposed Regulation**

**DLS Control No. 16-254**

**Department of Health and Mental Hygiene:**

**Medical Care Programs:**

**Senior Prescription Drug Assistance Program:** COMAR 10.09.60.01-.08

According to the department, the purpose of this action is to update the regulations regarding the administration of the Senior Prescription Drug Assistance Program which was

transferred from the Board of Directors of the Maryland Health Insurance Plan to the Department of Health and Mental Hygiene on July 1, 2016, in accordance with House Bill 489, Termination of Maryland Health Insurance Plan, Transfer of Senior Prescription Drug Assistance Program, and Funding for State Reinsurance Program, 2016, Chapter 321 of the Acts of 2016.

**Proposed Regulations**

**DLS Control No. 16-255**

**Department of Health and Mental Hygiene:**

**Board of Nursing:**

**Examination and Licensure:**

COMAR 10.27.01.04-.18

Board of Nursing - Certified Nursing Assistants: **Certification of Nursing Assistants:**

COMAR 10.39.01.03-.09

**Medication Technicians:** COMAR 10.39.04.04

Board of Nursing - Electrology Practice Committee: **Licensure:**

COMAR 10.53.02.01-.10

According to the department, the purpose of this action is to: (1) add new language for licensees and certificate holders to clarify that there is a one year deadline for submitting documents and information relating to applications and any positive results from a criminal history records check; (2) establish rules for when an incomplete application is determined to be abandoned, and when an applicant has to re-apply; (3) repeal the requirement for a passport photo to accompany nursing and nursing assistant applications; (4) repeal obsolete references to paper licenses; (5) repeal obsolete reference to the category of skilled nursing assistants; (6) establish requirements for certification as a Certified Nursing Assistant/Dialysis Technician (CNA/DT) that comply with federal requirements; and (7) make other technical and clarifying changes.

**Proposed Regulation**

**DLS Control No. 16-257**

**Department of Health and Mental Hygiene:**

**Drugs:**

**Impoundment and Disposal of Drugs and Prescription Records:** COMAR

10.13.12.01

According to the department, the purpose of this action is to remove the term “manufacturer’s permit” from the definition of “permit holder”. The Board of Pharmacy no longer issues a “manufacturer's permit” therefore, the term shall be removed from the definition under COMAR 10.13.12.01B(6)(a). This amendment is a result of the department’s evaluation and review of this chapter in response to the Regulatory Review and Evaluation Act (§§ 10–130—10–139 of the State Government Article).

**Proposed Regulation**

**DLS Control No. 16-258**

**Department of Health and Mental Hygiene:**

**Board of Examiners of Nursing Home Administrators:**

**Nursing Home Administrators: COMAR 10.33.01.14**

According to the department, the purpose of this action is to (1) clarify that a proposed preceptor for the AIT program must have been employed full-time as a nursing home administrator of record for a certain amount of time; and (2) authorize individuals to serve as a preceptor in an Administrator-in-Training (AIT) program provided the individual (a) works on the same property as the nursing home where the AIT program will be conducted and meets the standard in COMAR 10.33.01.02B(7)(b); (b) is able to demonstrate to the Board the proposed preceptor's active, direct, and material management and daily operations of the nursing home; and (c) has been actively licensed as a nursing home administrator for a minimum of five years immediately before the application to precept.

**Human Resources, Department of**

**Proposed Regulation**

**DLS Control No. 16-245**

**Department of Human Resources:**

**Social Services Administration:**

**Out-of-Home Placement Program: COMAR 07.02.11.03,.05,.16**

According to the department, the purpose of this action is to apply the reasonable and prudent parent standard to conform with the Federal "Preventing Sex Trafficking and Strengthening Families" Act, H.R. 4980.

**Proposed Regulations**

**DLS Control No. 16-246**

**Department of Human Resources:**

**Social Services Administration:**

**Youth Transitional Services: COMAR 07.02.10.08 and .18**

According to the department, the purpose of this action is to increase the frequency of updates to a transition plan for youth in care and clarify documentation that is to be provided to a youth when leaving out-of-home placement.

**Proposed Regulation**

**DLS Control No. 16-253**

**Department of Human Resources:**

**Social Services Administration Private Child Placement Agencies:**

**Private Independent Living Program: COMAR 07.05.04.01-.10**

According to the department, the purpose of this action is to clarify and amend areas of concern. Specifically: redefining regulatory requirements, improving the admission process, expanding assessments of case plans, instructions and monitoring, improving living accommodations of residents, expanding regulations concerning residents with children, and placement termination were all reviewed. Modifications were made to improve the intent of the regulations, improving the outcomes for the children in care.

### **Natural Resources, Department of**

#### **Proposed Regulation**

**DLS Control No. 16-239**

**Department of Natural Resources:**

**Fisheries Service:**

**General:** COMAR 08.02.01.05

According to the department, the purpose of this action is to modify the number of commercial fishing license authorization targets. The proposed action makes modifications to the authorization targets to reflect the number of tidal fish license conversions made in the 2015-2016 license year. The law allows the conversion (downgrade) of a UTFL into its individual component authorizations. Downgrading a UTFL decreases the UTFL target and increases the target of each license type that is included in a UTFL (resident fishing guide (FGR), unlimited finfish harvester (FIN), crab harvester 300 pot (CB3), clam harvester (CLM), oyster harvester (OYH), oyster dredge boat (ODB), and conch turtle lobster (CTL)). The number and type of authorizations involved in a downgrade of a UTFL provide the basis for changes to the license authorization target levels.

During the 2015-2016 license renewal period, 6 individuals downgraded their UTFL. Applicants could choose which license components of the UTFL they wanted to retain. In summary, the UTFL number is decreased by 6 and the number for FGR, FIN, CB3, CLM, OYH, ODB, and CTL is increased by 6 each.

The proposed action shows the target number for each authorization available after all of the additions and subtractions. The targets are correct as of April 1, 2016. The Tidal Fisheries Advisory Commission was consulted regarding these changes at their July 2016 meeting and did not have any questions or concerns.

#### **Proposed Regulation**

**DLS Control No. 16-241**

**Department of Natural Resources:**

**Fisheries Service:**

**Fish:** COMAR 08.02.05.22

According to the department, the purpose of this action is to change the minimum mesh size for trawls from 4 ½ inches to 5 inches for the harvest of scup. Scup are jointly managed by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery

Management Council (MAFMC). The ASMFC manages scup fisheries in state waters (out to three miles) while the MAFMC manages scup fisheries in federal waters (3-200 miles offshore). Scup were incorporated into the ASMFC and MAFMC summer flounder Fishery Management Plans in 1996. Since then, a series of amendments and addenda have been implemented to modify management measures. The ASMFC Summer Flounder, Scup and Black Sea Bass Fishery Management Plan requires a five inch minimum diamond mesh size for scup. Maryland regulations currently require a 4 ½ inch minimum mesh size, which is out of compliance with ASMFC. This action will ensure our compliance with the management plan. The proposed action corrects the minimum mesh size.

**Proposed Regulation**

**DLS Control No. 16-242**

**Department of Natural Resources:**

**Fisheries Service:**

**Horseshoe Crabs: COMAR 08.02.10.01**

According to the department, the purpose of this action is to clarify the method for harvesting horseshoe crabs. The proposed action requires that horseshoe crabs be harvested from a vessel and prohibits the harvest of horseshoe crabs from shore. Harvesting horseshoe crabs from shore is not a traditional harvesting method in Maryland; therefore, this action will have no impact on harvesters. It is also biologically irresponsible to harvest or disturb spawning horseshoe crabs.

**Proposed Regulation**

**DLS Control No. 16-256**

**Department of Natural Resources :**

**Fisheries Service:**

**Fishing in Nontidal Waters: COMAR 08.02.11.01, .04**

According to the department, the purpose of this action is to amend and clarify existing regulations for fishing in nontidal waters.

**Higher Education Commission, Maryland**

**Proposed Regulation**

**DLS Control No. 16-240**

**Maryland Higher Education Commission:**

**Community Colleges:**

**General Regulations and Policies for Community Colleges:**

**COMAR 13B.07.02.07**

According to the commission, the purpose of this action is to permit community colleges to waive out-of-county fees for certain victims of human trafficking, pursuant to §16-310 of the Education Article.

**Insurance Administration, Maryland**

**Proposed Regulation**

**DLS Control No. 16-243**

**Maryland Insurance Administration:**

**Long-Term Care:**

**Long-Term Care Partnership:** COMAR 31.14.03.06

According to the administration, the purpose of this action is to make a technical change to Regulation .06B(2)(a) under COMAR 31.14.03 Long-Term Care Partnership. Effective June 6, 2016 the minimum annual compound inflation benefit for new Long-Term Care Partnership policies was changed in COMAR 31.14.03.05F(1)(a)(i) from three percent to one percent. This technical amendment updates COMAR 31.14.03.06B(2)(a) consistent with that change.

**Proposed Regulation**

**DLS Control No. 16-244**

**Maryland Insurance Administration:**

**Health Insurance - General:**

**Uniform Claims Forms:** COMAR 31.10.11.14

According to the administration, the purpose of this action is to eliminate Regulation .14C(2). This subsection requires the commissioner to annually provide to the public a summary of information contained in claims data filings submitted by third-party payors. The statutory authority for this chapter does not require this report to be created. Interested persons may request this information through the Maryland Public Information Act.

**Proposed Regulations**

**DLS Control No. 16-247**

**Maryland Insurance Administration:**

**Property and Casualty Insurance:**

**Anti-arson Application:** COMAR 31.08.01.02

**Toll-Free Telephone Number:** COMAR 31.08.02.00, .02

**Notices of Cancellation, Nonrenewal, Premium Increase, and Reduction in Coverage:** COMAR 31.08.03.00

**Lead Poisoning:** COMAR 31.08.08.07

**Group Self-Insurance for Workers' Compensation:**

COMAR 31.08.09.00, .06, .07, .08, .13, .14

**Medical Professional Insurers Online Claim Survey Reporting Requirements:**

COMAR 31.08.10.02

According to the administration, the purpose of this action is to make changes consistent with the Maryland Insurance Administration's Evaluation Report for 31.08 under the Regulatory Review and Evaluation Act. Specifically, this proposed action:

- Amends Regulation .02 of 31.08.01 to replace references to “brokers or agents” with the term “producer,” which includes both brokers and agents;
- Removes an unnecessary statute in the enabling authority for COMAR 31.08.02; amends Regulation .02B and C of this Chapter to replace the term “agents” with “insurance producers,” which includes both agents and brokers as used in §2-109 of the Insurance Article; and amends Regulation .02C to replace the term “companies” with “insurers,” which is broader and mirrors the statutory language in § 2-109;
- Adds § 27-609 of the Insurance Article to the enabling authority for COMAR 31.08.03, as this statute is the basis for certain information contained in the forms in Regulations .07 and .08 of this Chapter;
- Amends an inaccurate cross reference in Regulation .07A of COMAR 31.08.08;
- Adds §§ 2-108, 9-102 and 27-501 of the Insurance Article to the enabling authority for COMAR 31.08.09, as these statutes are the basis for certain provisions contained in this Chapter; amends Regulation .06 of this Chapter to remove obsolete language; amends Regulation .07 to remove the specified attachment point and provide for any attachment point, subject to the Commissioner’s review, and to require each group to provide the Commissioner with a copy of its excess insurance policy in specified circumstances; amends Regulation .08 to clarify certain information to be included in a group's application for a Certificate of Authority, add new sections to this regulation to specify certain authorities retained by the Commissioner, and clarify that the required submission of a group's financial statements to demonstrate its combined net assets may be comprised of the financial reports of one or more members; amends Regulation .13 to require an annual submission of a group’s excess insurance policy and an annual report signed by one of the group’s executive officers concerning the financial condition of each member; and amends Regulation .14 to prohibit rebates and suspensions of premium contributions when a group is insolvent or when such rebates or suspensions of premium contributions otherwise causes the group to be considered in a financially hazardous condition; and
- Amends Regulation .02 under COMAR 31.02.10 to provide consistency with the corresponding statutory authority for this Chapter, §4-405 of the Insurance Article.

**Emergency/Proposed Regulations**

**DLS Control No. 16-251**

**Maryland Insurance Administration:**

**Miscellaneous:**

**Privacy of Consumer Financial and Health Information: COMAR 31.16.08.06**

According to the administration, emergency status is necessary, as this regulation is presently inconsistent with 2015 amendments to section 503 of the federal Gramm-Leach-Bliley Act (15 U.S.C. 6803). Federal law provides for an exception to certain annual notice requirements that COMAR does not presently recognize. Emergency adoption will confer an immediate benefit upon insurers and producers (licensees of the MIA) by providing language relieving them from having to send their customers an annual privacy notice where they comply with other requirements concerning any disclosure of personally identifiable financial information and only in situations where the licensee’s practices and policies regarding disclosure have not changed

since the last notice sent to their customer. The emergency action will also confer a benefit upon consumers relieving them from receiving duplicative annual notices, such that only new or changed notices will be received.