

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Maryland Department of Health
(DLS Control No. 24-016)**

Overview and Legal and Fiscal Impact

This regulation enables the Maryland Health Care Commission (MHCC) to impose financial penalties for violations of the procedural regulations governing certificates of need (CONs) and other MHCC approvals. The regulation also modifies the grounds for penalties MHCC may impose relating to procedural regulations governing CONs and other MHCC approvals.

The regulation presents no legal issues of concern. However, additional comments have been included in the *Technical Corrections and Special Notes* section of the Legal Analysis below for the consideration of the Joint Committee on Administrative, Executive, and Legislative Review.

To the extent that MHCC imposes financial penalties for violations of procedural regulations, MHCC special fund revenues increase by a minimal amount beginning in fiscal 2025.

Regulation of COMAR Affected

Maryland Department of Health:

Maryland Health Care Commission: Certificate of Need for Health Care Facilities:
COMAR 10.24.01.12

Legal Analysis

Summary of Regulation

The regulation authorizes MHCC to impose financial penalties for violations of the procedural regulations governing CONs and other MHCC approvals. The financial penalties may not exceed (1) \$100 per day for each day the violation continues for failure to timely provide a semiannual progress report; or (2) 1 percent of the approved budget for any other violation. There are several factors MHCC must consider when determining the amount of any financial penalty, including, for example, the willfulness of the improper conduct.

The regulation also clarifies existing and establishes new grounds for penalties related to violations of procedural regulations governing CONs and other MHCC approvals. More specifically, the regulation authorizes MHCC to impose financial penalties, withdraw a CON or other MHCC approval (or both) for: (1) making a material misrepresentation upon which MHCC relied in issuing first use approval; (2) failure to obtain approval for project changes after approval,

as specified; and (3) failure to obtain approval before first using of any portion of a facility or service developed under a CON or other MHCC approval, as specified.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

MHCC cites §§ 19-109(a)(1) and (a)(8), 19-116(b), 19-118(d), 19-120, 19-120.1, and 19-126, *et seq.* of the Health – General Article as statutory authority for the regulation. Section 19-109(a)(1) authorizes MHCC to adopt rules and regulations to carry out the provisions of law for which it is responsible. Section 19-109(a)(8) authorizes MHCC, subject to the limitation of the relevant subtitle, to exercise any other power that is reasonably necessary to carry out the purposes of the relevant subtitle, including adopting regulations that set reasonable deadlines for filing of information or reports required under the relevant subtitle and impose reasonable penalties for failure to file information or reports as required. Section 19-116(b) authorizes MHCC to impose a penalty of up to \$100 per day for failure of a health care facility to provide required specified information in an application for a CON, and establishes factors that must be considered when determining the amount of the penalty. Section 19-120(c) requires MHCC to adopt rules and regulations for applying for and issuing CONs, and establishes when a CON is required. The remaining cited authority is not relevant to the regulation.

The relevant cited authority is correct and complete. The regulation complies with the legislative intent of the law.

Technical Corrections and Special Notes

The Department of Legislative Services notes that while the Statement of Purpose encompasses the amendments pertaining to financial penalties, it does not describe the modifications to the grounds for penalties MHCC may impose relating to procedural regulations governing CONs and other MHCC approvals.

Fiscal Analysis

To the extent that MHCC imposes financial penalties for violations of procedural regulations, MHCC special fund revenues increase by a minimal amount beginning in fiscal 2025.

Agency Estimate of Projected Fiscal Impact

The regulation authorizes MHCC to impose financial penalties on health care facilities that hold a CON for noncompliance with procedural regulations. MHCC does not anticipate a significant increase in special fund revenues as a result of the imposition of penalties and advises that the regulation has a minimal fiscal impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

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

Agency Estimate of Projected Small Business Impact

MHCC advises that the regulation has minimal economic impact on small businesses in the State. The Department of Legislative Services concurs.

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