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# Maryland Register


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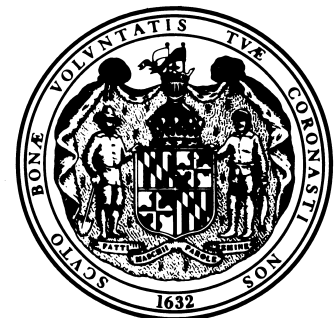
Governor  
Judiciary  
Regulations  
Errata  
Special Documents  
General Notices



Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before January 11, 2010, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of January 11, 2010.

Gail S. Klakring  
Acting Administrator, Division of State Documents  
Office of the Secretary of State



# Information About the Maryland Register and COMAR

## MARYLAND REGISTER

The Maryland Register is an official State publication published every other week throughout the year. A cumulative index is published quarterly.

The Maryland Register is the temporary supplement to the Code of Maryland Regulations. Any change to the text of regulations published in COMAR, whether by adoption, amendment, repeal, or emergency action, must first be published in the Register.

The following information is also published regularly in the Register:

- Governor's Executive Orders
- Governor's Appointments to State Offices
- Attorney General's Opinions in full text
- Open Meetings Compliance Board Opinions in full text
- State Ethics Commission Opinions in full text
- Court Rules
- District Court Administrative Memoranda
- Courts of Appeal Hearing Calendars
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- Other documents considered to be in the public interest

## CITATION TO THE MARYLAND REGISTER

The Maryland Register is cited by volume, issue, page number, and date. Example:

- 19:8 Md. R. 815—817 (April 17, 1992) refers to Volume 19, Issue 8, pages 815—817 of the Maryland Register issued on April 17, 1992.

## CODE OF MARYLAND REGULATIONS (COMAR)

COMAR is the official compilation of all regulations issued by agencies of the State of Maryland. The Maryland Register is COMAR's temporary supplement, printing all changes to regulations as soon as they occur. At least once annually, the changes to regulations printed in the Maryland Register are incorporated into COMAR by means of permanent supplements.

## CITATION TO COMAR REGULATIONS

COMAR regulations are cited by title number, subtitle number, chapter number, and regulation number. Example: **COMAR 10.08.01.03** refers to Title 10, Subtitle 08, Chapter 01, Regulation 03.

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Incorporation by reference is a legal device by which a document is made part of COMAR simply by referring to it. While the text of an incorporated document does not appear in COMAR, the provisions of the incorporated document are as fully enforceable as any other COMAR regulation. Each regulation that proposes to incorporate a document is identified in the *Maryland Register* by an Editor's Note. The Cumulative Table of COMAR Regulations Adopted, Amended or Repealed, found online, also identifies each regulation incorporating a document. Documents incorporated by reference are available for inspection in various depository libraries located throughout the State and at the Division of State Documents. These depositories are listed in the first issue of the *Maryland Register* published each year. For further information, call (410) 974-2486.

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Each COMAR title has a Table of Contents and Index. An Administrative History at the end of every COMAR chapter gives information about past changes to regulations. To determine if there have been any subsequent changes, check the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" which is found online at [www.dsd.state.md.us/CumulativeIndex.pdf](http://www.dsd.state.md.us/CumulativeIndex.pdf). This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call (410) 974-2486.

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Maryland citizens and other interested persons may participate in the process by which administrative regulations are adopted, amended, or repealed, and may also initiate the process by which the validity and applicability of regulations is determined.

Listed below are some of the ways in which citizens may participate (references are to State Government Article (SG), Annotated Code of Maryland):

- By submitting data or views on proposed regulations either orally or in writing, to the proposing agency (see "Opportunity for Public Comment" at the beginning of all regulations appearing in the Proposed Action on Regulations section of the Maryland Register). (See SG, §10-112)
- By petitioning an agency to adopt, amend, or repeal regulations. The agency must respond to the petition. (See SG §10-123)
- By petitioning an agency to issue a declaratory ruling with respect to how any regulation, order, or statute enforced by the agency applies. (SG, Title 10, Subtitle 3)
- By petitioning the circuit court for a declaratory judgment on the validity of a regulation when it appears that the regulation interferes with or impairs the legal rights or privileges of the petitioner. (SG, §10-125)
- By inspecting a certified copy of any document filed with the Division of State Documents for publication in the Maryland Register. (See SG, §7-213)

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## REGULATIONS CODIFICATION SYSTEM

Under the COMAR codification system, every regulation is assigned a unique four-part codification number by which it may be identified. All regulations found in COMAR are arranged by title. Each title is divided into numbered subtitles, each subtitle is divided into numbered chapters, and each chapter into numbered regulations.

**09.12.01.02D(2)(c)(iii)**

Title	Chapter	Section	Paragraph	Subparagraph
Subtitle		Regulation	Subsection	

A regulation may be divided into lettered sections, a section divided into numbered subsections, a subsection divided into lettered paragraphs, and a paragraph divided into numbered subparagraphs.

## Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed

This table, previously printed in the Maryland Register lists the regulations, by COMAR title, that have been adopted, amended, or repealed in the Maryland Register since the regulations were originally published or last supplemented in the Code of Maryland Regulations (COMAR). The table is no longer printed here but may be found on the Division of State Documents website at [www.dsd.state.md.us](http://www.dsd.state.md.us).

## Table of Pending Proposals

The table below lists proposed changes to COMAR regulations. The proposed changes are listed by their COMAR number, followed by a citation to that issue of the Maryland Register in which the proposal appeared. Errata pertaining to proposed regulations are listed, followed by "(err.)". Regulations referencing a document incorporated by reference are followed by "(ibr)". None of the proposals listed in this table have been adopted. A list of adopted proposals appears in the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed.

### 02 OFFICE OF THE ATTORNEY GENERAL

**02.01.11.01—05** • 36:24 Md. R. 1861 (11-20-09)

### 03 COMPTROLLER OF THE TREASURY

**03.02.01.03,,11,,20—22** • 37:3 Md. R. 179 (1-29-10)

**03.02.06.01—04** • 37:3 Md. R. 181 (1-29-10)

**03.04.02.06** • 37:3 Md. R. 182 (1-29-10)

**03.04.03.04,,06** • 37:3 Md. R. 182 (1-29-10)

**03.04.07.02** • 37:3 Md. R. 182 (1-29-10)

**03.04.08.02** • 37:3 Md. R. 182 (1-29-10)

**03.04.09.01** • 37:3 Md. R. 182 (1-29-10)

**03.04.12.08** • 37:3 Md. R. 182 (1-29-10)

**03.04.13.01,,02** • 37:3 Md. R. 182 (1-29-10)

### 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

**05.04.01.03—,18,,20** • 37:2 Md. R. 70 (1-15-10)

**05.04.09.08** • 37:3 Md. R. 183 (1-29-10)

**05.04.11.09** • 37:3 Md. R. 183 (1-29-10)

**05.05.01.15** • 37:3 Md. R. 183 (1-29-10)

**05.05.02.06** • 37:3 Md. R. 183 (1-29-10)

**05.05.05.14** • 37:3 Md. R. 183 (1-29-10)

**05.05.07.11** • 37:3 Md. R. 183 (1-29-10)

**05.05.08.11** • 37:3 Md. R. 183 (1-29-10)

**05.05.09.08** • 37:3 Md. R. 183 (1-29-10)

**05.06.01.10** • 37:3 Md. R. 183 (1-29-10)

**05.06.04.07** • 37:3 Md. R. 183 (1-29-10)

**05.13.01.07** • 37:3 Md. R. 183 (1-29-10)

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 33.07.04.01,.02 • 37:3 Md. R. 280 (1-29-10)  
 33.07.05.01—.03 • 37:3 Md. R. 280 (1-29-10)

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## CLOSING DATES and ISSUE DATES through JULY 30, 2010

ISSUE DATE	Emergency and Proposed Regulations*		
	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.	
<b>February 12</b>	January 25	February 3	February 1
<b>February 26**</b>	February 8	February 17	February 12
<b>March 12</b>	February 22	March 3	March 1
<b>March 26</b>	March 8	March 17	March 15
<b>April 9</b>	March 22	March 31	March 29
<b>April 23</b>	April 5	April 14	April 12
<b>May 7</b>	April 19	April 28	April 26
<b>May 21</b>	May 3	May 12	May 10
<b>June 4**</b>	May 17	May 25	May 21
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<b>July 2</b>	June 14	June 23	June 21
<b>July 16**</b>	June 28	July 7	July 2
<b>July 30</b>	July 12	July 21	July 19

\*Due date for documents containing 25 to 60 pages—48 hours before date shown

Due date for documents exceeding 60 pages—1 week before date shown

\*\*Note closing date changes

\*\*\*Note issue date change

**The regular closing date for Proposals and Emergencies is Monday.**

## EXECUTIVE ORDER 01.01.2010.01

### **Declaration of Continuing Emergency: Medical Services Staffing for Maryland's H1N1 Influenza Vaccination Campaign**

WHEREAS, In response to the H1N1 Influenza Pandemic, Maryland public health officials have initiated a Statewide vaccination campaign in accordance with Executive Order 01.01.2009.15;

WHEREAS, The provisions of Executive Order 01.01.2009.15 were renewed for an additional period of 30 days via Executive Order 01.01.2009.19;

WHEREAS, The initial phase of this campaign was successful in providing immunizations to many members of the high-risk population groups identified by the Centers for Disease Control and Prevention;

WHEREAS, The availability of additional vaccine supplies now permits the expansion of services to members of the general public; and

WHEREAS, There continues to be an urgent need to assure adequate staffing for vaccination sites across the State and to make full use of all trained health care providers who are willing and able to support the vaccination campaign.

NOW THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, PURSUANT TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE OF THE ANNOTATED CODE OF MARYLAND, DECLARE THAT A STATE OF EMERGENCY CONTINUES TO EXIST WITHIN THE STATE OF MARYLAND. I HEREBY AUTHORIZE THE SECRETARY OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE MARYLAND EMERGENCY MANAGEMENT AGENCY OR OTHER APPROPRIATE STATE AUTHORITY, DURING THIS EMERGENCY PERIOD, TO ENGAGE, DEPLOY AND COORDINATE ALL AVAILABALE RESOURCES, AND I PROCLAIM THE FOLLOWING EFFECTIVE IMMEDIATELY:

A. The provisions of Executive Order 01.01.2009.15 shall be and hereby are renewed for an additional period of 30 days.

B. The authorization for certain health care providers to assist in the Statewide vaccination campaign set forth in the foregoing Executive Order shall remain in full force and effect.

Given Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 8th day of January, 2010.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[10-03-57]

## COURT OF APPEALS OF MARYLAND

### RULES ORDER

WHEREAS, in response to a fiscal emergency of extraordinary proportions that the State of Maryland is experiencing, this Court approved amendments to Rule 16-104 on December 15, 2009, which reduced the number of annual leave days that a judge would earn in calendar year 2010 from 27 to 17; and

WHEREAS, in its consideration of the amendments to Rule 16-104, it became evident to this Court that the Judiciary's policy on sick leave that can be taken by judges would need to be clarified in light of the amendments; and

WHEREAS, the most efficacious way for this Court to clarify the sick leave policy for judges would be for it to amend Rule 16-104 so as to establish general standards and criteria and to delegate to the Chief Judge of the Court of Appeals the responsibility to promulgate an Administrative Order setting forth the specific, implementing details; now, therefore,

This Court having considered proposed amendments to Rule 16-104, Judicial Leave, at an open meeting, notice of which was posted as prescribed by law, and finding that an emergency does in fact exist with reference to the proposed Rule change, it is this 12th day of January, 2010,

ORDERED, by the Court of Appeals of Maryland, that the amendment to Rule 16-104 be, and it hereby is, adopted in the form attached to this Order; and it is further

ORDERED, that the Rule change hereby adopted by this Court shall govern the courts of this State and shall take effect and apply on and after January 12, 2010, and it is further

ORDERED, that a copy of this Order be published in the next issue of the *Maryland Register*.

Robert M. Bell  
Glenn T. Harrell, Jr.  
Lynne A. Battaglia  
Clayton Greene, Jr.  
Joseph F. Murphy, Jr.  
Sally D. Adkins  
Mary Ellen Barbera

Filed: January 12, 2010

BESSIE M. DECKER  
Clerk  
Court of Appeals of Maryland

### MARYLAND RULES OF PROCEDURE TITLE 16 — COURTS, JUDGES, AND ATTORNEYS CHAPTER 100 — COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-104 to modify the provisions concerning sick leave and to add a Committee note, as follows:  
Rule 16-104. JUDICIAL LEAVE

...

#### d. Sick Leave

In addition to the annual leave and personal leave as provided for above in this Rule, a judge: (1) is entitled to unlimited sick leave with respect to for any period of the judge's illness or disability that precludes the judge necessitating absence from performing judicial duties of the judge; and (2)

may take a reasonable amount of sick leave (A) for the judge's medical appointments; (B) due to the illness or disability of family members; or (C) due to the birth, adoption, or foster care placement of a child with the judge, all subject to the definitions, conditions, limitations, and procedures in an Administrative Order issued by the Chief Judge of the Court of Appeals. Sick leave used for the purposes allowed by subsection (2) of this section, together with annual leave and personal leave taken for these purposes, may not exceed an aggregate total of 12 weeks for the calendar year. The Chief Judge of the Court of Appeals shall issue an Administrative Order implementing this section. The Order shall be posted on the Judiciary's website and otherwise made publicly available. Sick leave may not be charged against annual or personal leave.

Committee note: The authority of the Commission on Judicial Disabilities with respect to a disability as defined in Rule 16-803 is not affected by this Rule.

...

[10-03-47]

### STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

#### NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Sixty-Third Report to the Court of Appeals, transmitting thereby a proposed new Code of Conduct for Judicial Appointees (Rule 16-814) and proposed new Rules 2-513, 3-513, 6-153, and 16-206 and proposed amendments to Rules 2-516, 2-611, 3-611, 4-216, 4-262, 4-263, 4-331, 4-342, 4-345, 4-347, 4-348, 4-501, 6-402, 6-403, 6-405, 6-416, 13-702, 16-816, 16-824, and 16-1006. Also transmitted are the Style Subcommittee's restyling of the Ideals of Professionalism that have been promulgated by the Professionalism Commission.

The Committee's One Hundred Sixty-Third Report and the proposed new rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and forward on or before March 1, 2010 any written comments they may wish to make to:

Sandra F. Haines, Esq.  
Reporter, Rules Committee  
2011-D Commerce Park Drive  
Annapolis, Maryland 21401

BESSIE M. DECKER  
Clerk  
Court of Appeals of Maryland

January 13, 2010

The Honorable Robert M. Bell,  
Chief Judge  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia  
The Honorable Clayton Greene, Jr.  
The Honorable Joseph F. Murphy, Jr.  
The Honorable Sally D. Adkins  
The Honorable Mary Ellen Barbera,  
Judges

The Court of Appeals of Maryland  
Robert C. Murphy Courts of Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Sixty-Third Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report is a comprehensive one, comprising eight categories of proposed changes.

**Category One** consists of a proposed new Code of Conduct for Judicial Appointees. On October 5, 2009, the Court considered and, subject to certain reservations, gave tentative approval to a new Code of Judicial Conduct and directed the Rules Committee to prepare and submit to the Court a parallel Code for judicial appointees. The proposed Code submitted with this Report follows the general format and uses the language of the pending Code of Judicial Conduct, to the extent relevant.

Transmitted with this Report, but not submitted as part of it, is the Code of Judicial Conduct, as tentatively approved by the Court, with one proposed addition to Comment [1] to Rule 4.3 and several relatively minor style changes. Those amendments are proposed for inclusion in the Code of Conduct for Judicial Appointees as well, so that the two Codes will be consistent. The Committee suggests the Court consider them first in the context of the Code of Judicial Conduct.

There is one matter of substance involving the Code for Judicial Appointees to which special mention is appropriate, that dealing with the scope or application of the Code. The current Code defines “judicial appointee” as a District Court Commissioner and an auditor, examiner, master, or referee appointed by a court. The Code thus applies to all persons in any of those positions but to no one else. In preparing the new Code, the Committee considered three questions on which it could find little guidance:

FIRST, in response to a questionnaire, the Committee was apprised by the county administrative judges that the courts are not currently appointing referees and thus opted to propose deletion of that category. It appears that the duties once assigned to referees can be performed by masters or auditors or, in situations under Code, Corporations and Associations Article, §3-210, appraisers appointed by the court. If the Court accepts that recommendation, it should consider deleting the reference to referees in Rule 16-816 (Financial Disclosure Statements) as well.

SECOND: Rules 2-541, 2-542, and 2-543 provide for two classes of master, examiner, and auditor — standing and special. A special master, examiner, or auditor is appointed for a “particular action,” and the issue is whether, or to what extent, those appointees should be subject to the provisions applicable to their “standing” counterparts.

THIRD: there are a number of persons, other than masters, examiners, and auditors, who are appointed by judges or courts to do judicially related work, *e.g.*, trust clerks, commissioners appointed in partition cases to value and divide the property, trustees, receivers, ADR practitioners, guardians of various kinds, and persons appointed to serve on property review boards under Code, Transportation Article §8-327. As with the special masters, examiners, and auditors, the question is whether, or to what extent, any of those persons should be subject to provisions applicable to the other categories of judicial appointees.

The current Code applies generally to *all* masters, examiners, and auditors but exempts those appointees serving only part-time from *some* of the restrictions applicable to full-time appointees. Subject to certain limitations and conditions, they may practice law and engage in business pursuits forbidden to the full-time appointees. Understanding that the issue is one of judicial policy for the Court to resolve, the Committee respectfully recommends the following approach, which is provided for in the “APPLICATION” provision of the proposed Code:

(1) District Court Commissioners and full-time standing masters, examiners, and auditors would be subject to the entire Code.

(2) Part-time standing masters, examiners, and auditors would be subject to the entire Code except as otherwise provided in specific Rules relating to certain extra-official activities.

(3) Special masters, examiners, and auditors, during the periods they serve as such, would be subject only to the Rules in Sections 1 and 2, to Rule 3.5, and to such of the Comments to those Rules as are relevant, given the limited duration of their service. The Rules that would be applicable are those relating to the conduct of the judicial appointees in their official work — fairness, impartiality, integrity, diligence, *ex parte* communications, etc. On request of a party or the appointing authority, however, those appointees would be required to disclose any interests or activities covered by the other Rules that might be ground for recusal.

(4) The Code should not be applicable to any of the other categories of persons appointed by courts or judges. The Committee’s view is that (i) trust clerks perform advisory clerical functions and do not make decisions having any legal effect; (ii) partition case commissioners take a specific oath that they will faithfully perform their duties and can be easily monitored; (iii) court-appointed ADR practitioners generally do not perform judicial or quasi-judicial functions; and (iv) receivers, trustees, and guardians also do not generally exercise judicial or quasi-judicial functions and, in any event, are subject to the duties and limitations emanating from their status as fiduciaries.

(5) The issue regarding property review boards is more problematic. The members of those boards perform duties akin to masters, but it is not clear whether those boards, although under the jurisdiction of the court, are really Executive Branch agencies, and there is the lurking issue of whether judicial appointments to such boards (especially of farmers and engineers) are permitted by Article 8 of the Maryland Declaration of Rights. The Committee notes that under Code, Transportation Article, §8-329, appeals from the board’s decision are heard *de novo* and are treated as original actions for condemnation. Once an “appeal” is filed, the board’s decision ceases to have any effect. *See Volz v. State Roads Commission*, 221 Md. 209 (1959).

**Category Two** consists of proposed new Rule 16-206, dealing with problem-solving programs, currently operating in the Circuit and District courts. The proposed Rule was developed with the active collaboration of Gray Barton, Executive Director of the Office of Problem-Solving Courts; Judges Kathleen Gallogly Cox, Jamey Hueston, and Neil Axel; representatives from the Office of the Public Defender; and other consultants. It establishes certain basic standards for those programs but permits the operating details

to be specified in a plan proposed by the county administrative judge of a Circuit Court or the Chief Judge of the District Court. The Rule requires the plans to be consistent with general protocols and requirements set forth in an Administrative Order of the Chief Judge of the Court of Appeals and it requires approval by the Court before a plan may be implemented. The Rule would provide a specific legal basis for these programs and thus mesh with proposed Rule 2.9 of the Code of Judicial Conduct.

**Category Three** consists of the Style Subcommittee's re-styling of the Ideals of Professionalism, as requested by the Court. It is recommended that the Ideals be placed immediately after the Maryland Lawyers' Rules of Professional Conduct.

**Category Four** consists of amendments to Rules 2-611 and 3-611. These revisions implement recommendations made by the Chief Judge of the District Court and the Attorney General's Office to provide greater protection against unlawfully obtained confessed judgments. The major structural change is that clerks no longer would be able to enter confessed judgments routinely without judicial direction.

**Category Five** consists of proposed new Rules 2-513 and 3-513, permitting, under certain conditions, testimony in civil cases to be provided remotely by telephone. These Rules were recommended by the Judicial Administration Section Council of the Maryland State Bar Association. The Committee currently is looking more broadly at authorizing certain judicial proceedings to be conducted by electronic means but is persuaded that Rules on telephonically transmitted testimony can stand alone for the present.

**Category Six** consists of amendments to Rules 4-262 and 4-263, dealing with discovery in criminal cases. A new definition of "provide" is designed to provide greater clarity in how discovery is to be implemented. A proposed amendment to Rule 4-262 would require that requests for discovery in District Court cases — for non-*Brady* material — be in writing.

**Category Seven** consists of two sets of amendments to Rule 4-331 (Motions for New Trial). One set is designed to make that Rule more compatible with Rules 4-701 through 4-711 (the new post conviction DNA testing Rules) and avoid parallel proceedings, by allowing the court to require a person filing a motion for new trial under Rule 4-331 based on DNA evidence subject to Code, Criminal Procedure Article, §8-202 to exhaust the remedies provided by Rules 4-701 through 4-711. The second set permits the court to dispense with a hearing on a motion filed under section (c)(1) of the Rule, which requires that the motion be filed within one year of certain events, if the motion was not timely filed. The Committee is planning to look more broadly at Rule 4-331, but recommends the adoption of these proposals now.

**Category Eight** consists of new Rule 6-153 and amendments to Rules 2-516, 4-216, 4-342, 4-345, 4-347, 4-348, 4-501, 6-402, 6-403, 6-405, 6-416, 13-702, 16-824, and 16-1006 designed primarily either to provide greater clarity to those Rules or to conform them to recent legislation.

For the further guidance of the Court and the public, following each proposed rules change is a Reporter's Note describing in further detail the reasons for the proposal and any changes that would be effected in current law or practice. *We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or*

*interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,  
Alan M. Wilner  
Chair

Linda M. Schuett  
Vice Chair

AMW/LMS:cdc

## MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES 2010

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#### PREAMBLE

This Code of Conduct for Judicial Appointees governs the conduct of **judicial appointees**. It is patterned after the Maryland Code of Judicial Conduct (MCJC) set forth in Rule 16-813, and the provisions of this Code should be read in a consistent manner with parallel provisions in the MCJC.

This Code sets forth minimum standards and is not intended as a limitation on an appointing authority's power to impose additional requirements.

#### DEFINITIONS

##### (a) Judicial Appointee

"**Judicial appointee**" means:

(1) an auditor, examiner, or master appointed by a court of this State; and

Cross reference: See Rules 2-541, 2-542, and 2-543.

(2) a District Court commissioner appointed pursuant to Article IV, §41G of the Maryland Constitution.

**Source:** With style changes this definition is derived from the former Code of Conduct for Judicial Appointees.

**Cross reference:** For the definition of "judicial appointee" for purposes of filing a financial disclosure statement, see Rule 16-816.

##### (b) Member of Judicial Appointee's Family

"**Member of judicial appointee's family**" means a

spouse, **domestic partner**, child, grandchild, parent, grandparent, or other relative or person with whom the **judicial appointee** maintains a close familial relationship.

**Source:** This definition is derived from Section B-108 of the MCJC.

##### (c) Member of Judicial Appointee's Household

"**Member of judicial appointee's household**"

means:

(1) if sharing the **judicial appointee's** legal residence, the **judicial appointee's** spouse, **domestic partner**, child, ward, financially dependent parent, or other financially dependent relative; or

(2) the **judicial appointee's** spouse, **domestic partner**, child, ward, parent, or other relative over whose financial affairs the **judicial appointee** has legal or actual control.

**Source:** This definition is derived from Section B-109 of the MCJC.

##### (d) Other Definitions

As to a **judicial appointee**, "**domestic partner**," "**fiduciary**," "**gift**," "**impartial, impartiality, and impartially**," "**impending matter**," "**independence**," "**knowingly, knowledge, known, and knows**," "**pending matter**," "**significant financial interest**," and "**third degree of relationship**" have the meanings set forth, respectively, in Sections B-101, B-102, B-103, B-104, B-105, B-106, B-107, B-110, and B-111, and B-112 of the MCJC.

#### APPLICATION

(a) District Court Commissioners and Full-time Standing Masters, Examiners, and Auditors

This Code applies in its entirety to District Court Commissioners and full-time standing masters, examiners, and auditors.

(b) Part-time Standing Masters, Examiners, and Auditors

Except as otherwise provided in a specific Rule, this Code applies in its entirety to part-time standing masters, examiners, and auditors.

(c) Special Masters, Examiners, and Auditors

During the period of their serving in that capacity, special masters, examiners, and auditors are subject only to the Rules in Sections 1 and 2, to Rule 3.5, and to such of the Comments to those Rules as are relevant, given the limited duration of the service. Special masters, examiners, and auditors shall, however, on request of a party or the appointing authority, disclose any extra-official activity or interests covered by the other Rules in this Code that may be grounds for a motion to recuse under Rule 2.11.

**Source:** This provision is new.

**Committee note:** District Court Commissioners, despite the number of hours they may actually be on duty, are regarded as full-time judicial appointees. Auditors, examiners, and masters may fall into several categories.

Under Code, Courts Article, §2-102, all courts may appoint a master, examiner, or auditor in "a specific proceeding." Under Code, Courts Article, §2-501, the judges of the circuit courts have more general authority to employ masters, examiners, and auditors. That authority is extended and made more specific in Rules 2-541 (masters), 2-542 (examiners), and 2-543 (auditors).

Rules 2-541, 2-542, and 2-543 create two categories of masters, examiners, and auditors — standing and special. Standing masters, examiners, and auditors are employed to deal with whatever cases are referred to them on an on-going basis, but their employment by the court may be full-time or part-time. Special masters, examiners, and auditors are appointed "for a particular action," and thus, like appointments made under Courts Article, § 2-102, their service is limited to the particular action or proceeding. During that period of service, however, it is possible that they may work full-time or part-time, as necessary or as directed by the court. A master, examiner, or auditor may therefore be standing full-time, standing part-time, special full-time, or special part-time.

This Code, in its entirety, applies to District Court Commissioners and full-time standing masters, examiners, and auditors. Because their employment by the court is full-time and more-or-less permanent, it is appropriate to limit some of their extra-official activities in the same manner as judges. Standing masters, examiners, and auditors who work only part-time but whose employment is also more-or-less permanent and who handle whatever cases are referred to them also need to be subject to most of the requirements

and limitations in the Code, but it is impractical to preclude them from engaging in other lawful remunerative activities, such as practicing law or accounting or providing ADR services. They are subject to the entire Code, except as provided in specific Rules. Special masters, examiners, and auditors, appointed for only one proceeding, are subject to those Rules governing such things as fairness, impartiality, integrity, and diligence during the period of their service, but it is impractical and unnecessary to subject them across-the-board to the Rules in Section 4 or most of the Rules in Section 3 (political and extra-official activities), provided that, upon request of a party or the appointing authority, they disclose any activity or interest that may be cause for recusal.

## SECTION 1.

### RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

#### Rule 1.1. COMPLIANCE WITH THE LAW

A **judicial appointee** shall comply with the law, including the Rules in this Code of Conduct for Judicial Appointees that are applicable.

**Source:** This Rule is derived from Rule 1.1 of the MCJC.

#### Rule 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

(a) A **judicial appointee** shall act at all times in a manner that promotes public confidence in the **independence**, integrity, and **impartiality** of the judiciary.

(b) A **judicial appointee** shall avoid conduct that would create in reasonable minds a perception of impropriety.

#### COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a **judicial appointee**.

[2] A **judicial appointee** should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by this Code.

[3] Conduct that compromises or appears to compromise the **independence**, integrity, and **impartiality** of a **judicial appointee** undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] **Judicial appointees** should participate in activities that promote ethical conduct among **judicial appointees** and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, and this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the **judicial appointee's** ability to carry out the responsibilities of the **judicial appointee's** position with competence, **impartiality**, and integrity is impaired.

[6] A **judicial appointee** should, where appropriate, initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the **judicial appointee** must act in a manner consistent with this Code.

**Source:** This Rule is derived from Rule 1.2 of the MCJC.

#### Rule 1.3. AVOIDING LENDING THE PRESTIGE OF THE POSITION

A **judicial appointee** shall not lend the prestige of the **judicial appointee's** position to advance the personal or

economic interests of the **judicial appointee** or others, or allow others to do so.

#### COMMENT

[1] It is improper for a **judicial appointee** to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a **judicial appointee** to allude to his or her official status to gain favorable treatment in encounters with traffic officials. Similarly, a **judicial appointee** must not use an official letterhead to gain an advantage in conducting his or her personal business.

[2] A **judicial appointee** may provide a reference or recommendation for an individual based upon the **judicial appointee's** personal knowledge. The **judicial appointee** may use an official letterhead if the **judicial appointee** indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the **judicial appointee's** position.

[3] **Judicial appointees** may participate in the process of judicial selection by cooperating with appointing authorities and screening committees and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when **judicial appointees** write or contribute to publications of for-profit entities, whether related or unrelated to the law. A **judicial appointee** should not permit anyone associated with the publication of such materials to exploit the **judicial appointee's** position in a manner that violates this Rule or other applicable law. In contracts for publication of a **judicial appointee's** writing, the **judicial appointee** should retain sufficient control over the advertising to avoid such exploitation.

**Source:** This Rule is derived from Rule 1.3 of MCJC

## SECTION 2.

### RULES GOVERNING THE PERFORMANCE OF A JUDICIAL APPOINTEE'S DUTIES

#### Rule 2.1. GIVING PRECEDENCE TO THE DUTIES OF POSITION

The duties of the **judicial appointee's** position, as prescribed by law and by the conditions and requirements imposed by the appointing authority, shall take precedence over a **judicial appointee's** personal and extra-official activities.

#### COMMENT

[1] To ensure that **judicial appointees** are available to fulfill their official duties, **judicial appointees** must conduct their personal and extra-official activities to minimize the risk of conflicts that would result in frequent disqualification.

[2] Although it is not a duty of a **judicial appointee's** position unless prescribed by law, **judicial appointees** are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

[3] With respect to time devoted to personal and extra-official activities, this Rule must be construed in a reasonable manner. Family obligations, illnesses, emergencies, and other permissible extra-official activities may require a **judicial appointee's** immediate attention. Attending to those obligations and situations, temporary in nature, is not prohibited by this Rule and should be dealt with in accordance with applicable vacation, sick leave, and administra-



tive leave policies. Judicial appointees must not permit their other activities to interfere with their ability to perform the duties of their public position.

**Source:** This Rule is derived from Rule 2.1 of MCJC. The last sentence of Comment [3] is new.

### **Rule 2.2. IMPARTIALITY AND FAIRNESS**

A **judicial appointee** shall uphold and apply the law and shall perform all duties of the position impartially and fairly.

#### COMMENT

[1] To ensure **impartiality** and fairness to all parties, a **judicial appointee** must be objective and open-minded.

[2] Although each **judicial appointee** comes to the position with a unique background and personal philosophy, a **judicial appointee** must interpret and apply the law without regard to whether the **judicial appointee** approves or disapproves of the law in question.

[3] When applying and interpreting the law, a **judicial appointee** sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a **judicial appointee** to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

**Cross reference:** See Rule 2.6 Comment [2].

**Source:** This Rule is derived from Rule 2.2 of MCJC.

### **Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT**

(a) A **judicial appointee** shall perform the duties of the position, including administrative duties, without bias or prejudice.

(b) A **judicial appointee** shall not, in the performance of the **judicial appointee's** duties, by words or conduct, manifest bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. A **judicial appointee** shall require lawyers in proceedings before the **judicial appointee**, court staff, court officials, and others subject to the **judicial appointee's** direction and control to refrain from similar conduct.

(c) The restrictions of paragraph (b) do not preclude **judicial appointees** or lawyers from making legitimate references to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

#### COMMENT

[1] A **judicial appointee** who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] A **judicial appointee** must avoid conduct that may reasonably be perceived as prejudiced or biased. Examples of manifestations of bias or prejudice include epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based upon stereotypes, threatening, intimidating, or hostile acts, suggestions of connections between race, ethnicity, or nationality and crime, and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, the media, and others an appearance of bias or prejudice.

[3] Harassment, as referred to in paragraph (b), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender,

religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

**Source:** This Rule is derived from Rule 2.3 of the MCJC

### **Rule 2.4. EXTERNAL INFLUENCES ON PROFESSIONAL CONDUCT**

(a) A **judicial appointee** shall not be swayed by public clamor or fear of criticism.

(b) A **judicial appointee** shall not permit family, social, political, financial, or other interests or relationships to influence the **judicial appointee's** official conduct or judgment.

(c) A **judicial appointee** shall not convey or permit others to convey the impression that any person or organization is in a position to influence the **judicial appointee**.

#### COMMENT

[1] An independent judiciary requires that **judicial appointees** decide matters according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the **judicial appointee's** friends or family. Confidence in the judiciary is eroded if a **judicial appointee's** decision-making is perceived to be subject to inappropriate outside influences.

**Source:** This Rule is derived from Rule 2.4 of the MCJC.

### **Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION**

(a) A **judicial appointee** shall perform the duties of the position competently, diligently, promptly, and without favoritism or nepotism.

(b) A **judicial appointee** shall cooperate with judges, other **judicial appointees** of the court, and court officials in the administration of court business.

(c) A **judicial appointee** shall not wilfully fail to comply with administrative rules or reasonable directives of a judge or other **judicial appointee** with supervisory authority.

#### COMMENT

[1] Competence in the performance of a **judicial appointee's** duties requires the legal **knowledge**, skill, thoroughness, and preparation reasonably necessary to perform the responsibilities of the position.

[2] A **judicial appointee** should seek the necessary docket time, court staff, expertise, and resources to discharge the **judicial appointee's** responsibilities.

[3] Prompt disposition of the court's business requires a **judicial appointee** to devote adequate time to the position in accordance with the requirements imposed by the appointing authority, to be punctual in attendance and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the **judicial appointee** to that end.

[4] In disposing of matters promptly and efficiently, a **judicial appointee** must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A **judicial appointee** should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

**Source:** This Rule is derived from Rule 2.5 of the MCJC.

**Rule 2.6. ENSURING THE RIGHT TO BE HEARD**

(a) A **judicial appointee** shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(b) A **judicial appointee** may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

**COMMENT**

[1] The right to be heard is an essential component of a fair and **impartial** system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] Increasingly, **judicial appointees** have before them self-represented litigants whose lack of **knowledge** about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A **judicial appointee's** obligation under Rule 2.2 to remain fair and **impartial** does not preclude the **judicial appointee** from making reasonable accommodations to protect a self-represented litigant's right to be heard, so long as those accommodations do not give the self-represented litigant an unfair advantage. This Rule does not require a **judicial appointee** to make any particular accommodation.

[3] Settlement conferences and referrals to alternative dispute resolution may play an important role in the administration of justice. A **judicial appointee** may play an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. Among the factors that a **judicial appointee** should consider when deciding upon an appropriate settlement practice for a case are (a) whether the parties have requested or voluntarily consented to a certain level of participation by the **judicial appointee** in settlement discussions, (b) whether the parties and their counsel are relatively sophisticated in legal matters, (c) whether the case will be tried by a judge or a jury, (d) whether the parties participate with their counsel in settlement discussions, (e) whether any parties are self-represented, and (f) the nature of the proceeding.

[4] **Judicial appointees** must be mindful of the effect settlement discussions can have, not only on their objectivity and **impartiality**, but also on the appearance of their objectivity and **impartiality**. A **judicial appointee** should keep in mind the effect that the **judicial appointee's** participation in settlement discussions may have on both the **judicial appointee's** own views of the case and the perceptions of the lawyers and the parties if the case remains with the **judicial appointee** after settlement efforts are unsuccessful. Despite a **judicial appointee's** best efforts, there may be instances when information obtained during settlement discussions could influence a **judicial appointee's** decision making during proceedings, and, in such instances, the **judicial appointee** should consider whether disqualification may be appropriate. *See* Rule 2.11 (a)(1).

**Source:** This Rule is derived from Rule 2.6 of the MCJC.

**Rule 2.7. RESPONSIBILITY TO DECIDE**

A **judicial appointee** shall hear and decide matters assigned to the **judicial appointee** unless recusal is appropriate.

**COMMENT**

[1] Although there are times when disqualification is necessary or appropriate to protect the rights of litigants and

preserve public confidence in the **independence**, integrity, and **impartiality** of the judiciary, **judicial appointees** must be available to decide matters that come before them. The dignity of the court, the **judicial appointee's** respect for fulfillment of the duties of the position, and a proper concern for the burdens that may be imposed upon the judges and the **judicial appointee's** colleagues require that a **judicial appointee** not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

**Source:** This Rule is derived from Rule 2.7 of the MCJC.

**Rule 2.8. DECORUM AND DEMEANOR**

(a) A **judicial appointee** shall require order and decorum in proceedings before the **judicial appointee**.

(b) A **judicial appointee** shall be patient, dignified, and courteous to litigants, witnesses, lawyers, court staff, court officials, and others with whom the **judicial appointee** deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the **judicial appointee's** direction and control.

**COMMENT**

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. **Judicial appointees** can be efficient and businesslike while being patient and deliberate.

**Source:** This Rule is derived from Rule 2.8 of the MCJC, except that Comments [2] and [3] were deleted.

**Rule 2.9. EX PARTE COMMUNICATIONS**

(a) A **judicial appointee** shall not initiate, permit, or consider ex parte communications, or consider other communications made to the **judicial appointee** out of the presence of the parties or their lawyers, concerning a **pending or impending matter**, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the **judicial appointee** reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the **judicial appointee** makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A **judicial appointee** may obtain the advice of a disinterested expert on the law applicable to a proceeding if the **judicial appointee** (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords the parties a reasonable opportunity to respond.

(3) A **judicial appointee** may consult with court staff and court officials whose functions are to aid the **judicial appointee** in carrying out the **judicial appointee's** adjudicative responsibilities, or with a judge, provided the **judicial appointee** does not make a decision based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A **judicial appointee** may, with the consent of the parties, confer separately with the parties and their lawyers as part of a settlement conference conducted pursuant to Rules 17-102 (h) and 17-105 (b).

(5) A **judicial appointee** may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(6) When serving in a problem-solving program of a Circuit Court or the District Court pursuant to Rule 16-206, a **judicial appointee** may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have expressly consented to those protocols.

(b) If a **judicial appointee** inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the **judicial appointee** shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) Unless expressly authorized by law, a **judicial appointee** shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

Cross reference: See Code, Courts Article, §2-607 (c)(2) authorizing District Court Commissioners to conduct investigations and inquiries into the circumstances of matters presented to determine if probable cause exists for the issuance of a charging document warrant, or criminal summons.

(d) A **judicial appointee** shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the **judicial appointee's** direction and control.

#### COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a **judicial appointee**.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is self-represented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A **judicial appointee** may consult with judges or other **judicial appointees** on **pending matters**, including a retired judge approved for recall, but must avoid ex parte discussions of a case with judges or **judicial appointees** who have previously been disqualified from hearing the matter or with a judge whom the **judicial appointee** **knows** has been assigned to hear exceptions to the **judicial appointee's** recommendation in the matter.

[5] The prohibition against a **judicial appointee** investigating the facts in a matter extends to information available in all mediums, including electronic.

[6] A **judicial appointee** may consult ethics advisory committees, outside counsel, or legal experts concerning the **judicial appointee's** compliance with this Code. Such consultations are not subject to the restrictions of paragraph (a)(2).

**Source:** This Rule is derived in part from Rule 2.9 of the MCJC.

#### **Rule 2.10. STATEMENTS ON PENDING AND IMPENDING CASES**

(a) A **judicial appointee** shall abstain from public comment that relates to a proceeding **pending or impending** in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding and

shall require similar abstention on the part of court personnel subject to the **judicial appointee's** direction and control. This Rule does not prohibit a **judicial appointee** from making public statements in the course of official duties or from explaining for public information the procedures of the court.

(b) With respect to a case, controversy, or issue that is likely to come before the court, a **judicial appointee** shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office.

(c) Notwithstanding the restrictions in paragraphs (a) and (b), a **judicial appointee** may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the **judicial appointee** is a litigant in a non-official capacity.

#### COMMENT

[1] This Rule's restrictions are essential to the maintenance of the **independence**, integrity, and **impartiality** of the judiciary.

[2] This Rule does not prohibit a **judicial appointee** from commenting on proceedings in which the **judicial appointee** is a litigant in a personal capacity. In cases in which the **judicial appointee** is a litigant in an official capacity, such as a writ of mandamus, the **judicial appointee** must not comment publicly.

[3] "Court personnel," as used in paragraph (a) of this Rule does not include the lawyers in a proceeding before the **judicial appointee**. The comment of lawyers in this regard is governed by Rule 3.6 of the Maryland Lawyers' Rules of Professional Conduct.

**Source:** This Rule is derived from Rule 2.10 of the MCJC.

#### **Rule 2.11. DISQUALIFICATION**

(a) A **judicial appointee** shall disqualify himself or herself in any proceeding in which the **judicial appointee's impartiality** might reasonably be questioned, including the following circumstances:

(1) The **judicial appointee** has a personal bias or prejudice concerning a party or a party's lawyer, or personal **knowledge** of facts that are in dispute in the proceeding.

(2) The **judicial appointee** **knows** that the **judicial appointee**, the **judicial appointee's** spouse or **domestic partner**, or a person within the third degree of relationship to either of them, or the spouse or **domestic partner** of such a person:

(A) is a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) is a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(D) is likely to be a material witness in the proceeding.

(3) The **judicial appointee** **knows** that he or she, individually or as a **fiduciary**, or any of the following persons has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding:

(A) the **judicial appointee's** spouse or **domestic partner**;

(B) a person within the third degree of relationship to the **judicial appointee**; or

(C) any other **member of the judicial appointee's family** residing in the **judicial appointee's** household.

(4) The **judicial appointee**, while a **judicial appointee** or as an applicant for the position, has made a public statement, other than in a court proceeding, decision, or opinion, that commits or appears to commit the **judicial appointee** to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The **judicial appointee**:

(A) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association; or

(B) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy.

(6) If the **judicial appointee** is part-time, the **judicial appointee** or any attorney with whom the **judicial appointee** is associated represents a party or otherwise has an interest in the proceeding.

(b) A **judicial appointee** shall keep informed about the **judicial appointee's** personal and **fiduciary** economic interests and make a reasonable effort to keep informed about the personal economic interests of the **judicial appointee's** spouse and minor children residing in the **judicial appointee's** household.

(c) A **judicial appointee** subject to disqualification under this Rule, other than for bias or prejudice under paragraph (a)(1), may disclose on the record the basis of the **judicial appointee's** disqualification and may ask the parties and their lawyers to consider, outside the presence of the **judicial appointee** and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the **judicial appointee** or court personnel, that the **judicial appointee** should not be disqualified, the **judicial appointee** may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

#### COMMENT

[1] Under this Rule, a **judicial appointee** is disqualified whenever the **judicial appointee's impartiality** might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (a)(1) through (5) apply. In this Rule, "disqualification" has the same meaning as "recusal."

[2] A **judicial appointee's** obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] A **judicial appointee** should disclose on the record information that the **judicial appointee** believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the **judicial appointee** believes there is no basis for disqualification.

[4] This procedure gives the parties an opportunity to waive the recusal if the **judicial appointee** agrees. The **judicial appointee** may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the **judicial appointee**. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a **judicial appointee** may request that all parties and their lawyers sign a waiver agreement.

**Source:** This Rule is derived from Rule 2.11 of the MCJC, except that Comment [3] was deleted. Paragraph (a)(6) is derived from Canon 3D (1)(b)(ii) of the former Code of Conduct for Judicial Appointees.

#### Rule 2.12. SUPERVISORY DUTIES

(a) A **judicial appointee** shall require court staff, court officials, and others subject to the **judicial appointee's** direction and control to act in a manner consistent with the **judicial appointee's** obligations under this Code.

(b) A **judicial appointee** with supervisory authority for the performance of other **judicial appointees** shall take reasonable measures to ensure that those **judicial appointees** properly discharge their **official** responsibilities, including the prompt disposition of matters before them.

#### COMMENT

[1] A **judicial appointee** is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the **judicial appointee's** direction or control. A **judicial appointee** may not direct court personnel to engage in conduct on the **judicial appointee's** behalf or as the **judicial appointee's** representative when such conduct would violate this Code if undertaken by the **judicial appointee**.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a **judicial appointee** with supervisory authority must take the steps needed to ensure that **judicial appointees** under his or her supervision administer their workloads promptly.

**Source:** This Rule is derived from Rule 2.12 (a) of the MCJC.

#### Rule 2.13. ADMINISTRATIVE APPOINTMENTS

(a) In making **official** administrative appointments, a **judicial appointee**:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, personal benefit, and unnecessary appointments.

(b) A **judicial appointee** shall not approve compensation of appointees beyond the fair value of services rendered.

#### COMMENT

[1] Consent by the parties to an appointment or an award of compensation does not relieve the **judicial appointee** of the obligation prescribed by paragraph (a).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship to either the **judicial appointee** or the **judicial appointee's** spouse or **domestic partner**, or the spouse or **domestic partner** of such relative.

[3] Rule 2.13 does not apply to the appointment or compensation of an employee in the private office of a part-time **judicial appointee**.

**Source:** This Rule is derived from Rule 2.13 of the MCJC, except that the first sentence of Comment [1] was deleted.

#### Rule 2.14. DISABILITY AND IMPAIRMENT OF OTHERS

A **judicial appointee** having a reasonable belief that the performance of a lawyer, a judge, or another **judicial appointee** is impaired by drugs or alcohol or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

#### COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge, **judicial appointee**, or lawyer in question to address the problem and prevent

harm to the justice system. Depending upon the circumstances, appropriate action may include speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a **judicial appointee's** responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the **judicial appointee's** attention, however, the **judicial appointee** may be required to take other action, such as reporting the impaired judge, **judicial appointee**, or lawyer to the appropriate authority, agency, or body. *See* Rule 2.15.

**Source:** This Rule is derived from Rule 2.14 of the MCJC.

#### **Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT**

(a) A **judicial appointee** shall take or initiate appropriate corrective measures with respect to the unprofessional conduct of a judge, another **judicial appointee**, or a lawyer.

(b) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee**:

(1) shall inform the Commission on Judicial Disabilities of facts **known** to the **judicial appointee** that raise a substantial question as to a judge's fitness for office;

(2) shall inform the Attorney Grievance Commission of facts **known** to the **judicial appointee** that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and

(3) shall inform the appointing authority of facts **known** to the **judicial appointee** that raise a substantial question as to another **judicial appointee's** fitness for the position.

(c) Acts of a **judicial appointee** required or permitted by paragraphs (a) or (b) of this Rule shall be absolutely privileged.

#### **COMMENT**

[1] Permitting a **judicial appointee** to take "corrective" measures gives the **judicial appointee** a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge, lawyer, or other **judicial appointee** who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

**Source:** This Rule is derived from Rule 2.15 of the MCJC, except that paragraph (b)(3) is new.

#### **Rule 2.16. COOPERATION WITH DISCIPLINARY AUTHORITIES**

(a) A **judicial appointee** shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(b) A **judicial appointee** shall not retaliate, directly or indirectly, against a person **known** or suspected to have assisted or cooperated with an investigation of a judge, another **judicial appointee**, or a lawyer.

#### **COMMENT**

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (a) of this Rule, instills confidence in **judicial ap-**

**pointees'** commitment to the integrity of the judicial system and the protection of the public.

**Source:** This Rule is derived from Rule 2.16 of the MCJC.

### **SECTION 3.**

#### **RULES GOVERNING EXTRA-OFFICIAL ACTIVITY**

#### **Rule 3.1. EXTRA-OFFICIAL ACTIVITIES IN GENERAL**

A **judicial appointee** may engage in extra-official activities, except as prohibited by law or this Code. When engaging in extra-official activities, a **judicial appointee** shall not:

(a) participate in activities that will interfere with the proper performance of the **judicial appointee's** official duties;

(b) participate in activities that will lead to frequent disqualification of the **judicial appointee**;

(c) participate in activities that would appear to a reasonable person to undermine the **judicial appointee's independence**, integrity, or impartiality;

(d) engage in conduct that would appear to a reasonable person to be coercive; or

(e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

#### **COMMENT**

[1] To the extent that time permits, and **independence** and **impartiality** are not compromised, **judicial appointees** are encouraged to engage in appropriate extra-official activities. Judicial appointees are uniquely qualified to engage in extra-official activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, **judicial appointees** are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extra-official activities not conducted for profit, even when the activities do not involve the law. *See* Rule 3.7.

[2] Participation in both law-related and other extra-official activities helps integrate **judicial appointees** into their communities and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a **judicial appointee**, even outside the **judicial appointee's** official actions, are likely to appear to a reasonable person to call into question the **judicial appointee's** integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a **judicial appointee's** extra-official activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. *See* Rule 3.6.

[4] While engaged in permitted extra-official activities, **judicial appointees** must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a **judicial appointee's** solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7 (a), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the **judicial appointee**.

**Source:** This Rule is derived from Rule 3.1 of the MCJC.

### **Rule 3.2. APPEARANCES BEFORE GOVERNMENTAL BODIES AND CONSULTATION WITH GOVERNMENT OFFICIALS**

A **judicial appointee** shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

- (a) in connection with matters concerning the law, the legal system, or the administration of justice;
- (b) in connection with matters about which the **judicial appointee** acquired knowledge or expertise in the course of the **judicial appointee's** official duties;
- (c) when the **judicial appointee** is acting self-represented in a matter involving the **judicial appointee's** legal or economic interests, or when the **judicial appointee** is acting in a **fiduciary** capacity; or
- (d) as permitted by Rule 3.10.

#### **COMMENT**

[1] **Judicial appointees** possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, **judicial appointees** must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting them from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on **pending and impending matters**, and Rule 3.1 (c), prohibiting **judicial appointees** from engaging in extra-official activities that would appear to a reasonable person to undermine the **judicial appointee's independence**, integrity, or **impartiality**.

[3] In general, it would be an unnecessary and unfair burden to prohibit **judicial appointees** from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, **judicial appointees** must not refer to their official positions, and must otherwise exercise caution to avoid using the prestige of their position.

**Source:** This Rule is derived from Rule 3.2 of the MCJC.

### **Rule 3.3. TESTIFYING AS A CHARACTER WITNESS**

A **judicial appointee** shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

#### **COMMENT**

[1] A **judicial appointee** who, without being subpoenaed, testifies as a character witness abuses the prestige of the position to advance the interests of another. *See* Rule 1.3. Except in unusual circumstances where the demands of justice require, a **judicial appointee** should discourage a party from requiring the **judicial appointee** to testify as a character witness.

**Source:** This Rule is derived from Rule 3.3 of the MCJC.

### **Rule 3.4. APPOINTMENT TO GOVERNMENTAL POSITIONS**

A **judicial appointee** shall not accept appointment to: (a) a Judicial Nominating Commission or (b) any other governmental committee, board, commission, or position, unless it is one that concerns the law, the legal system, or the administration of justice.

#### **COMMENT**

[1] Rule 3.4 implicitly acknowledges the value of **judicial appointees** accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a **judicial appointee** should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the **judicial appointee's** time commitments, and giving due regard to the requirements of the **independence** and **impartiality** of the judiciary.

[2] A **judicial appointee** may not accept a governmental appointment that could interfere with the effectiveness and **independence** of the judiciary, assume or discharge an executive or legislative power, or hold another "office" under the Constitution or laws of the United States or the State of Maryland. *See* Maryland Declaration of Rights, Articles 8, 33, and 35.

[3] A **judicial appointee** may represent his or her country, State, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

**Committee note:** Although the Judicial Ethics Committee has concluded that the Supremacy Clause of the U.S. Constitution may allow service in reserve components of the armed forces that otherwise might be precluded under this Code, such as service as a judge advocate or military judge, the Attorney General, rather than the Judicial Ethics Committee, traditionally has rendered opinions with regard to issues of dual or incompatible offices.

**Source:** This Rule is derived from Rule 3.4 of the MCJC.

### **Rule 3.5. USE OF NONPUBLIC INFORMATION**

A **judicial appointee** shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the **judicial appointee's** official duties. Nonpublic information means information that is not available to the public. It may include information that is (a) sealed or shielded pursuant to law or court order, (b) impounded, (c) communicated in camera, or (d) offered in grand jury proceedings, pre-sentencing reports, dependency cases, or psychiatric reports.

#### **COMMENT**

[1] In the course of performing official duties, a **judicial appointee** may acquire information of commercial or other value that is unavailable to the public. The **judicial appointee** must not reveal or use such information for personal gain or for any purpose unrelated to his or her official duties.

[2] This Rule is not intended, however, to affect a **judicial appointee's** ability to act on information as necessary to protect the health or safety of the **judicial appointee** or a member of a **judicial appointee's family**, court personnel, or other judicial officers.

**Source:** This Rule is derived from Rule 3.5 of the MCJC.

### **Rule 3.6. AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS**

(a) A **judicial appointee** shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(b) A **judicial appointee** shall not use the benefits or facilities of an organization if the **judicial appointee knows** or should **know** that the organization practices invidious

discrimination on one or more of the bases identified in paragraph (a). A **judicial appointee's** attendance at an event in a facility of an organization that the **judicial appointee** is not permitted to join is not a violation of this Rule when the **judicial appointee's** attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

#### COMMENT

[1] A **judicial appointee's** public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and **impartiality** of the judiciary. A **judicial appointee's** membership in an organization that practices invidious discrimination creates the perception that the **judicial appointee's impartiality** is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which **judicial appointees** should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a **judicial appointee** learns that an organization to which the **judicial appointee** belongs engages in invidious discrimination, the **judicial appointee** must resign immediately from the organization.

[4] A **judicial appointee's** membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

**Source:** This Rule is derived from Rule 3.6 of the MCJC.

#### **RULE 3.7. PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR CIVIC ORGANIZATIONS AND ACTIVITIES**

(a) Subject to the requirements of Rules 3.1 and 3.6, a **judicial appointee** may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from **members of the judicial appointee's family**, judges, or other **judicial appointees** over whom the **judicial appointee** does not exercise supervisory authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the **judicial appointee** may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the **judicial appointee**; or

(B) will frequently be engaged in adversary proceedings in the appointing court.

(b) A **judicial appointee** may encourage but not coerce lawyers to provide pro bono publico legal services.

#### COMMENT

[1] The activities permitted by paragraph (a) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a **judicial appointee** should consider whether the membership and purposes of the organization or the nature of the **judicial appointee's** participation in or association with the organization would conflict with the **judicial appointee's** obligation to refrain from activities that reflect adversely upon a **judicial appointee's independence**, integrity, and **impartiality**.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (a)(4). It is also generally permissible for a **judicial appointee** to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse of the prestige of the **judicial appointee's** position.

[4] Identification of a **judicial appointee's** position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the **judicial appointee's** title or position if comparable designations are used for other persons.

[5] A **judicial appointee** may promote access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the **judicial appointee** does not employ coercion, or abuse the prestige of the **judicial appointee's** position. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

**Source:** This Rule is derived from Rule 3.7 of the MCJC.

#### **RULE 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS**

(a) Except as provided in paragraph (b), a **judicial appointee** may hold a **fiduciary** position, such as executor,

administrator, trustee, guardian, attorney in fact, or other personal representative.

(b) A **judicial appointee** shall not hold a **fiduciary** position if:

(1) doing so would interfere with the proper performance of the **judicial appointee's** official duties; or

(2) the **fiduciary** will likely be engaged in proceedings that would ordinarily come before the **judicial appointee**, or if the estate, trust, or ward becomes involved in adversary proceedings in the appointing court.

(c) A **judicial appointee** acting in a **fiduciary** capacity shall be subject to the same restrictions on engaging in financial activities that apply to a **judicial appointee** personally.

(d) If a person who is serving in a **fiduciary** position becomes a **judicial appointee**, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a **judicial appointee**.

#### COMMENT

[1] A **judicial appointee** should recognize that other restrictions imposed by this Code may conflict with the **judicial appointee's** obligations as a **fiduciary**; in such circumstances, a **judicial appointee** should resign as **fiduciary**. For example, serving as a **fiduciary** might require frequent disqualification of a **judicial appointee** under Rule 2.11 because a **judicial appointee** is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

**Source:** This Rule is derived in part from Rule 3.8 of the MCJC but permits **judicial appointees** to serve as a **fiduciary** in situations in which a judge is not permitted to serve.

#### **Rule 3.9. SERVICE AS ARBITRATOR OR MEDIATOR**

(a) A full-time **judicial appointee** shall not act as an arbitrator or a mediator or perform other alternative dispute resolution functions apart from the **judicial appointee's** official duties unless expressly authorized by law.

(b) A part-time **judicial appointee** may conduct alternative dispute resolution (ADR) proceedings in a private capacity only if the **judicial appointee**:

(1) conducts no ADR proceedings in a private capacity relating to a matter currently assigned to the **judicial appointee**;

(2) discloses to the parties in each matter assigned to the **judicial appointee**:

(A) the **judicial appointee's** professional association with any entity that is engaged in offering ADR services;

(B) whether the **judicial appointee** is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the matter assigned to the **judicial appointee**; and

(C) any negotiations or agreements for future ADR services involving the **judicial appointee** and any of the parties or counsel to the case; and

(3) except if there is no disqualification by agreement as permitted by Rule 2.11 (c), does not participate in a matter in which the **judicial appointee's impartiality** might reasonably be questioned because of ADR services engaged in or offered by the **judicial appointee**.

#### COMMENT

[1] This Rule does not prohibit a part-time **judicial appointee** from participating in arbitration, mediation, or

other alternative dispute resolution services in a private capacity. See, however, Rule 3.1.

[2] Masters may conduct settlement conferences pursuant to Rules 17-102 (h) and 17-105 (b) as part of assigned official duties. Full-time **judicial appointees** shall not otherwise render dispute resolution services, whether or not for economic gain, unless expressly authorized by law.

**Source:** This Rule is derived in part from Canon 4F of the former Code of Conduct for Judicial Appointees.

#### **Rule 3.10. PRACTICE OF LAW**

(a) In General

Except as expressly allowed by this Rule, a **judicial appointee** shall not practice law.

(b) Exceptions

(1) A **judicial appointee** may act self-represented in a matter involving the **judicial appointee** or the **judicial appointee's** interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judicial appointee's family**.

(2) To the extent not expressly prohibited by law or by the appointing authority and subject to other applicable provisions of this Code, a part-time **judicial appointee** who is a lawyer may practice law, provided that:

(A) the **judicial appointee** shall not use his or her position to further the **judicial appointee's** success in the practice of law; and

(B) the **judicial appointee** shall not practice or appear as an individual in a matter involving the **judicial appointee** or the **judicial appointee's** interest in the appointing court.

(c) Prior to assuming official duties, a full-time **judicial appointee** shall enter into an agreement for payments relating to the **judicial appointee's** former law practice. A payment period limited to a maximum of five years is presumptively reasonable.

#### COMMENT

[1] A **judicial appointee** may act self-represented in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A **judicial appointee** must not use the prestige of office to advance the **judicial appointee's** personal or family interests. See Rule 1.3.

**Source:** This Rule is derived from Canon 4G of the former Maryland Code of Conduct for Judicial Appointees.

#### **Rule 3.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES**

(a) A **judicial appointee** may hold and manage investments of the **judicial appointee** and **members of the judicial appointee's family**.

(b)(1) Except as permitted by Rule 3.7, a **judicial appointee** shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a **judicial appointee** may manage or participate in:

(A) a business closely held by the **judicial appointee** or **members of the judicial appointee's family**; or

(B) a business entity primarily engaged in investment of the financial resources of the **judicial appointee** or **members of the judicial appointee's family**.

(2) This section does not apply to a part-time **judicial appointee**.

(c) A **judicial appointee** shall not engage in financial activities permitted under paragraphs (a) or (b) if they will:



(1) interfere with the proper performance of the **judicial appointee's** official duties;

(2) lead to frequent disqualification of the **judicial appointee**;

(3) involve the **judicial appointee** in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the appointing court; or

(4) result in violation of other provisions of this Code.

#### COMMENT

[1] **Judicial appointees** are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extra-official activities, is subject to the requirements of this Code. For example, it would be improper for a **judicial appointee** to spend so much time on business activities that it interferes with the performance of the **judicial appointee's** official duties. See Rule 2.1. Similarly, it would be improper for a **judicial appointee** to use his or her official title or conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the **judicial appointee** must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

**Source:** This Rule is derived from Rule 3.11 of the MCJC.

#### **Rule 3.12. COMPENSATION FOR EXTRA-OFFICIAL ACTIVITIES**

A **judicial appointee** may accept reasonable compensation for extra-official activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the **judicial appointee's independence, integrity, or impartiality.**

#### COMMENT

[1] A **judicial appointee** is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The **judicial appointee** should be mindful, however, that official duties must take precedence over other activities.

[2] Compensation derived from extra-official activities may be subject to public reporting. See Rule 3.15.

**Source:** This Rule is derived from Rule 3.12 of the MCJC.

#### **Rule 3.13. ACCEPTANCE OF GIFTS, LOANS, BEQUESTS, BENEFITS, OR OTHER THINGS OF VALUE**

(a) A **judicial appointee** shall not accept any **gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judicial appointee's independence, integrity, or impartiality.**

(b) Unless otherwise prohibited by law, or by paragraph (a), a **judicial appointee** may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) **gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judicial appointee**

would in any event require disqualification of the **judicial appointee** under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not **judicial appointees**;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not **judicial appointees**;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not **judicial appointees**, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) **gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judicial appointee** residing in the **judicial appointee's** household, but that incidentally benefit the **judicial appointee.**

(9) **gifts** incident to a public testimonial;

(10) invitations to the **judicial appointee** and the **judicial appointee's** spouse, **domestic partner,** or guest to attend without charge:

(A) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(B) an event associated with any of the **judicial appointee's** educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to persons who are not **judicial appointees** who are engaged in similar ways in the activity as is the **judicial appointee.**

#### COMMENT

[1] Whenever a **judicial appointee** accepts a **gift** or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the **judicial appointee's** decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (b) identifies circumstances in which the risk that the acceptance would appear to undermine the **judicial appointee's independence, integrity, or impartiality** is low. As the value of the benefit or the likelihood that the source of the benefit will appear before the **judicial appointee** increases, the **judicial appointee** is prohibited under paragraph (a) from accepting the **gift.**

[2] **Gift-giving** between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the **judicial appointee's independence, integrity, or impartiality** has been compromised. In addition, when the appearance of friends or relatives in a case would require the **judicial appointee's** disqualification under Rule 2.11, there would be no opportunity for a **gift** to influence the **judicial appointee's** decision-making. Paragraph (b)(2) places no restrictions upon the ability of a **judicial appointee** to accept **gifts** or other things of value from friends or relatives under these circumstances.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, ei-

ther in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A **judicial appointee** may freely accept such benefits if they are available to the general public, or if the **judicial appointee** qualifies for the special price or discount according to the same criteria as are applied to persons who are not **judicial appointees**. As an example, loans provided at generally prevailing interest rates are not **gifts**, but a **judicial appointee** could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the **judicial appointee** also possesses.

[4] Rule 3.13 applies only to acceptance of **gifts** or other things of value by a **judicial appointee**. Nonetheless, if a **gift** or other benefit is given to the **judicial appointee's** spouse, **domestic partner**, or **member of the judicial appointee's family** residing in the **judicial appointee's** household, it may be viewed as an attempt to evade Rule 3.13 and influence the **judicial appointee** indirectly. Where the **gift** or benefit is being made primarily to such other persons, and the **judicial appointee** is merely an incidental beneficiary, this concern is reduced. A **judicial appointee** should, however, remind **family and household members** of the restrictions imposed upon **judicial appointees** and urge them to take these restrictions into account when making decisions about accepting such **gifts** or benefits.

[5] Rule 3.13 does not apply to contributions to a **judicial appointee's** campaign for judicial office.

**Source:** This Rule is derived from Rule 3.13 of the MCJC.

#### **Rule 3.14. REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES**

(a) Unless otherwise prohibited by Rule 3.1, Rule 3.13 (a), or other law, a **judicial appointee** may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the **judicial appointee's** employing entity, if the expenses or charges are associated with the **judicial appointee's** participation in extra-official activities permitted by this Code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the **judicial appointee** and, when appropriate to the occasion, by the **judicial appointee's** spouse, **domestic partner**, or guest.

#### COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. **Judicial appointees** are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extra-official activities is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain **judicial appointees** to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A **judicial appointee's** decision whether to accept reimbursement of ex-

penses or a waiver or partial waiver of fees or charges in connection with these or other extra-official activities must be based upon an assessment of all the circumstances. The **judicial appointee** must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A **judicial appointee** must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the **judicial appointee's independence**, integrity, or **impartiality**. The factors that a **judicial appointee** should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation **pending or impending** before the **judicial appointee**, or to matters that are likely to come before the **judicial appointee**;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the **judicial appointee's** court, thus possibly requiring disqualification of the **judicial appointee** under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges or **judicial appointees**.

**Source:** This Rule is derived from Rule 3.14 of the MCJC.

#### **Rule 3.15. REPORTING REQUIREMENTS**

A **judicial appointee** must accurately complete and timely file an annual Statement of Financial Interests on the form and as otherwise prescribed by the Court of Appeals pursuant to Md. Rule 16-816.

**Source:** This Rule is derived from Md. Rule 16-816.

### **SECTION 4.**

#### **RULES GOVERNING POLITICAL ACTIVITY**

##### **Rule 4.1. DEFINITIONS**

###### **(a) Applicant**

(1) "**Applicant**" means a **judicial appointee** who has applied for appointment by the Governor to a judicial office.

(2) A **judicial appointee** becomes an **applicant** when the **judicial appointee** files an application with a judicial nominating commission and remains an **applicant** until the Governor makes an appointment to that judicial office unless, prior to that time, the **judicial appointee** formally withdraws the application.

(3) If the **judicial appointee** is not appointed but, pursuant to an Executive Order of the Governor or other law, remains eligible for appointment to another judicial office without a further application to or recommendation

from the judicial nominating commission, the **judicial appointee** remains an **applicant** until the Governor makes an appointment to that other judicial office, unless, prior to that time, the **judicial appointee** formally withdraws the application.

**Cross reference:** Executive Order 01.01.2008.04

(b) **Candidate for election**

(1) “**Candidate for election**” means a **judicial appointee** who seeks initial election to a Circuit Court or an Orphans’ Court.

(2) A **judicial appointee** becomes a **candidate for election** on the date on which the **judicial appointee** files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office.

(3) A **judicial appointee** who becomes a **candidate for election** under paragraph (c) remains a **candidate for election** until the general election for the office unless, prior to that time, the **judicial appointee** files a formal withdrawal of candidacy in accordance with Maryland election laws.

(c) **Political organization**

“**Political organization**” includes a political party, a political committee, and a partisan organization, as those terms are defined in Maryland Code, Election Article, §1-101.

**Source:** These definitions are derived from Rule 4.1 of the MCJC.

**Rule 4.2. POLITICAL CONDUCT OF JUDICIAL AP-  
POINTEE WHO IS NOT A CANDIDATE**

(a) A **judicial appointee** who is not a **candidate for election** shall not engage in any partisan political activity.

(b) A **judicial appointee** shall resign when the **judicial appointee** becomes a candidate for a non-judicial office, except that a **judicial appointee** may continue to hold the appointed position while a **candidate for election** as a delegate to a Maryland Constitutional Convention.

**Source:** Rule 4.2 is derived from Rule 4.2 of the MCJC.

**Rule 4.3. POLITICAL CONDUCT OF APPLICANT**

An **applicant** for judicial office may initiate communications or contact with a judicial nominating commission or its members and may seek endorsements for the appointment from any other person or organization, other than a **political organization**.

**COMMENT**

[1] An **applicant** may initiate communications or contact with a judicial nominating commission or its members, but neither the commission nor its members are obliged to respond to such communications or contact. **Applicants** may appear for interviews before the commission and may respond to questions or inquiries from commission members, and they may solicit endorsements from other persons or organizations (other than a **political organization**). If they have a question regarding the procedure or their application, they may contact the Administrative Office of the Courts, which acts as a secretariat to the commissions. This Rule is not intended to permit an applicant to give anything of value to a commission member or to any member of a commission member’s immediate family.

**Source:** This Rule is derived from Rule 4.3 of the MCJC.

**Rule 4.4. POLITICAL CONDUCT OF CANDIDATE  
FOR ELECTION**

**A candidate for election:**

(a) shall comply with all applicable election laws and regulations;

(b) shall act at all times in a manner consistent with the **independence**, integrity, and **impartiality** of the judiciary and maintain the dignity appropriate to judicial office;

(c) subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy, and, in that regard:

(1) may publicly endorse or oppose candidates for the same judicial office;

(2) may attend or purchase tickets for dinners or other events sponsored by a **political organization** or a candidate for public office; and

(3) may seek, accept, and use endorsements from any person or organization; but

(4) shall not act as a leader in or hold office in a **political organization**, make a speech for a candidate or political organization, or publicly endorse a candidate for non-judicial office.

(d) As to statements and materials made or produced during a campaign:

(1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the **candidate** or by the **candidate’s** campaign committee or other authorized agents;

(2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the **candidate** activities that the **candidate** is prohibited from doing by this Rule;

(3) with respect to a case, controversy, or issue that is likely to come before the **judicial appointee**, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office;

(4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter **pending or impending** in any court;

(5) shall not **knowingly**, or with reckless disregard for the truth, misrepresent the **candidate’s** identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;

(6) may speak or write on behalf of the **candidate’s** candidacy through any medium, including advertisements, websites, or other campaign literature; and

(7) subject to paragraph (b) of this Rule, may respond to a personal attack or an attack on the **candidate’s** record.

**COMMENT**

[1] This Rule is derived from Rule 4.4 of the MCJC.

[2] Rule 4.4 (a) requires **candidates for election** to comply with all election laws and regulations. The Election Law Article of the Maryland Code contains laws governing candidates, campaign contributions, finance, expenditures, and reporting. Those requirements are supplemented by regulations adopted by the State Board of Elections. **Candidates for election** must become familiar with applicable laws and regulations and comply with them.

[3] Public confidence in the **independence** and **impartiality** of the judiciary is eroded if **judicial appointees**, as **candidates** for judicial office, are perceived to be subject to political influence. Although they may register to vote as

members of a political party, they are prohibited by Rule 4.4 (c)(4) from assuming leadership roles in **political organizations**.

[4] Rule 4.4 (c)(4) also prohibits **candidates for election** from making speeches on behalf of **political organizations** or publicly endorsing or opposing candidates for public office, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. Rule 4.4 does not prohibit **candidates for election** from (a) campaigning on their own behalf, (b) endorsing or opposing **candidates for election** to the same judicial office for which they are running, or (c) from having their name on the same sample ballot as a candidate for another public office.

[5] Although members of the families of **candidates for election** are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in Rule 4.4 (c)(4) against publicly endorsing candidates for public office. A **candidate for election** must not become involved in, or be publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, **candidates for election** should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

[6] Judicial **candidates** must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Rule 4.4 (d)(5) obligates them to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading. Rule 4.4 (d)(1) requires the **candidate** to review and approve the content of statements made by the **candidate’s** campaign committee or other authorized agents and makes the **candidate** responsible for those statements.

[7] **Candidates for election** are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. As long as the **candidate for election** does not violate Rule 4.4 (d), he or she may make a factually accurate public response, although it is preferable for someone else to respond if the allegations relate to a pending case. If an independent third party has made unwarranted attacks on a **candidate for election’s** opponent, the **candidate for election** may disavow the attacks and request the third party to cease and desist.

[8] Rule 4.4 (d)(3) prohibits **candidates for election**, with regard to cases or issues likely to come before the court, from making a commitment, promise, or pledge that is inconsistent with the **impartial** performance of the duties of the office. The making of a commitment, promise, or pledge is not dependent on, or limited to, the use of any specific words or phrases. The totality of the statement must be examined to determine if a reasonable person would believe that the candidate has specifically undertaken to reach a particular result. Commitments, promises, and pledges must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a **candidate for election** should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

**Source:** This Rule is derived from Rule 4.4 of the MCJC.

#### **Rule 4.5. APPLICABILITY AND DISCIPLINE**

(a) A **judicial appointee** shall comply with the Rules in this Section 4 and with Rule 8.2 of the Maryland Lawyers’ Rules of Professional Conduct (Maryland Rule 16-812). If successful as a **candidate for election**, the **judicial appointee** is subject to judicial discipline for campaign conduct. If unsuccessful, the **judicial appointee** is subject to attorney discipline for campaign conduct.

**Source:** This Rule is derived from Rule 4.6 of the MCJC.

#### REPORTER’S NOTE

This Code of Conduct of Judicial Appointees, proposed to replace the current Code set forth in Rule 16-814, is based upon (1) the 2007 ABA Model Code of Judicial Conduct; (2) the revised Maryland Code of Judicial Conduct, which is based on the 2007 ABA Code and was approved in principle by the Court of Appeals on October 4, 2009; (3) the November 10, 2009 recommendations of a group of masters, District Court Commissioners, and others affected by the Code; (4) the December 8, 2009 recommendations of the General Court Administration Subcommittee; and (5) the January 8, 2010 recommendations of the Rules Committee.

### **MARYLAND RULES OF PROCEDURE TITLE 16 — COURTS, JUDGES, AND ATTORNEYS CHAPTER 800 — MISCELLANEOUS**

AMEND Rule 16-816 to delete a reference to a referee, as follows:

#### **Rule 16-816. FINANCIAL DISCLOSURE STATEMENT — JUDICIAL APPOINTEES**

a. For purposes of this Rule, judicial appointee means (1) a full- or part-time master, (2) a full- or part-time commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland, and (3) an auditor[,] or examiner[, or referee] who is full-time or who earns in any calendar year, by reason of the judicial appointee’s official position, compensation at least equal to the pay provided for the base step of State Pay Grade 16, as in effect on July 1 of that calendar year. If an auditor[,] or examiner[, or referee] has served as such for only a portion of a calendar year, a pro rata determination of compensation shall be applied.

...

#### REPORTER’S NOTE

The Rules Committee has determined that courts no longer are appointing “referees” and, therefore, has omitted the term from the proposed revised Code of Conduct for Judicial Appointees (Rule 16-814). The Committee also recommends deleting this obsolete term from Rule 16-816.

### **MARYLAND RULES OF PROCEDURE TITLE 16 — COURTS, JUDGES, AND ATTORNEYS CHAPTER 200 — THE CALENDAR — ASSIGN- MENT AND DISPOSITION OF MOTIONS AND CASES**

ADD new Rule 16-206, as follows:

#### **Rule 16-206. PROBLEM-SOLVING COURT PROGRAMS** (a) Applicability

This Rule applies to problem-solving court programs, which are specialized court dockets or programs that address matters under a court’s jurisdiction through a multi-disciplinary and integrated approach incorporating collabora-

ration by the court with other governmental entities, community organizations, and parties.

Committee note: Problem-solving court programs include adult and juvenile drug treatment, DUI, mental health, truancy, and family recovery programs.

(b) Submission of Plan

After consultation with the Office of Problem-Solving Courts and any officials whose participation in the program will be required, the Chief Judge of the District Court or the County Administrative Judge of a circuit court may prepare and submit to the State Court Administrator a detailed plan for a problem-solving program consistent with the protocols and requirements in an Administrative Order of the Chief Judge of the Court of Appeals.

Committee note: Examples of officials to be consulted include individuals in the Office of the State's Attorney; Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Resources.

(c) Approval of Plan

After review of the plan, the State Court Administrator shall submit the plan, together with any comments and a recommendation, to the Court of Appeals. The program shall not be implemented until it is approved by the Court of Appeals.

(d) Acceptance of Participant into Program

(1) Written Agreement Required; Contents

As a condition of acceptance into a program and after the advice of counsel, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program,

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 2.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program; and

(D) any rights waived by the participant, including any rights under Rule 4-215 or Code, Courts Article, §3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, §3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after an examination of the prospective participant on the record, the court determines and announces on the record that the prospective participant knowingly and voluntarily enters into the agreement and understands it.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made a part of the record.

(e) Immediate Sanctions; Loss of Liberty or Termination from Program

In accordance with the protocols of the program, the court may, for good cause, impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by counsel before the court makes its decision. If a hearing is required by this section and the participant is unrepresented by counsel, the court shall comply

with Rule 4-215 in a criminal action or Code, Courts Article, §3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 2.11 of the Code of Judicial Conduct from post-termination proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information the judge may have received while the participant was in the program.

(f) Credit for Incarceration Time Served

If a participant is terminated from a program, any period of time for which the participant was incarcerated as a sanction during participation in the program shall be credited against any sentence imposed or directed to be executed in the action.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 16-206 provides a uniform, State-wide procedure for the approval of new problem-solving court programs and the operation of those programs, while allowing jurisdictions flexibility in administering the programs based on each jurisdiction's needs.

**IDEALS OF PROFESSIONALISM**

Professionalism is the combination of the core values of personal integrity, competency, civility, independence, and public service that distinguish lawyers as the caretakers of the rule of law.

These Ideals of Professionalism emanate from and complement the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"), the overall thrust of which is well-summarized in this passage from the Preamble to those Rules:

"A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials."

A failure to observe these Ideals is not of itself a basis for disciplinary sanctions, but the conduct that constitutes the failure may be a basis for disciplinary sanctions if it violates a provision of the MLRPC or other relevant law.

**Preamble**

Lawyers are entrusted with the privilege of practicing law. They take a firm vow or oath to uphold the Constitution and laws of the United States and the State of Maryland. Lawyers enjoy a distinct position of trust and confidence that carries the significant responsibility and obligation to be caretakers for the system of justice that is essential to the continuing existence of a civilized society. Each lawyer, therefore, as a custodian of the system of justice, must be conscious of this responsibility and exhibit traits that reflect a personal responsibility to recognize, honor, and enhance the rule of law in this society. The Ideals and some characteristics set forth below are representative of a value system that lawyers must demand of themselves as professionals in order to maintain and enhance the role of legal professionals as the protectors of the rule of law.

**Ideals of Professionalism**

*A lawyer should aspire:*

(1) to put fidelity to clients before self-interest;

(2) to be a model for others, and particularly for his or her clients, by showing respect due to those called upon to

resolve disputes and the regard due to all participants in the dispute resolution processes;

(3) to avoid all forms of wrongful discrimination in all of his or her activities, including discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, with equality and fairness as the goals;

(4) to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good;

(5) to make the law, the legal system, and other dispute resolution processes available to all;

(6) to practice law with a personal commitment to the rules governing the profession and to encourage others to do the same;

(7) to preserve the dignity and the integrity of the profession by his or her conduct, because the dignity and the integrity of the profession are an inheritance that must be maintained by each successive generation of lawyers;

(8) to strive for excellence in the practice of law to promote the interests of his or her clients, the rule of law, and the welfare of society; and

(9) to recognize that the practice of law is a calling in the spirit of public service, not merely a business pursuit.

#### **Accountability and Trustworthiness**

*A lawyer should understand the principles set forth in this section.*

(1) Punctuality promotes the credibility of a lawyer. Tardiness and neglect denigrate the individual, as well as the legal profession.

(2) Personal integrity is essential to the honorable practice of law. Lawyers earn the respect of clients, opposing counsel, and the courts when they keep their commitments and perform the tasks promised.

(3) Honesty and, subject to legitimate requirements of confidentiality, candid communications promote credibility with clients, opposing counsel, and the courts.

(4) Monetary pressures that cloud professional judgment and should be resisted.

#### **Education, Mentoring, and Excellence**

*A lawyer should:*

(1) make constant efforts to expand his or her legal knowledge and to ensure familiarity with changes in the law that affect a client's interests;

(2) willingly take on the responsibility of promoting the image of the legal profession by educating each client and the public regarding the principles underlying the justice system, and, as a practitioner of a learned art, by conveying to everyone the importance of professionalism;

(3) attend continuing legal education programs to demonstrate a commitment to keeping abreast of changes in the law;

(4) as a senior lawyer, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of less experienced lawyers; and

(5) understand that mentoring includes the responsibility for setting a good example for another lawyer, as well as an obligation to ensure that each mentee learns the principles enunciated in these Ideals and adheres to them in practice.

#### **A Calling to Service**

*A lawyer should:*

(1) serve the public interest by communicating clearly with clients, opposing counsel, judges, and the general public;

(2) consider the impact on others when scheduling events. Reasonable requests for schedule changes should be accommodated if, in the view of the lawyer, such requests do not impact adversely the merits of the client's position;

(3) maintain an open and respectful dialogue with clients and opposing counsel;

(4) respond to all communications promptly, even if more time is needed to formulate a complete answer, and understand that delays in returning telephone calls or answering mail may leave the impression that the communication was unimportant or that the message was lost, and such delays increase tension and frustration;

(5) keep a client apprised of the status of important matters affecting the client and inform the client of the frequency with which information will be provided, understanding that some matters will require regular contact, while others will require only occasional communication;

(6) always explain a client's options or choices with sufficient detail to help the client make an informed decision;

(7) reflect a spirit of respect in all interactions with opposing counsel, parties, staff, and the court; and

(8) accept responsibility for ensuring that justice is available to every person and not just those with financial means.

#### **Fairness, Civility, and Courtesy**

*A lawyer should:*

(1) act fairly in all dealings as a way of promoting the system of justice;

(2) understand that an excess of zeal may undermine a client's cause and hamper the administration of justice and that a lawyer can advocate zealously a client's cause in a manner that remains fair and civil;

(3) know that zeal requires only that the client's interests are paramount and therefore warrant use of negotiation and compromise, when appropriate, to achieve a beneficial outcome, understanding that yelling, intimidating, issuing ultimatums, and using an "all or nothing" approach may constitute bullying, not zealous advocacy;

(4) seek to remain objective when advising a client about the strengths and weaknesses of the client's case or work;

(5) not allow a client's improper motives, unethical directions, or ill-advised wishes to influence a lawyer's actions or advice, such as when deciding whether to consent to an extension of time requested by an opponent, and make that choice based on the effect, if any, on the outcome of the client's case and not on the acrimony that may exist between the parties;

(6) when appropriate and consistent with duties to the client, negotiate in good faith in an effort to avoid litigation and, where indicated, suggest alternative dispute resolution;

(7) use litigation tools to strengthen the client's case, but avoid using litigation tactics in a manner solely to harass, intimidate, or overburden an opposing party; and

(8) note explicitly any changes made to documents submitted for review by opposing counsel, understanding that fairness is undermined by attempts to insert or delete language without notifying the other party or the party's lawyer.

A lawyer should understand that:

- (1) professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others;
- (2) courtesy does not reflect weakness; rather, it promotes effective advocacy by ensuring that parties have the opportunity to participate in the process without personal attacks or intimidation;
- (3) maintaining decorum in every venue, especially in the courtroom, is neither a relic of the past nor a sign of weakness; it is an essential component of the legal process;
- (4) professionalism is enhanced by preparing scrupulously for meetings and court appearances and by showing respect for the court, opposing counsel, and the parties through courteous behavior and respectful attire;
- (5) courtesy and respect should be demonstrated in all contexts, not just with clients and colleagues, or in the courtroom, but also with support staff and court personnel;
- (6) hostility between clients should not become grounds for a lawyer to show hostility or disrespect to a party, opposing counsel, or the court;
- (7) patience enables a lawyer to exercise restraint in volatile situations and to diffuse anger, rather than elevate the tension and animosity between parties or lawyers; and
- (8) the Ideals of Professionalism are to be observed in all manner of communication, and a lawyer should resist the impulse to respond uncivilly to electronic communications in the same manner as he or she would resist such impulses in other forms of communication.

**MARYLAND RULES OF PROCEDURE**  
**TITLE 2 — CIVIL PROCEDURE —**  
**CIRCUIT COURT**  
**CHAPTER 600 — JUDGMENT**

AMEND Rule 2-611 to specify the form of affidavit accompanying a complaint seeking a confessed judgment, to require the court to direct the clerk to enter a confessed judgment under certain circumstances, and to require the court to dismiss the complaint under certain circumstances, as follows:

**Rule 2-611. CONFESSED JUDGMENT**

**[(a) Entry of Judgment**

Judgment by confession shall be entered by the clerk upon the filing of a complaint, the original or a photocopy of the written instrument authorizing the confession of judgment for a liquidated amount, and an affidavit specifying the amount due and stating the address of the defendant or that the whereabouts of the defendant are unknown to the plaintiff.]

*(a) Complaint; Written Instrument and Affidavit Required*

A complaint seeking a confessed judgment shall be accompanied by the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount and an affidavit in the following form:

- Affidavit for Judgment by Confession
- 1. I, \_\_\_\_\_, am competent to testify.  
     (Name of Affiant)
  - 2. I am:  the plaintiff in this action.  
                or  
 \_\_\_\_\_.  
     (If the Affiant is not the plaintiff, state the Affiant's  
     relationship to the action.)

- 3. The original or a copy of the written instrument authorizing the confession of judgment against the defendant is attached to the complaint.
- 4. The amount due and owing under the instrument is:

Principal	\$ _____
Interest	\$ _____
Attorneys' Fees	\$ _____
Total	\$ _____

- 5. The address of the defendant is:  
 \_\_\_\_\_  
   or  
 unknown, and the following efforts to locate the defendant have been made: \_\_\_\_\_

\_\_\_\_\_  
*(State specific details of the efforts made, including by whom and when the efforts were made.)*

- 6. The instrument does not evidence or arise from a consumer loan as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §12-311 (b).
- 7. The instrument does not evidence or arise from a consumer transaction as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §13-301.
- 8. The instrument is not subject to the Maryland Retail Installment Sales Act as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §12-607.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
*(Signature of Affiant)*

\_\_\_\_\_  
*(Date)*

*(b) Action by Court*

If the court determines that (1) the complaint complies with the requirements of section (a) of this Rule and (2) the pleadings and papers demonstrate a factual and legal basis for entitlement to a confessed judgment, the court shall direct the clerk to enter the judgment. Otherwise, it shall dismiss the complaint.

**[(b)] (c) Notice**

Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the original pleadings shall be served on the defendant in accordance with Rule 2-121. If the court is satisfied from [an] the affidavit filed by the plaintiff that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

**[(c)] (d) Motion by Defendant**

The defendant may move to open, modify, or vacate the judgment within the time prescribed for answering by sections (a) and (b) of Rule 2-321. The motion shall state the legal and factual basis for the defense to the claim.

**[(d)] (e) Disposition of Motion**

If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession

opened, modified, or vacated and permit the defendant to file a responsive pleading.

[(e)] (f) Delay of Enforcement

Unless the court orders otherwise, property shall not be sold in execution of a judgment by confession and wages or other debt shall not be remitted by a garnishee to the judgment creditor until the expiration of the time for filing a motion under section [(c)] (d) of this Rule and the disposition of any motion so filed.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule 645 a and in part new.

Section (b) is new.

Section [(b)] (c) is new. The last sentence is consistent with former Rule 645 e.

Section [(c)] (d) is derived from former Rule 645 c.

Section [(d)] (e) is derived from former Rule 645 d.

Section [(e)] (f) is new but is consistent with former Rule 645 i.

REPORTER'S NOTE

The Chief Judge of the District Court has brought to the attention of the Rules Committee the problem of the confessed judgment Rules being used for the entry of judgments based on illegal contracts and fraudulent misrepresentations.

To address this problem, the Committee recommends amendments to Rules 2-611 and 3-611.

Proposed to be added to the Rules as part of new section (a) is a mandatory form of affidavit that includes a statement of the principal, interest, and attorneys' fees claimed to be due and owing under the instrument; specific details of efforts to locate a defendant whose whereabouts are claimed to be unknown; and three specific representations (Statement Nos. 6, 7, and 8) concerning the underlying transaction. Section (a) carries forward the current requirement that the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount be filed with the complaint.

Pursuant to new section (b), judgment is not automatically entered by the clerk, but the complaint is reviewed by the court. If the court determines that the requirements of section (a) are met and that the papers and pleadings demonstrate a factual and legal basis for entitlement to a confessed judgment, the court directs entry of the confessed judgment. If these requirements are not met, the court dismisses the complaint. At present, the clerk routinely enters judgment, subject to a motion to vacate. However, the Committee is advised that defendants often do not know to file such a motion, and some are victims of fraud and are never served.

Current section (f) of Rule 3-611 is deleted as unnecessary, in light of Statement No. 8 of the required affidavit.

MARYLAND RULES OF PROCEDURE
TITLE 3 — CIVIL PROCEDURE —
DISTRICT COURT
CHAPTER 600 — JUDGMENT

AMEND Rule 3-611 to specify the form of affidavit accompanying a complaint seeking a confessed judgment, to require the Court to direct the clerk to enter a confessed judgment under certain circumstances, to require the Court to dismiss the complaint under certain circumstances, and to delete section (f), as follows:

Rule 3-611. CONFESSED JUDGMENT

[(a)] Entry of Judgment

Judgment by confession shall be entered by the clerk upon the filing of a complaint, the original or a photocopy of the written instrument authorizing the confession of judgment for a liquidated amount, and an affidavit specifying the amount due and stating the address of the defendant or that the whereabouts of the defendant are unknown to the plaintiff.]

(a) Complaint; Written Instrument and Affidavit Required

A complaint seeking a confessed judgment shall be accompanied by the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount and an affidavit in the following form:

Affidavit for Judgment by Confession

1. I, \_\_\_\_\_, am competent to testify.

(Name of Affiant)

2. I am:  the plaintiff in this action.

or

\_\_\_\_\_.

(If the Affiant is not the plaintiff, state the Affiant's relationship to the action.)

3. The original or a copy of the written instrument authorizing the confession of judgment against the defendant is attached to the complaint.

4. The amount due and owing under the instrument is:

Table with 2 columns: Description (Principal, Interest, Attorneys' Fees, Total) and Amount (\$ \_\_\_\_\_)

5. address of the defendant is:

\_\_\_\_\_.

or

unknown, and the following efforts to locate the defendant have been made: \_\_\_\_\_

(State specific details of the efforts made, including by whom and when the efforts were made.)

6. The instrument does not evidence or arise from a consumer loan as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §12-311 (b).

7. The instrument does not evidence or arise from a consumer transaction as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §13-301.

8. The instrument is not subject to the Maryland Retail Installment Sales Act as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §12-607.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information, and belief.

(Signature of Affiant)

(Date)

(b) Action by Court

If the court determines that (1) the complaint complies with the requirements of section (a) of this Rule and (2) the pleadings and papers demonstrate a factual and legal basis for entitlement to a confessed judgment, the court shall direct the clerk to enter the judgment. Otherwise, it shall dismiss the complaint.

[(b)] (c) Notice

Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the original pleadings shall be served on



the defendant in accordance with Rule 3-121. If the court is satisfied from [an] *the* affidavit filed by the plaintiff that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

**[(c)] (d) Motion by Defendant**

The defendant may move to open, modify, or vacate the judgment within 30 days after service of the notice. The motion shall state the legal and factual basis for the defense to the claim.

**[(d)] (e) Disposition of Motion**

If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading.

**[(e)] (f) Delay of Enforcement**

Unless the court orders otherwise, property shall not be sold in execution of a judgment by confession and wages or other debt shall not be remitted by a garnishee to the judgment creditor until the expiration of the time for filing a motion under section (e) (d) of this Rule and the disposition of any motion so filed.

**[(f) Plaintiff's Certificate**

Judgment by confession may be entered only when accompanied by a certificate executed by the plaintiff or plaintiff's attorney in the following form: "I hereby certify that the instrument authorizing confession of judgment was not executed by a buyer under the Retail Installment Sales Act, Commercial Law Article, Sections 12-601 through 12-636, of the Annotated Code of Maryland."

Source: This Rule is derived as follows:

Section (a) is *in part* derived from former M.D.R. 645 a *and in part new*.

Section (b) is *new*.

Section [(b)] (c) is *new*. The last sentence is consistent with former Rule 645 e.

Section [(c)] (d) is derived from former M.D.R. 645 c.

Section [(d)] (e) is derived from former M.D.R. 645 d.

Section [(e)] (f) is *new* but is consistent with former M.D.R. 645 i.

[Section (f) is derived from former M.D.R. 645 j.]

**REPORTER'S NOTE**

See the Reporter's note to Rule 2-611.

**MARYLAND RULES OF PROCEDURE  
TITLE 2 — CIVIL PROCEDURE —  
CIRCUIT COURT  
CHAPTER 500 — TRIAL**

ADD new Rule 2-513, as follows:

**Rule 2-513. TESTIMONY TAKEN BY TELEPHONE**

**(a) Definition**

In this Rule, "telephone" means a landline telephone and does not include a cellular phone.

**(b) When Testimony Taken by Telephone Allowed; Applicability**

A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections (e) and (f) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.

Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, §9.5-110.

**(c) Time for Filing Motion**

Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the testimony is to be offered.

**(d) Contents of Motion**

The motion shall state the witness's name and, unless excused by the court:

(1) the address and telephone number of the witness;

(2) the subject matter of the witness's expected testimony;

(3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (e) of this Rule;

(4) the location from which the witness will testify;

(5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and

(6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.

**(e) Good Cause**

A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:

(1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;

(2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(3) a personal appearance would be an undue hardship to the witness; or

(4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.

Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.

**(f) When Testimony Taken by Telephone is Prohibited**

If a party objects, a court shall not allow the testimony of a witness to be taken by telephone if the court finds that:

(1) the witness is a party or will be testifying as an expert;

(2) the testimony is to be offered in a jury trial;

(3) the demeanor and credibility of the witness are or may be critical to the outcome of the proceeding;

(4) the issue or issues about which the witness is to testify are or may be so determinative of the outcome of the proceeding that the opportunity for face-to-face cross-examination is needed;

(5) a deposition taken under these Rules is a fairer way to present the testimony;

(6) the exhibits or documents about which the witness is to testify are so voluminous that testimony by telephone is not practical;

(7) adequate facilities for taking the testimony by telephone are not available;

(8) failure of the witness to appear in person will or may cause substantial prejudice to a party; or

(9) other circumstances require the personal appearance of the witness.

**(g) Use of Deposition**

A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for

which the deposition could have been used had the witness appeared in person.

(h) Costs

Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rules 2-513 and 3-513 are based upon the request of the Section Council of the Judicial Administration Section of the Maryland State Bar Association.

The Rules allow the testimony of witnesses to be taken by telephone, under certain circumstances. The Rules Committee is working on the development of Rules proposals dealing with a broader range of remote access in court proceedings, including the use of video transmissions and access via computers. It is anticipated that the broader Rules will subsume Rules that pertain solely to telephone access.

The Section Council has specifically requested that rules pertaining to testimony by telephone be promulgated as quickly as possible. In accordance with this request, proposed new Rules 2-513 and 3-513 are being advanced.

**MARYLAND RULES OF PROCEDURE  
TITLE 3 — CIVIL PROCEDURE —  
DISTRICT COURT  
CHAPTER 500 — TRIAL**

ADD new Rule 3-513, as follows:

**Rule 3-513. TESTIMONY TAKEN BY TELEPHONE**

(a) Definition

In this Rule, "telephone" means a landline telephone and does not include a cellular phone.

(b) When Testimony Taken by Telephone Allowed; Applicability

A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections (e) and (f) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.

Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, §9.5-110.

(c) Time for Filing Motion

Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the testimony is to be offered.

(d) Contents of Motion

The motion shall state the witness's name and, unless excused by the court:

- (1) address and telephone number for the witness;
- (2) the subject matter of the witness's expected testimony;
- (3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (e) of this Rule;
- (4) the location from which the witness will testify;
- (5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and
- (6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.

(e) Good Cause

A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:

- (1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;
- (2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;
- (3) a personal appearance would be an undue hardship to the witness; or
- (4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.

Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.

(f) When Testimony Taken by Telephone is Prohibited

If a party objects, a court shall not allow the testimony of a witness to be taken by telephone if the court finds that:

- (1) the witness is a party or will be testifying as an expert;
- (2) the demeanor and credibility of the witness are or may be critical to the outcome of the proceeding;
- (3) the issue or issues about which the witness is to testify are or may be so determinative of the outcome of the proceeding that the opportunity for face-to-face cross-examination is needed;
- (4) a deposition taken under these Rules is a fairer way to present the testimony;
- (5) the exhibits or documents about which the witness is to testify are so voluminous that testimony by telephone is not practical;
- (6) adequate facilities for taking the testimony by telephone are not available;
- (7) failure of the witness to appear in person will or may cause substantial prejudice to a party; or
- (8) other circumstances require the personal appearance of the witness.

(g) Use of Deposition

A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in person.

(h) Costs

Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to Rule 2-513.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 200 — PRETRIAL PROCEDURES**

AMEND Rule 4-262 to add a definition of the word "provide" to section (b); to require that requests pursuant to subsections (d)(2) and (f)(1) and section (e) be made in writing; to require that discovery and inspection be completed pre-trial if practicable; to allow the court to grant a delay or continuance if pretrial compliance with a discovery request was impracticable; to add a new section (j) clarifying that requests for discovery, motions for discovery, and any responses thereto are to be filed with the court; and to make stylistic changes, as follows:

## Rule 4-262. DISCOVERY IN DISTRICT COURT

## (a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

## (b) Definitions

In this Rule, the terms “defense,” “defense witness,” “oral statement,” “provide,” “State’s witness,” and “written statement” have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of “State’s Attorney,” see Rule 4-102 (k).

## (c) Obligations of the Parties

## (1) Due Diligence

The State’s Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

## (2) Scope of Obligations

The obligations of the State’s Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney’s staff, or any other person who either reports regularly to the attorney’s office or has reported to the attorney’s office in regard to the particular case.

Cross reference: For the obligations of the State’s Attorney, see *State v. Williams*, 392 Md. 194 (2006).

## (d) Disclosure by the State’s Attorney

## (1) Without Request

Without the necessity of a request, the State’s Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant’s guilt or punishment as to the offense charged and all material or information in any form, whether or not admissible, that tends to impeach a State’s witness.

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

## (2) On Request

On *written* request of the defense, the State’s Attorney shall provide to the defense:

## (A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

## (B) Written Statements of State’s Witnesses

As to each State’s witness [whom] the State’s Attorney intends to call to prove the State’s case in chief or to rebut alibi testimony, those written statements of the witness that relate to the offense charged and are (i) signed by or adopted by the witness or (ii) contained in a police or investigative report, together with the name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of the witness;

## (C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State’s witness;

## (D) Reports or Statements of Experts

As to each State’s witness the State’s Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

(i) the expert’s name and address, the subject matter on which the expert is expected to testify, the substance of the expert’s findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

## (E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State’s Attorney intends to use at a hearing or at trial; and

## (F) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State’s Attorney intends to use the item at a hearing or at trial.

## (e) Disclosure by Defense

On *written* request of the State’s Attorney, the defense shall provide to the State’s Attorney:

## (1) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert’s name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert; and

## (2) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

## (f) Person of the Defendant

## (1) On Request

On *written* request of the State’s Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

## (2) On Motion

On motion filed by the State’s Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

## (g) Matters Not Discoverable

## (1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

## (2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

## (h) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

## (i) Procedure

*To the extent practicable*, [The] the discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. [A request for discovery and inspection and response need not be in writing and need not be filed with the court.] If a request was made before the date of the hearing or trial and the request was refused or denied, or *pretrial compliance was impracticable*, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(j) *Requests, Motions, and Responses to be Filed with the Court*

*Requests for discovery, motions for discovery, and any responses to the requests or motions shall be filed with the court.*

[(j)] (k) *Discovery Material Not to be Filed with the Court*

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

[(k)] (l) *Retention; Inspection of Original*

The party generating discovery material shall retain the original until the expiration of any sentence imposed on the defendant and, on request, shall make the original available for inspection and copying by the other party.

[(l)] (m) *Protective Orders*

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

[(m)] (n) *Failure to Comply with Discovery Obligation*

The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 4-262 (b) incorporates into the District Court discovery Rule the amendment to the "Definitions" section of Rule 4-263, which is the addition of a definition of the word "provide."

Amendments to subsections (d)(2) and (f)(1) and section (e) require that certain discovery requests be made in writing.

An amendment to section (i) requires that, to the extent practicable, all discovery and inspections be completed before the hearing or trial. If pretrial compliance with a discovery request was impracticable, the court may grant a delay or continuance to permit inspection or discovery. The Rules Committee believes that specific deadlines for requesting and providing discovery would not be compatible with District Court practice, and therefore declines to recommend the addition of discovery deadlines to Rule 4-262.

A new section (j) is added, stating that requests for discovery, motions for discovery, and any responses to the requests or motions must be filed with the court.

The deletion of the word "whom" from subsection (d)(2)(B) is stylistic, only.

**MARYLAND RULES OF PROCEDURE**  
**TITLE 4 — CRIMINAL CAUSES**  
**CHAPTER 200 — PRETRIAL PROCEDURES**

AMEND Rule 4-263 to add to section (b) a definition of "provide" and to add a new subsection to section (k) clarifying that requests for discovery, motions for discovery, motions to compel discovery, and any responses thereto are to be filed with the court, as follows:

**Rule 4-263. DISCOVERY IN CIRCUIT COURT**(a) *Applicability*

This Rule governs discovery and inspection in a circuit court.

(b) *Definitions*

In this Rule, the following definitions apply:

(1) *Defense*

"Defense" means an attorney for the defendant or a defendant who is acting without an attorney.

(2) *Defense Witness*

"Defense witness" means a witness whom the defense intends to call at a hearing or at trial.

(3) *Oral Statement*

"Oral statement" of a person means the substance of a statement of any kind by that person, whether or not reflected in an existing writing or recording.

(4) *Provide*

*Unless otherwise agreed by the parties or required by Rule or order of court, "provide" information or material means (A) to send or deliver it by mail, e-mail, facsimile transmission, or hand-delivery, or (B) to make the information or material available at a specified location for purposes of inspection if sending or delivering it would be impracticable because of the nature of the information or material.*

[(4)] (5) *State's Witness*

"State's witness" means a witness whom the State's Attorney intends to call at a hearing or at trial.

Cross reference: For the definition of "State's Attorney," see Rule 4-102 (k).

[(5)] (6) *Written Statement*

"Written statement" of a person:

(A) includes a statement in writing that is made, signed, or adopted by that person;

(B) includes the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person;

(C) includes a statement contained in a police or investigative report; but

(D) does not include attorney work product.

(c) *Obligations of the Parties*(1) *Due Diligence*

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with all written statements of the person that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has

information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

Without the necessity of a request, the defense shall provide to the State's Attorney:

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

(2) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by

the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e)(2)(A) of this Rule.

(6) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213, and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery[; Material Not to be Filed with Court]

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed, and (B) promptly file with the court a notice that (i) reasonably identifies the information provided and (ii) states the date and manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Requests, Motions, and Responses to be Filed with the Court

*Requests for discovery, motions for discovery, motions to compel discovery, and any responses to the requests or motions shall be filed with the court.*

[(3)] (4) Discovery Material Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the

court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(l) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of a party or a person from whom discovery is sought, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

**REPORTER'S NOTE**

Two amendments to Rule 4-263 are proposed.

A definition of "provide" is added to section (b) to clarify that whenever discovery material and information are to be "provided," the material and information are to be given or sent via mail, e-mail, facsimile transmission, or hand-delivery unless a different method is required by Rule or order of court. A party may require the other party to go to a specified location to inspect the information or material only if, because of the nature of the information or material, it is impracticable to send or deliver it by using one of the four listed methods.

The Rules Committee has been advised that in at least one county in Maryland, the clerk's office regards requests for discovery as discovery material that is not to be filed and, therefore, does not allow the filing of the requests. Since requests for discovery are not discovery material and should be placed in the file of a criminal case, the Committee recommends adding a new subsection to section (k) to clarify that requests for discovery, motions for discovery, motions to compel discovery, and any responses to these are to be filed with the court.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 300 — TRIAL AND SENTENCING**

AMEND Rule 4-331 to change the title of the Rule, to add a new section (d) pertaining to DNA evidence, to add a cross reference following section (d), to revise the provisions pertaining to when the court is required to hold a hearing on a motion based on newly discovered evidence, and to make stylistic changes, as follows:

**Rule 4-331. MOTIONS FOR NEW TRIAL; REVISORY POWER**

(a) Within Ten Days of Verdict

On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Cross reference: For the effect of a motion under this section on the time for appeal see Rules 7-104 (b) and 8-202 (b).

(b) Revisory Power

The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

(1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

(2) in the circuit courts, on motion filed within 90 days after its imposition of sentence. Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(c) Newly Discovered Evidence

The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the date the court imposed sentence or the date it received a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later;

(2) on motion filed at any time if a sentence of death was imposed and the newly discovered evidence, if [proven] *proved*, would show that the defendant is innocent of the capital crime of which the defendant was convicted or of an aggravating circumstance or other condition of eligibility for the death penalty actually found by the court or jury in imposing the death sentence;

(3) on motion filed at any time if the motion is based on DNA identification testing *not subject to the procedures of Code, Criminal Procedure Article, §8-201* or other generally accepted scientific techniques the results of which, if [proven] *proved*, would show that the defendant is innocent of the crime of which the defendant was convicted.

Committee note: Newly discovered evidence of mitigating circumstances does not entitle a defendant to claim actual innocence. See *Sawyer v. Whitley*, 112 S. Ct. 2514 (1992).

(d) DNA Evidence

*If the defendant seeks a new trial or other appropriate relief under Code, Criminal Procedure Article, §8-201, the defendant shall proceed in accordance with Rules 4-701 through 4-711. On motion by the State, the court may suspend proceedings on a motion for new trial or other relief under this Rule until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.*

Cross reference: For retroactive applicability of Code, Criminal Procedure Article, §8-201, see *Thompson v. State*, \_\_\_ Md. \_\_\_ (No. 78, September Term 2008, filed November 16, 2009).

**[(d)] (e) Form of Motion**

A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.

**[(e)] (f) Disposition**

The court may hold a hearing on any motion filed under this Rule. **[and]** *Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section [(d)] (e) of this Rule, and [a hearing was requested] (3) the movant has established a prima facie basis for granting a new trial.* The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

Cross reference: Code, Criminal Procedure Article, §§6-105, 6-106, 11-104, and 11-503.

Source: This Rule is derived from former Rule 770 and M.D.R. 770.

**REPORTER'S NOTE**

In light of recent statutory changes to Code, Criminal Procedure Article, §§8-201 and the addition of new Rules 4-701 through 4-711, all of which pertain to DNA evidence, the Rules Committee recommends adding to Rule 4-331 a new section (d), which (1) directs the defendant to the new Rules pertaining to DNA evidence if the defendant seeks a new trial or other relief under Code, Criminal Procedure Article, §§8-201, and (2) allows the court, on motion by the State, to suspend proceedings on a motion for new trial or other relief under Rule 4-331 until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.

A proposed cross reference after section (d) draws attention to *Thompson v. State*, \_\_\_ Md. \_\_\_ (No. 78, September Term 2008, filed November 16, 2009), which held that Code, Criminal Procedure Article, §§8-201 can be applied retroactively.

Proposed amendments to section (e), relettered (f), provide that if a hearing on a motion under section (c) is requested, the court must hold one if the motion satisfies the requirements of section (d), relettered (e); a prima facie basis for granting a new trial is established by the movant; and, if the motion was filed under subsection (c)(1), it was timely filed.

**MARYLAND RULES OF PROCEDURE  
TITLE 2 — CIVIL PROCEDURE —  
CIRCUIT COURT  
CHAPTER 500 — TRIAL**

AMEND Rule 2-516 to conform the language of section (b) to the language of Rule 4-322 (c), as follows:

**Rule 2-516. EXHIBITS AND RECORDINGS****(a) Generally**

All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record and, unless the court orders otherwise, shall remain in the custody of the clerk. With leave of court, a party may substitute a photograph or copy for any exhibit.

Cross reference: Rule 16-306.

**(b) Audio, Audiovisual, or Visual Recordings****(1) Recording**

A party who offers or uses an audio, audiovisual, or visual recording at a hearing or trial shall:

(A) ensure that the recording is marked for identification and made part of the record and that an additional

copy is provided to the court, so that it is available for future transcription; **[, and]**

(B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record **[,]; and**

(C) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and upon request present it to an appellate court in a format designated by the court.

**(2) Transcript of Recording**

A party who offers or uses a transcript of the recording at a hearing or trial shall **[(A)]** ensure that the transcript is made part of the record and provide an additional copy to the court **[, and (B) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and upon request present it to an appellate court in a format designated by the court].**

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-505.

Source: This Rule is derived in part from former Rule 635 b and is in part new.

**REPORTER'S NOTE**

The amendments to Rule 2-516 conform its provisions concerning audio, audiovisual, and visual recordings to the language of comparable provisions in a recently adopted amendment to Rule 4-322.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 200 — PRETRIAL PROCEDURES**

AMEND Rule 4-216 (c) by adding a new statutory reference, as follows:

**Rule 4-216. PRETRIAL RELEASE**

...

**(c) Defendants eligible for release only by a judge**

A defendant charged with an offense for which the maximum penalty is death or life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), **[or] (e), or (f)** may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

...

**REPORTER'S NOTE**

A District Court Commissioner may not authorize the pretrial release of a defendant charged with certain crimes. Chapter 42, Laws of 2009 (HB 88) added another category of crimes to this list. It prohibits a defendant who is charged with specified firearm violations from being released pretrial by a commissioner if the defendant had previously been convicted of one of the firearm violations listed. A proposed amendment to Rule 4-216 (c) conforms the Rule to the legislation.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 300 — TRIAL AND SENTENCING**

AMEND Rule 4-342 (i) to conform to a statutory change, to add language referring to any right to be represented by counsel, and to make stylistic changes, as follows:



Rule 4-342. SENTENCING — PROCEDURE IN NON-CAPITAL CASES

...  
(i) Advice to the Defendant

(1) At the time of imposing sentence, the court shall cause the defendant to be advised of: (A) any right of appeal, (B) any right of review of the sentence under the Review of Criminal Sentences Act, (C) any right to move for modification or reduction of the sentence, (D) any right to be represented by counsel, and (E) the time allowed for the exercise of these rights.

(2) At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole or for conditional release under mandatory supervision pursuant to Code, Correctional Services Article, §7-501.

(3) The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court reporter.

...

REPORTER'S NOTE

Chapter 584, Laws of 2009 (HB 638) provides that an inmate convicted of a violent crime committed on or after October 1, 2009 is not eligible for a conditional release until after the inmate becomes eligible for parole. It also provides that when a sentence of confinement that is to be served is imposed for a violent crime for which a defendant will be eligible for parole, the court shall state in open court the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision. The Rules Committee recommends adding language to section (i) of Rule 4-342 to conform to the new legislation.

Additionally, Rule 4-342 is proposed to be amended to include language explicitly requiring the court or counsel at the time of sentencing to advise the defendant of any right to be represented by counsel.

Stylistic changes to the Rule also are made.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 300 — TRIAL AND SENTENCING**

AMEND Rule 4-345 to change the placement and revise the language of a Committee note and to add subsection (e)(3) to conform to a certain statute, as follows:

Rule 4-345. SENTENCING — REVISORY POWER OF COURT

...

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

*Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene if the de-*

*endant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.*

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(3) Inquiry by Court

*Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, §11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.*

[Committee note: The court may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene at any time if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification, or if the defendant timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.]

...

REPORTER'S NOTE

Chapter 573, Laws of 2009 (SB 620) amended Code, Criminal Procedure Article, §11-403 to require the court to ascertain from the prosecuting attorney information on the record regarding the presence of the victim or victim's representative. The Rules Committee recommends adding a new subsection to section (e) to conform to the new legislation.

The revised placement of the Committee note that currently follows subsection (e)(2) of the Rule and the changes to the wording of the Committee note are stylistic, only.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 300 — TRIAL AND SENTENCING**

AMEND Rule 4-347 by adding a cross reference after section (a) and by adding language to section (c) referring to a judge of the circuit court, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How Initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.

Cross reference: See Code, Criminal Procedure Article, §6-223.

## (b) Notice

A copy of the petition, if any, and the order shall be served on the defendant with the summons or warrant.

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§11-104, 11-503, and 11-507.

## (c) Release Pending Revocation Hearing

Unless the judge who issues the warrant sets conditions of release or expressly denies bail, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court or before a judge of the circuit court without unnecessary delay or, if the warrant so specifies, before a judge of the District Court or circuit court for the purpose of determining the defendant's eligibility for release.

## (d) Waiver of Counsel

The provisions of Rule 4-215 apply to proceedings for revocation of probation.

## (e) Hearing

## (1) Generally

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked. The hearing shall be scheduled so as to afford the defendant a reasonable opportunity to prepare a defense to the charges. Whenever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel. With the consent of the parties and the sentencing judge, the hearing may be held before any other judge. The provisions of Rule 4-242 do not apply to an admission of violation of conditions of probation.

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection. For procedures to be followed by the court when a defendant may be incompetent to stand trial in a violation of probation proceeding, see Code, Criminal Procedure Article, §3-104.

## (2) Conduct of Hearing

The court may conduct the revocation hearing in an informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. The defendant shall be given the opportunity to admit or deny the alleged violations, to testify, to present witnesses, and to cross-examine the witnesses testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings. For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 513, Laws of 2009 (SB 145) modified the procedure to revoke probation by providing that the circuit court as well as the District Court may end the period of probation and that the time period for filing a revocation of probation in District Court would be extended. To conform to the new statute, the Rules Committee recommends adding a cross reference to the statute, and, in section (c), a reference to "a judge of the circuit court."

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 300 — TRIAL AND SENTENCING**

AMEND Rule 4-348 (b) to add a sentence authorizing the circuit court to stay a sentence of imprisonment and to impose appropriate terms and conditions of release, as follows:

## Rule 4-348. STAY OF EXECUTION OF SENTENCE

## (b) Sentence of Imprisonment

The filing of an appeal or a petition for writ of certiorari in any appellate court, including the Supreme Court of the United States, stays a sentence of imprisonment during any period that the defendant is released pursuant to Rule 4-349, unless a court orders otherwise pursuant to section (d) of that Rule. *On the filing of a notice of appeal in a case that is tried de novo, the circuit court, on motion or by consent of the parties, may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court, subject to any appropriate terms and conditions of release.*

Cross reference: See Rule 4-349.

REPORTER'S NOTE

Chapter 680, Laws of 2009 (HB 569) provides that when a criminal appeal that is tried *de novo* is filed, the circuit court may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court. A proposed amendment to Rule 4-348 conforms section (b) to the new statute. The amendment also makes clear that the circuit court may impose such terms and conditions of release as the court deems appropriate.

**MARYLAND RULES OF PROCEDURE  
TITLE 4 — CRIMINAL CAUSES  
CHAPTER 500 — EXPUNGEMENT OF  
RECORDS**

AMEND Rule 4-501 to change a statutory reference and to add a statutory reference to the cross reference at the end of the Rule, as follows:

## Rule 4-501. APPLICABILITY

The procedure provided by this Chapter is exclusive and mandatory for use in all judicial proceedings for expungement of records whether pursuant to Code, Criminal Procedure Article, §§[10-101] 10-102 through 10-109 or otherwise.

Cross reference: For expungement of criminal charges transferred to the juvenile court, see Rule 11-601 and Code, Criminal Procedure Article, §10-106.

Source: This Rule is derived from former Rule EX2.

REPORTER'S NOTE

Chapter 712, Laws of 2009 (HB 1227) changed the procedure for expungement of criminal charges transferred to juvenile court. The Rules Committee recommends modifying the statutory reference in the body of the Rule and adding a reference to the new statute to the cross reference at the end of the Rule.

**MARYLAND RULES OF PROCEDURE  
TITLE 6 — SETTLEMENT OF  
DECEDENTS' ESTATES  
CHAPTER 100 — GENERAL PROVISIONS**

ADD new Rule 6-153, as follows:

**Rule 6-153. ADMISSION OF COPY OF EXECUTED WILL**

An interested person, without notice to other interested persons, may file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if:

- (1) the original executed will is alleged to be lost or destroyed;
- (2) a duplicate reproduction of the original executed will, evidencing a copy of the original signatures of the decedent and the witnesses, is offered for admission; and
- (3) all the heirs at law and all legatees named in the will have executed a consent in the following form:

[CAPTION]

**CONSENT TO PROBATE OF COPY OF EXECUTED**

**LAST WILL AND TESTAMENT**

The undersigned \_\_\_\_\_ and \_\_\_\_\_,

being all the heirs at law of the decedent and all the legatees named in the will executed by the decedent on \_\_\_\_\_, hereby consent to the probate of a copy of that executed will, it having been determined, after an extensive search of the decedent's personal records, that an original of the will cannot be located. By signing this consent each of the undersigned affirms that it is his or her belief that the will executed by the decedent on \_\_\_\_\_, is the last valid will executed by the decedent and was not revoked and that the copy of the will, as submitted with the petition for its admission, represents a true and correct copy of the will.

We affirm under the penalties of perjury that the facts set forth in this consent are true and correct to the best of our knowledge, information, and belief.

Date	Signature	Print Name and Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

**REPORTER'S NOTE**

Chapter 37, Acts of 2009 (SB 154) authorizes an interested person to file a petition for admission of a copy of an executed will to probate if the original executed will is alleged to be lost or destroyed, a duplicate reproduction of the original executed will is offered for admission, and all the heirs at law and legatees named in the offered will execute a consent. The Rules Committee recom-

mends adding a new Rule addressing the new statute, including the consent form set out by the legislature.

**MARYLAND RULES OF PROCEDURE  
TITLE 6 — SETTLEMENT OF  
DECEDENTS' ESTATES  
CHAPTER 400 — ADMINISTRATION  
OF ESTATES**

AMEND Rule 6-402 by adding a cross reference, as follows:

**Rule 6-402. FORM OF INVENTORY**

Within three months after appointment, the personal representative shall file with the register (1) an inventory consisting of a summary and supporting schedules in the forms set forth in this Rule and (2) any required appraisal in conformity with Rule 6-403.

- (a) Form of Summary

[CAPTION]

Date of Death \_\_\_\_\_

**INVENTORY**

Summary

Schedule	Type of Property	Appraised Value
A	Real _____	\$ _____
B	Leasehold _____	\$ _____
C	Tangible personal _____	\$ _____
D	Corporate stocks _____	\$ _____
E	Bonds, notes, mortgages, debts due to the decedent _____	\$ _____
F	Bank accounts, savings and loan accounts, cash _____	\$ _____
G	All other interests _____	\$ _____
	Total	\$ _____

I solemnly affirm under the penalties of perjury that the contents of the foregoing inventory are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

Date: \_\_\_\_\_

\_\_\_\_\_  
Personal Representative(s)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

- (b) Form of Supporting Schedules

Inventory of Estate of \_\_\_\_\_

Estate No. \_\_\_\_\_

**SCHEDULE \_\_\_\_\_**

Item No.	Description	Market Value
		Total \$ _____

Verification of appraiser other than personal representative, if not supplied separately:

I solemnly affirm under the penalties of perjury that I appraised the property listed on this schedule on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that the appraisal was done impartially and to the best of my skill and judgment.

\_\_\_\_\_  
Signature of Appraiser

\_\_\_\_\_  
Name and Address

**Instructions:**

Pursuant to Code, Estates and Trusts Article, §7-201, 1. Describe each item in reasonable detail, and indicate its appraised gross market value as of the date of death of the decedent.

2. If an item is encumbered, show the type and amount of any encumbrance in the description.

3. For real and leasehold property, give a description sufficient to identify the property and the title reference by liber and folio.

4. In listing tangible personal property it is not necessary to list wearing apparel other than furs and jewelry.

Cross reference: Code, Estates and Trusts Article, §7-201 and 7-202.

REPORTER'S NOTE

Chapter 405, Acts of 2009 (HB 582) provides an alternate method for the valuation of real and leasehold property. To draw attention to this, the Rules Committee recommends adding a cross reference to the new law at the end of Rules 6-402 and 6-403.

**MARYLAND RULES OF PROCEDURE  
TITLE 6 — SETTLEMENT OF  
DECEDENTS' ESTATES  
CHAPTER 400 — ADMINISTRATION  
OF ESTATES**

AMEND Rule 6-403 by adding a cross reference, as follows: Rule 6-403. APPRAISAL

(a) Required Content

When an appraisal is required, the appraisal shall be prepared and executed by each appraiser named in the Inventory, other than the personal representative. The appraisal shall (1) describe briefly the appraiser's qualifications, (2) list in columnar form each item appraised and its market value as of the date of death of the decedent and (3) be verified substantially in the following form:

I solemnly affirm under the penalties of perjury that I appraised the property listed in this appraisal on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that the appraisal

(month) (year) was done impartially and to the best of my skill and judgment.

\_\_\_\_\_  
Appraiser

\_\_\_\_\_  
Address

(b) Basis of Appraisal

The basis of appraisal need not be set forth in the appraisal, but, upon request of the register or order of the court, the personal representative shall produce the basis for inspection by the register.

Cross reference: Code, Estates and Trusts Article, §§2-301 through 2-303, and §7-202 (a) and (b). For valuation other than at appraised fair market value under certain circumstances, see Code, Estates and Trusts Article, §7-202 (c).

REPORTER'S NOTE

See the Reporter's note to Rule 6-402.

**MARYLAND RULES OF PROCEDURE  
TITLE 6 — SETTLEMENT OF  
DECEDENTS' ESTATES  
CHAPTER 400 — ADMINISTRATION  
OF ESTATES**

AMEND Rule 6-405 by adding a cross reference, as follows:

Rule 6-405. APPLICATION TO FIX INHERITANCE TAX ON NON-PROBATE ASSETS

An application to fix inheritance taxes on non-probate assets shall be filed with the register within 90 days after decedent's death, together with any required appraisal in conformity with Rule 6-403. The application shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND

In the matter of: File No. \_\_\_\_\_  
\_\_\_\_\_, Deceased

APPLICATION TO FIX INHERITANCE TAX ON NON-PROBATE ASSETS

The applicant represents that:

1. The decedent, a resident of \_\_\_\_\_, (county) died on \_\_\_\_\_, \_\_\_\_\_, (month) (day) (year).

2. The non-probate property subject to the inheritance tax in which the decedent and the recipient had interests, the nature of each interest (such as joint tenant, life tenant, remainderman of life estate, trustee, beneficiary, transferee), and the market value of the property at the date of death are:

PROPERTY	NATURE OF INTERESTS	DATE AND TYPE OF INSTRUMENT	MARKET VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. The name and address of the recipient of the property and the relationship to the decedent are: \_\_\_\_\_

4. Any liens, encumbrances, or expenses payable from the above property and their amounts are: \_\_\_\_\_

_____	\$ _____
_____	\$ _____
_____	\$ _____

5. Attached is a statement of the basis for valuation or, if required by law, an appraisal. 6. All other information necessary to fix inheritance tax is as follows: [ ] tax is payable from residuary estate pursuant to decedent's will; [ ]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The applicant requests the Register of Wills to fix the amount of inheritance tax due.

I solemnly affirm under the penalties of perjury that the contents of the foregoing application are true to the best of my knowledge, information, and belief.

Date: \_\_\_\_\_  
Applicant

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

-----  
**(FOR APPLICANT'S USE — OPTIONAL)**

Value of property as above .....	\$ _____
Less: Liens, encumbrances, and expenses as above .....	\$ _____
Amount taxable .....	\$ _____
Direct Inheritance Tax due at ___ % .....	\$ _____
Collateral Inheritance Tax due at ___ % .....	\$ _____
Total tax due .....	\$ _____

Cross reference: Code, Tax-General Article, §§7-208 and 7-225 and Code, Estates and Trusts Article, §7-202.

**REPORTER'S NOTE**

An Assistant Attorney General pointed out that Code, Tax General Article, §7-225 pertains to appraisals of non-probate property for the purpose of determining inheritance tax. The trustees of this type of property have the responsibility to have the property appraised. The statute incorporates by reference procedures in the Estates and Trusts Article related to appraisals. Since there are no valuation procedures set out for trustees, a cross reference to Code, Estates and Trusts Article, §7-202, which pertains to valuation of real and leasehold property, is proposed to be added at the end of Rule 6-405.

**MARYLAND RULES OF PROCEDURE  
TITLE 6 — SETTLEMENT OF  
DECEDENTS' ESTATES  
CHAPTER 400 — ADMINISTRATION OF  
ESTATES**

AMEND Rule 6-416 (b) to modify the "Consent to Compensation for Personal Representative and/or Attorney" form, as follows:

**Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS**

- (a) Subject to Court Approval
  - (1) Contents of Petition

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: (A) the amount of all fees or commissions previously allowed, (B) the amount of fees or commissions that the petitioner reasonably anticipates will be requested in the future, (C) the amount of fees or commissions currently requested, (D) the basis for the current request in reasonable detail, and (E) that the notice required by subsection (a)(3) of this Rule has been given.

(2) Filing — Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

**NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS**

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed.

You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Consent in Lieu of Court Approval

(1) Conditions for Payment

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_,  
MARYLAND IN THE ESTATE OF: \_\_\_\_\_  
Estate No. \_\_\_\_\_

**CONSENT TO COMPENSATION FOR PERSONAL REPRESENTATIVE AND/OR ATTORNEY**

[I consent to the following payments of compensation to the personal representative and/or attorney and acknowledge that, if consented to by all unpaid creditors who have filed claims and all interested persons, these payments will not be subject to review or approval by the Court. I also understand that the total compensation does not exceed the amounts provided in Estates and Trusts Article, §7-601 which are 9% of the first \$20,000 of the gross estate plus 3.6% of the excess over \$20,000.]

*I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total compensation to be paid for Personal Representative's Commis-*

sions and/or Attorney's Fees without order of court. If the total compensation being requested falls within the maximum allowable amount, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, then this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first \$20,000 of the gross estate PLUS 3.6% of the excess over \$20,000.

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time = \_\_\_\_\_, LESS any Personal Representative's Commissions and/or Attorney's Fees previously paid. To date, \$ \_\_\_\_\_ in Personal Representative's Commissions and \$ \_\_\_\_\_ in Attorney's Fees have been paid.

Total combined fees being requested are \$ \_\_\_\_\_, to be paid as follows:

Amount	To	Name of Personal Representative/ Attorney
_____	_____	_____
_____	_____	_____
_____	_____	_____

[Consented to by:] I have read this entire form and I hereby consent to the payment of Personal Representative and/or Attorney's Fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____	_____
Attorney	Personal Representative
_____	_____
Address	Personal Representative
_____	_____
Address	
_____	
Telephone Number	

(2) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602 and 7-604.

REPORTER'S NOTE

The Conference of Orphans' Court Judges has suggested that the form in Rule 6-416 entitled "Consent to Compensation for Personal Representative and/or Attorney" be modified to ensure that lay persons who sign the form are giving informed consent. The Rules Committee recommends an amendment to the form, which has been developed with the assistance of the Conference, representatives of the Registers of Wills, and members of the Bar.

MARYLAND RULES OF PROCEDURE TITLE 13 — RECEIVERS AND ASSIGNEES CHAPTER 700 — REMOVAL AND RESIGNATION

AMEND Rule 13-702 to correct an internal reference, as follows:

Rule 13-702. RESIGNATION OF RECEIVER OR ASSIGNEE

(b) Report to be Filed

The receiver or assignee shall file with the petition a report pursuant to Rule [13-601] 13-501 for any period not covered in an annual report previously filed or, if no annual report has been filed, from the date the receiver or assignee took charge of the estate.

REPORTER'S NOTE

The proposed amendment to Rule 13-702 corrects an internal reference in section (b) of the Rule.

MARYLAND RULES OF PROCEDURE TITLE 16 — COURTS, JUDGES, AND ATTORNEYS CHAPTER 800 — MISCELLANEOUS

AMEND Rule 16-824 by changing the word "may" to the word "shall" in the Committee note after section (b), as follows:

Rule 16-824. RESTRICTIONS

(a) Judge's Own Ceremony

A judge may not perform his or her own marriage ceremony.

(b) Compensation

A judge may receive no compensation, remuneration, or gift for performing a marriage ceremony.

Committee note: See Code, Family Law Article, §2-410, as to the fees a clerk or deputy clerk [may] shall collect for performing a marriage ceremony.

(c) Advertising or Other Solicitations

A judge may not give or offer to give any reward to any person as an inducement to have the judge perform a marriage ceremony. A judge may not advertise or otherwise solicit individuals contemplating marriage to choose the judge to perform the ceremony.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee believes that the Committee note after section (b) incorrectly implies that clerks have the option of collecting fees for performing marriages. Since clerks must collect these fees by law, the Committee recommends changing the word "may" to the word "shall."

MARYLAND RULES OF PROCEDURE TITLE 16 — COURTS, JUDGES, AND ATTORNEYS CHAPTER 1000 — ACCESS TO COURT RECORDS

AMEND Rule 16-1006 (b) to add to subsection (b)(1) a reference to a certified nurse practitioner, to substitute the words "becomes effective" for the words "is issued" in subsection (b)(2), to add a cross reference following section (b), and to add a new section (c) referring to certain records pertaining to petitions for relief from abuse, as follows:

Rule 16-1006. REQUIRED DENIAL OF INSPECTION —  
CERTAIN CATEGORIES OF CASE RECORDS

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

...

(b) The following case records pertaining to a marriage license:

(1) A [physician's] certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license [is issued] becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

*Cross reference: See Code, Family Law Article, §2-402 (f).*

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of 48 hours after the petition is filed or the court acts on the petition.

[(c)] (d) ...  
[(d)] (e) ...  
[(e)] (f) ...  
[(f)] (g) ...  
[(g)] (h) ...  
[(h)] (i) ...  
[(i)] (j) ...  
[(j)] (k) ...  
[(k)] (l) ...

REPORTER'S NOTE

Chapter 233, Laws of 2009 (HB 1140) allows certified nurse practitioners as well as physicians to determine whether a 15, 16, or 17-year-old minor who wishes to be married is pregnant or has given birth to a child. A proposed amendment to Rule 16-1006 (b)(1) adds a reference to a "certified nurse practitioner" as being authorized to attest to a current pregnancy of the minor or a pregnancy that resulted in the minor giving birth to a child.

Subsection (b)(2) of Rule 16-1006 currently provides that the information about the application for a marriage license cannot be disclosed until a license is issued, except to a parent or guardian of a party to be married. The Rules Committee observed that Code, Family Law Article, §2-402 (f) provides that the information may not be disclosed until a marriage license becomes effective. A license may be issued immediately upon the filing of the application, but it does not become effective until two days later. Thus, the Rule and the statute are in conflict, since the Rule may allow disclosure of the fact that there has been an application for a marriage license as soon as the application is filed. The Committee recommends amending subsection (b)(2) to conform to the language of the statute.

The Committee also recommends that case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504 be added to the list of sealed case records in Rule 16-1006. The concern is that once the petition is filed, the alleged abuser may cause some harm before a judge can issue a protective order. The addition to the Rule would delay the disclosure to the alleged abuser.

[10-03-48]

# Emergency Action On Regulations

## Symbol Key

- Roman type indicates text existing before emergency status was granted.
- *Italic type* indicates new text.
- [Single brackets] indicate deleted text.

## Emergency Regulations

Under State Government Article, §10-111(b), Annotated Code of Maryland, an agency may petition the Joint Committee on Administrative, Executive, and Legislative Review (AELR), asking that the usual procedures for adopting regulations be set aside because emergency conditions exist. If the Committee approves the request, the regulations are given emergency status. Emergency status means that the regulations become effective immediately, or at a later time specified by the Committee. After the Committee has granted emergency status, the regulations are published in the next available issue of the Maryland Register. The approval of emergency status may be subject to one or more conditions, including a time limit. During the time the emergency status is in effect, the agency may adopt the regulations through the usual promulgation process. If the agency chooses not to adopt the regulations, the emergency status expires when the time limit on the emergency regulations ends. When emergency status expires, the text of the regulations reverts to its original language.

## Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

### Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

#### 09.03.06 Mortgage Lenders

Authority: Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 11-503, and 11-503.1; Annotated Code of Maryland

#### Notice of Extension of Emergency Status

[09-223-E-1]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .03 under **COMAR 09.03.06 Mortgage Lenders**.

**Emergency status has been extended to: March 15, 2010.**

**Emergency action was published in: 36:15 Md. R 1158 — 1159 (July 17, 2009).**

SARAH BLOOM RASKIN  
Commissioner of Financial Regulation

### Subtitle 03 COMMISSIONER OF FINANCIAL REGULATION

#### 09.03.09 Mortgage Originators

Authority: Business Regulation Article, §2-105; Financial Institutions Article, §§2-105.1, 11-602, 11-612, and 11-612.1; Annotated Code of Maryland

#### Notice of Extension of Emergency Status

[09-224-E-1]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations .02, .03, and .07, the repeal of existing Regulations .05 and .06, and new Regulations .05 and .06 under **COMAR 09.03.09 Mortgage Originators**.

**Emergency status has been extended to: March 15, 2010.**

**Emergency action was published in: 36:15 Md. R 1159 — 1162 (July 17, 2009).**

SARAH BLOOM RASKIN  
Commissioner of Financial Regulation

## Title 14 INDEPENDENT AGENCIES

### Subtitle 01 STATE LOTTERY AGENCY

#### 14.01.10 Video Lottery Terminals

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

#### Notice of Emergency Action

[10-045-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .02 and new Regulations .15, .16, and .17 under **COMAR 14.01.10 Video Lottery Terminals**.

**Emergency status began: December 28, 2009.**

**Emergency status expires: June 24, 2010.**

#### Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

#### Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

#### .02 Definitions.

- (text unchanged)
- Terms Defined.

(1) "Contractor" means a person or individual, other than an employee of a video operation licensee, who contracts with a video lottery operation licensee or other person to:

- Manage or operate a video lottery facility;
- Provide security for a video lottery facility;



(c) Perform service, maintenance, or repairs of a video lottery terminal, central operating system, associated equipment, or software;

(d) Own or control a person described in §B(2)(a) — (c) of this regulation; or

(e) Provide any other service that is essential to operation of a video lottery facility.

[(1)] (2) (text unchanged)

[(1-1)] (3) “Gaming employee” means an individual who [is]:

(a) [Employed] Is or is seeking to be employed by an applicant for or holder of an operation license, whose duties relate or will relate to the operation of a facility, and who performs or supervises or will perform or supervise the performance of:

(i) — (iv) (text unchanged)

(v) Operating or maintaining a facility’s information systems; [or]

(b) Is employed by a contractor or manufacturer, whose duties directly relate to the repair, service, or distribution of a video lottery terminal and associated equipment, or is otherwise required to be present on the gaming floor or in a restricted area of the facility; or

[(b)] (c) (text unchanged)

[(1-2)] (4) (text unchanged)

[(2)] (5) (text unchanged)

[(2-1)] (6) “Non-gaming employee” means an individual who is employed or is seeking to be employed by an applicant for or holder of an operation license, whose duties are or will be other than the duties of a gaming employee.

[(3)] (7) (text unchanged)

(8) *Principal Employee.*

(a) “Principal employee” means a video lottery employee who owns, controls or manages a licensee, or otherwise exercises control over a video lottery function of a licensee.

(b) “Principal employee” includes an employee of a contractor who performs any function described in §B(2) of this regulation.

(c) “Principal employee” does not include a gaming employee.

[(4)] (9) (text unchanged)

### **.15 Manufacturer Licenses.**

#### **A. General.**

(1) Unless a manufacturer holds a valid manufacturer’s license issued by the Commission before conducting business with a licensee or the State, the manufacturer may not offer any video lottery terminal, central monitor and control system, associated equipment or software, or goods or services that directly relate to the operation of video lottery terminals under State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland.

(2) The following persons must meet the Commission’s manufacturer license requirements:

(a) A manufacturer; and

(b) Each person that owns, controls, or is a representative of a manufacturer.

(3) Upon written request of an applicant for a manufacturer license, the Commission may apply an alternative licensing standard under Regulation .12 of this chapter.

**B. Qualification Requirements.** The Commission may issue a manufacturer license to a manufacturer that has:

(1) Paid the application and license fee under §C of this regulation;

(2) Unless exempt, obtained a bond required under Regulation .14C(2) of this chapter;

(3) Furnished the Commission with the information and documentation required under this chapter;

(4) Established by clear and convincing evidence that each person identified in §A(2) of this Regulation has:

(a) Qualified under State Government Article, §9-1A-07(c), Annotated Code of Maryland; and

(b) Not been disqualified under State Government Article, §9-1A-08, Annotated Code of Maryland;

(5) Provided the Commission with sufficient information to establish that the manufacturer has otherwise qualified for a manufacturer license; and

(6) Established that its system, associated equipment or software, or goods or services meet the specifications and procedures in COMAR 14.01.12.

#### **C. Application and License Fees.**

(1) The application fee for a person is:

(a) \$10,000 for a manufacturer of a video lottery terminal;

(b) \$10,000 for a manufacturer of a central monitor and control system;

(c) \$10,000 for a manufacturer of associated equipment and software; and

(d) \$10,000 for a distributor or reseller of a video lottery terminal, central monitor and control system, or associated equipment and software.

(2) The license fee for a person is:

(a) \$1,000 for a manufacturer of a video lottery terminal;

(b) \$25,000 for a manufacturer of a central monitor and control system;

(c) \$1,000 for a manufacturer of associated equipment and software; and

(d) \$1,000 for a distributor or reseller of a video lottery terminal, central monitor and control system, or associated equipment and software.

**D.** The manufacturer license authorizes the licensee to manufacture or distribute a video lottery terminal, a central monitor and control system, and associated equipment and software to the Commission or a video lottery destination location in the State.

**E.** A licensee has a continuing duty to inform the Commission of an act or omission that the licensee knows or should know constitutes a violation of State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, or the Commission’s regulations.

#### **F. Term; Renewal; License Renewal Fee.**

(1) The term of a manufacturer license is 1 year.

(2) The Commission may renew the license if, before the term of the license expires, the licensee:

(a) Applies for renewal;

(b) Continues to comply with all licensing requirements;

(c) Submits to a background investigation under Regulation .05 of this chapter; and

(d) Pays a license renewal fee of \$10,000.

### **.16 Principal Employee Licenses.**

**A. General.** Unless an individual holds a valid principal employee license issued by the Commission, the individual may not be employed by a licensee as a principal employee.

**B.** Upon written request of an applicant for a principal employee license, the Commission may apply an alternative licensing standard under Regulation .12 of this chapter.

**C. Qualification Requirements.** The Commission may issue a principal employee license to an individual who is employed by a licensee, and who has:

(1) Paid the application and license fee under §D of this regulation;

(2) Unless exempt, obtained a bond required under Regulation .14 of this chapter;

(3) Furnished the Commission with the personal and background information required under this chapter;

(4) Provided the Commission with sufficient information to establish that the individual is qualified for a principal employee license; and

(5) Established by clear and convincing evidence that the individual has:

(a) Qualified under State Government Article, §9-1A-07(c), Annotated Code of Maryland; and

(b) Not been disqualified under State Government Article, §9-1A-08, Annotated Code of Maryland.

**D. Application and License Fees.**

(1) The application fee for a principal employee is \$2,500.

(2) The license fee for a principal employee is \$500.

E. The principal employee license authorizes the licensee to function as a principal employee for any licensee in the State.

F. A licensee has a continuing duty to inform the Commission of an act or omission that the licensee knows or should know constitutes a violation of State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, or the Commission's regulations.

**G. Term; Renewal; License Renewal Fee.**

(1) The term of a principal employee license is 1 year.

(2) The Commission may renew the license if, before the term of the license expires, the licensee:

(a) Applies for renewal;

(b) Continues to comply with all licensing requirements;

(c) Submits to a background investigation under Regulation .05 of this chapter; and

(d) Pays a license renewal fee of \$500.

**.17 Contractor — Qualification.**

A. General. If a video lottery operation licensee engages a contractor to provide services described in Regulation .02B(2) of this chapter, the contractor shall qualify under the standards and provisions set forth in State Government Article, §§9-1A-07 and 9-1A-08, Annotated Code of Maryland.

B. Upon written request of a contractor, the Commission may apply an alternative licensing standard under Regulation .12 of this chapter in evaluating the qualifications of a contractor.

C. Qualification Requirements. The Commission may find a contractor qualified if it has provided the Commission with sufficient information to establish by clear and convincing evidence that it has:

(1) Qualified under State Government Article, §9-1A-07(c), Annotated Code of Maryland; and

(2) Not been disqualified under State Government Article, §9-1A-08, Annotated Code of Maryland.

D. The Commission may charge a contractor for the administrative costs associated with performing a background investigation under Regulation .03 of this chapter.

E. Application Fees. The application fee for the Commission's qualification of a contractor is \$500.

**F. Term; Renewal; Fees.**

(1) The term of qualification is 2 years.

(2) The Commission may renew the qualification if, before the expiration of 2 years, the contractor:

(a) Applies to renew qualification;

(b) Continues to comply with all qualification requirements;

(c) Submits to a background investigation under Regulation .05 of this chapter; and

(d) Pays a renewal fee of \$500.

**G. A contractor is exempt from:**

(1) License requirements if the Commission determines that the licensing requirements are not necessary in order to protect the public interest and accomplish the policies established by State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland;

(2) Bond requirements under Regulation .14 of this chapter; and

(3) Labor peace agreement requirements under State Government Article, §9-1A-07(c)(7)(v), Annotated Code of Maryland, unless the contractor is engaged:

(a) As a lessee;

(b) As a tenant; or

(c) Under a management agreement.

H. The Commission shall maintain and make publicly available a list of qualified contractors.

GINA M. SMITH  
Interim Director  
State Lottery Agency

**Subtitle 01 STATE LOTTERY AGENCY**

**14.01.10 Video Lottery Terminals**

Authority: State Government Article, Title 9, Subtitle 1-A,  
Annotated Code of Maryland

**Notice of Emergency Action**

[10-044-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .03 under **COMAR 14.01.10 Video Lottery Terminals**.

**Emergency status began: December 28, 2009.**

**Emergency status expires: June 24, 2010.**

**Comparison to Federal Standards**

There is no corresponding federal standard to this emergency action.

**Estimate of Economic Impact**

The emergency action has no economic impact.

**Economic Impact on Small Businesses**

The emergency action has minimal or no economic impact on small businesses.

**.03 Process.**

A. — E. (text unchanged)

F. Administrative Costs of Background Investigations.

(1) — (2) (text unchanged)

(3) The Commission may require an advance deposit from an applicant for the Commission's estimate of the administrative costs of conducting the applicant's background investigation.

(4) The Commission shall refund to an applicant any unused amount of the advance deposit.

G. Payment and collection. Applicants shall pay the administrative costs and fees required under this regulation by:

- (1) *Wire transfer;*
- (2) *Money order;*
- (3) *Certified check made payable to the State of Maryland;* or

(4) *Any other manner designated by the Commission.*

**[G.] H. Continuing Obligations.**

(1) — (2) (text unchanged)

(3) For a holder of an operation license, the information referred to in **[G(2)] §H(2)** of this regulation includes the license holder's final written proposal submitted to and approved by the Location Commission.

GINA M. SMITH  
Interim Director  
State Lottery Agency

## Subtitle 09 WORKERS' COMPENSATION COMMISSION

### 14.09.01 Procedural Regulations

Authority: Labor and Employment Article, §9-309(a),  
Annotated Code of Maryland

#### Notice of Emergency Action

[10-046-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulations **.01** and **.19** under **COMAR 14.09.01 Procedural Regulations**. This action was considered at a public meeting held on November 30, 2009, notice of which was given by publication pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Emergency status began: January 4, 2010.**

**Emergency status expires: July 2, 2010.**

#### Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

#### Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(2-1) "*Formal set-aside allocation*" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

(3) (text unchanged)

#### .19 Agreements for Final Compromise and Settlement.

A. General Requirements. An agreement for final compromise and settlement of a claim that is submitted to the Commission for approval as required by Labor and Employment Article, §9-722, Annotated Code of Maryland, shall contain the following:

(1) (text unchanged)

(2) **[The]** *A payment allocation sheet including the amount of any deductions for attorney's fees, medical fees, and other costs;*

(3) — (4) (text unchanged)

(5) If any compensation was previously awarded or paid, a statement indicating whether the settlement in-

cludes, is in addition to, or is in place of all or part of that compensation; **[and]**

(6) A statement indicating the rate of payment and whether all or part of the settlement is to be paid in a lump sum**[.];**

(7) *The claimant's average weekly wage;*

(8) *The claimant's date of birth and age in years and months;*

(9) *The total amount of all indemnity benefits paid to claimant;*

(10) *A statement confirming that the interests of Medicare have been considered in reaching the settlement;*

(11) *A statement that the insurer shall reimburse Medicare for any provisional or conditional payments made by Medicare that are ultimately determined to be the responsibility of the employer/insurer;*

(12) *The gross total of all future payments to be paid pursuant to an annuity (not present value); and*

(13) *If the insurer makes an assignment of any of its obligations to a third party, the settlement agreement shall contain affirmative language confirming that the employer/insurer shall resume its obligation for all remaining payments in the event of default by the third party.*

#### B. Future Medical Expenses

(1) *In determining whether a settlement must be reviewed and approved by the Centers for Medicare and Medicaid Services ("CMS"), the Commission shall apply the Medicare thresholds set forth in the most current memorandum or regulation available at the CMS website.*

(2) *A settlement that falls within the Medicare thresholds must be approved by CMS before it is approved by the Commission.*

(3) *A settlement that falls outside the Medicare thresholds may be approved by the Commission provided that the settlement agreement:*

(a) *Contains a statement confirming that the interests of Medicare have been considered in reaching the settlement; and*

(b) *Identifies the amount of the proposed settlement:*

(i) *Apportioned to future medical expenses; or*

(ii) *Set-aside for future medical expenses through a formal set-aside allocation.*

(4) *The apportionment of the amount of the settlement associated with future medical expenses shall be supported by medical evidence such as a medical opinion or evaluation.*

(5) *A formal set-aside allocation shall comply with the guidelines established by Medicare for set-aside allocations.*

#### **[B.] C. Special Requirements.**

(1) Claims Involving Third-Party Liability. When the settlement arises in connection with a claim involving a third-party liability action under Labor and Employment Article, Title 9, Subtitle 9, Annotated Code of Maryland the agreement submitted to the Commission for approval, in addition to complying with §§A and B of this regulation, shall contain or be accompanied by the following:

(a) — (b) (text unchanged)

(c) A copy of the *executed* release or judgment.

(2) Dependency Claims.

(a) When the settlement arises in connection with a claim involving a surviving dependent, the agreement submitted to the Commission for approval, in addition to complying with §§A and B of this regulation, shall contain:

(i) — (ii) (text unchanged)

(b) (text unchanged)

**[C.] D. (text unchanged)**

**[D.] E. Medical Report.**

(1) Except for those settlements arising under [§B(2)] §C(2) of this regulation, an agreement for final compromise and settlement shall be accompanied by all medical reports evaluating the nature and extent of the claimant's disability.

(2) On written request of the parties, the Commission may waive the requirement under [§D(1)] §E(1) of this regulation, [above,] if:

(a) The claim being settled is contested on an issue that denies the claimant's right to any benefits under Labor and Employment Article, Title 9, *Annotated Code of Maryland*;

(b) — (c) (text unchanged)

[E.] F. Hearing. The Commission may not approve an agreement for final compromise and settlement without a hearing unless the agreement is accompanied by [the notarized] affidavit of the claimant, on the form prescribed by the Commission, waiving the hearing. The Commission may, *at its discretion*, require a hearing even when the affidavit is filed.

R. KARL AUMANN  
Chairman

Workers' Compensation Commission

## Errata

### COMAR 10.14.01.06

At 36:26 Md. R. 2040 (December 18, 2009), col. 1, line 11 from the top:

For: **[.04] .06 Reporting Requirements [of Reporting Fa-(cilities).]**

Read: **[.04] .06 Reporting Requirements [of Reporting Fa-(cilities).]**

[10-03-39]

### COMAR 10.15.06.02

At 36:26 Md. R. 2047 (December 18, 2009), col. 1, line 8 from the bottom:

For: *products under the authority of the Secretary, as provide un-(der)*

Read: *products under the authority of the Secretary, as provided un-(der)*

### COMAR 10.15.06.03

At 36:26 Md. R. 2048 (December 18, 2009), col. 1, line 21 from the bottom:

For: §§401 — 417, as amended; and

Read: §§341-350f, as amended; and

### COMAR 10.15.06.04

At 36:26 Md. R. 2048 (December 18, 2009), col. 1, line 11 from the bottom:

For: (2) *Federal Food Drug and Cosmetic Act, 21 U.S.C.*

Read: (2) *Federal Food, Drug, and Cosmetic Act, 21 U.S.C.*

At 36:26 Md. R. 2048 (December 18, 2009), col. 1, line 10 from the bottom:

For: §§401 — 417;

Read: §§341-350f;

At 36:26 Md. R. 2048 (December 18, 2009), col. 2, line 1 from the top:

For: (2) *Federal Food Drug and Cosmetic Act, 21 U.S.C.*

Read: (2) *Federal Food, Drug, and Cosmetic Act, 21 U.S.C.*

At 36:26 Md. R. 2048 (December 18, 2009), col. 2, line 2 from the top:

For: §§401 — 417;

Read: §§341-350f;

### COMAR 10.15.06.05

At 36:26 Md. R. 2048 (December 18, 2009), col. 2, line 12 from the top:

For: §§401 — 417;

Read: §§341-350f;

### COMAR 10.15.06.08

At 36:26 Md. R. 2049 (December 18, 2009), col. 1, line 6 from the bottom:

For: (§21-)428, by:

Read: (§21-)428, *Annotated Code of Maryland*, by:

### COMAR 10.15.06.09

At 36:26 Md. R. 2049 (December 18, 2009), col. 2, line 2 from the top:

For: §§401 — 417;

Read: §§341-350f;

### COMAR 10.15.06.15

At 36:26 Md. R. 2051 (December 18, 2009), col. 1, line 26 from the bottom:

For: (5) *Clean in place (CIP) systems;*

Read: (5) *Clean-in-place (CIP) systems;*

[10-03-41]

### COMAR 10.36.02

At 36:26 Md. R. 1995 (December 18, 2009), col. 2, line 1 from the bottom:

For: **Effective Date: December 31, 2009.**

Read: **Effective Date: December 31, 2010.**

[10-03-35]

### COMAR 31.16.09

At 36:20 Md. R. 1561 (September 29, 2009), col. 2, line 14 from the top:

For: D. *The sections of the reports outlined in §A(4) and (5) of*

Read: D. *The sections of the reports outlined in §B(4) and (5) of*

[10-03-52]

## Symbol Key

- Roman type indicates text already existing at the time of the proposed action.
- *Italic type* indicates new text added at the time of proposed action.
- *Single underline, italic* indicates new text added at the time of final action.
- Single underline, roman indicates existing text added at the time of final action.
- ~~[[Double brackets]]~~ indicate text deleted at the time of final action.

## Title 02 OFFICE OF THE ATTORNEY GENERAL

### Subtitle 02 DIVISION OF SECURITIES

#### 02.02.01 General Administrative Regulations

Authority: Corporations and Associations Article,  
§§11-203, 11-302, 11-305, and 11-412,  
Annotated Code of Maryland

#### Notice of Final Action [09-344-F]

On January 11, 2010, the Office of the Attorney General adopted new Regulation **.09** under **COMAR 02.02.01 General Administrative Regulations**. This action, which was proposed for adoption in 36:22 Md. R. 1727 — 1728 (October 23, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

MELANIE SENTER LUBIN  
Securities Commission

## Title 08 DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### Notice of Final Action [09-394-F]

On January 19, 2010, the Secretary of Natural Resources adopted amendments to:

(1) Regulation **.05** under **COMAR 08.02.01 General**; and

(2) Regulations **.10** and **.14** under **COMAR 08.02.03 Crabs**.

This action, which was proposed for adoption in 36:25 Md. R. 1959 — 1961 (December 4, 2010), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

### Subtitle 12 DIVISION OF LABOR AND INDUSTRY

#### 09.12.27 Tower Crane Operator Certification

Authority: Business Occupations and Professions Article, Title 9.5, Labor and Employment Article, §§2-106(b)(4) and 5-312,  
Annotated Code of Maryland

#### Notice of Final Action [09-348-F]

On January 5, 2010, the Commissioner of Labor and Industry adopted new Regulations **.01 — .04** under a new chapter, **COMAR 09.12.27 Tower Crane Operator Certification**. This action, which was proposed for adoption in 36:24 Md. R. 1863 — 864 (November 20, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

RONALD J. DEJULIIS  
Commissioner of Labor and Industry

## Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### 10.09.27 Home Care for Disabled Children Under a Model Waiver

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105,  
Annotated Code of Maryland

#### Notice of Final Action [09-363-F]

On January 11, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulation **.06** under **COMAR 10.09.27 Home Care for Disabled Children Under a Model Waiver**. This action, which was proposed for adoption in 36:23 Md. R. 1827 (November 6, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS****10.09.54 Home/Community Based Services Waiver for Older Adults**

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-132, Annotated Code of Maryland

**Notice of Final Action**

[09-390-F]

On January 20, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .33 under **COMAR 10.09.54 Home/Community-Based Services Waiver for Older Adults**. This action, which was proposed for adoption in 36:25 Md. R. 1963 (December 4, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS****10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder**

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-130, Annotated Code of Maryland

**Notice of Final Action**

[09-391-F]

On January 20, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .22 under **COMAR 10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder**. This action, which was proposed for adoption in 36:25 Md. R. 1963 — 1964 (December 4, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 21 MENTAL HYGIENE REGULATIONS****10.21.25 Fee Schedule — Mental Health Services — Community-Based Programs and Individual Practitioners**

Authority: Health-General Article, §§10-901, 15-103, and 15-105; Title 16, Subtitles 1 and 2; Annotated Code of Maryland

**Notice of Final Action**

[09-351-F]

On January 20, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .09 under **COMAR 10.21.25 Fee Schedule — Mental Health Services — Community-Based Programs and Individual Practitioners**. This action, which was proposed for adoption in 36:22 Md. R. 1737 — 1738 (October 23, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS****10.29.05 Continuing Education**

Authority: Health Occupations Article, §§7-205 and 7-314(c)(4), Annotated Code of Maryland

**Notice of Final Action**

[09-339-F]

On January 11, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .03 — .05 under **COMAR 10.29.05 Continuing Education**. This action, which was proposed for adoption in 36:22 Md. R. 1738 (October 23, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 42 BOARD OF SOCIAL WORK EXAMINERS****Notice of Final Action**

[09-362-F]

On January 11, 2010, the Secretary of Health and Mental Hygiene adopted amendments to:

- (1) Regulations .08 and .16 — .19 under **COMAR 10.42.01 Regulations Governing Licensure**; and
- (2) Regulation .02 under **COMAR 10.42.05 Fee Schedule**.

This action, which was proposed for adoption in 36:23 Md. R. 1830 — 1832 (November 6, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

## Title 11 DEPARTMENT OF TRANSPORTATION

**Subtitle 04 STATE HIGHWAY ADMINISTRATION****11.04.05 Commercial-Industrial or Subdivision Street Permits (All Entrance Permits other than Residential)**

Authority: Transportation Article, §§2-103(b)(2), 8-202(b)(2)(i), 8-203(a), 8-204(b), (c), and (i), 8-625, 8-629, 8-630, and 8-646, Annotated Code of Maryland

**Notice of Final Action**

[09-331-F]

On November 24, 2009, the Administrator of the State Highway Administration adopted amendments to Regulations .01 — .03, .05, and .06 under **COMAR 11.04.05 Commercial-Industrial or Subdivision Street Permits (All Entrance Permits other than Residential)**. This action, which was proposed for adoption in 36:21 Md. R.

1601 — 1604 (October 9, 2009), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 8, 2010.**

#### Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Authority: Three citations added to chapter.

Regulation .03E(1)(e): Delete the words “pedestrian and bicycle mobility” and add the words “for increased safety and access for pedestrian and bicycle traffic”. These changes in language conform to statutory language and conform to statutory authority.

Regulation .03G(1): Delete the words “accommodate pedestrian mobility and the” and add the words “provide for increased safety and access for pedestrian and other”. These changes in language conform to statutory language and conform to statutory authority.

Regulation .03G(2): Delete the words “accommodate pedestrian mobility and the” and add the words “provide for increased safety and access for pedestrian and other”. These changes in language conform to statutory language and conform to statutory authority.

#### .03 Entrance Standards and Specifications.

A. — D. (proposed text unchanged)

E. Channelization.

(1) Unless other channelization is acceptable to the Chief, Engineering Access Permits Division, all entrances permitted under these regulations shall be channelized, for their entire frontage, as follows:

(a) — (d) (proposed text unchanged)

(e) *All improvements shall provide [[pedestrian and bicycle mobility]] for increased safety and access for pedestrian and bicycle traffic in a manner acceptable to the Administration.*

(2) — (4) (proposed text unchanged)

F. (proposed text unchanged)

G. Intersection Radius.

(1) At the intersection of a State highway with a minor road (county, municipal, etc.), the minimum radius shall be a 30-foot or equivalent three-centered compound curve and [[accommodate pedestrian mobility and the]] provide for increased safety and access for pedestrian and other intended traffic in a manner acceptable to SHA.

(2) At the intersection of a State highway with a State highway or other major arterial highway, the minimum radius shall be a 50-foot or equivalent three-centered compound curve and [[accommodate pedestrian mobility and the]] provide for increased safety and access for pedestrian and other intended traffic in a manner acceptable to SHA.

(3) — (4) (proposed text unchanged)

H. — M. (proposed text unchanged)

NEIL J. PEDERSEN  
Administrator  
State Highway Administration

## Subtitle 15 MOTOR VEHICLE ADMINISTRATION — VEHICLE REGISTRATION

### 11.15.16 Issuance, Renewal, Display, and Expiration of Registrations

Authority: Transportation Article, §§12-104(b), 13-403, 13-410, 13-412, 13-904, 13-912, and 13-950 — 13-952, Annotated Code of Maryland

#### Notice of Final Action

[09-370-F]

On January 5, 2010, the Administrator of the Motor Vehicle Administration adopted amendments to Regulation .01 under **COMAR 11.15.16 Issuance, Renewal, Display, and Expiration of Registrations**. This action, which was proposed for adoption in 36:24 Md. R. 1890 — 1891 (November 20, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

## Subtitle 21 MOTOR VEHICLE ADMINISTRATION — COMMERCIAL MOTOR VEHICLES

### 11.21.01 Motor Carrier Safety

Authority: Transportation Article, §§12-104(b), 16-820, and 25-111(f), Annotated Code of Maryland

#### Notice of Final Action

[09-356-F]

On January 5, 2010, the Administrator of the Motor Vehicle Administration adopted amendments to Regulation .06 under **COMAR 11.21.01 Motor Carrier Safety**. This action, which was proposed for adoption in 36:22 Md. R. 1741 — 1742 (October 23, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

## Title 27 CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

#### Notice of Final Action

[09-273-F]

On January 6, 2010, the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays adopted amendments to:

(1) Regulation .01 under **COMAR 27.01.01 General Provisions**;

(2) Regulations .03, .04, and .05 under COMAR 27.01.02 Development in the Critical Area;

(3) Regulations .01 and .02 under COMAR 27.01.09 Habitat Protection Areas in the Critical Area;

(4) Regulation .01 under COMAR 27.02.01 General Provisions; and

(5) Regulations .03, .09, and .10 under COMAR 27.02.05 State Agency Actions Resulting in Development on State-Owned Lands.

This action, which was proposed for adoption in 36:19 Md. R. 1480 — 1484 (September 11, 2009), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 8, 2010.**

#### Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

COMAR 27.01.01.01B(72): Amended to provide that the definition of "tributary streams" has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland. The change conforms the COMAR definition with the definition in the statute.

COMAR 27.02.01.01B(30-1): Adds the term "lot coverage" and states that the term has the meaning stated in Natural Resources Article, Section 8-1802(a), Annotated Code of Maryland. The change corrects an inadvertent omission of the term "lot coverage" from COMAR, and the change conforms COMAR with the definition in the statute.

COMAR 27.02.01.01B(60): Amended to provide that the definition of "tributary streams" has the meaning stated in Natural Resources Article, Section 8-1802(a), Annotated Code of Maryland. The change conforms the COMAR definition with the definition in the statute.

The changes provide uniformity between COMAR and the Natural Resources Article.

The changes do not affect parties subject to the regulation, because the definitions already existed in statute.

### Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

#### 27.01.01 General Provisions

Authority: Natural Resources Article, §8-1806,  
Annotated Code of Maryland

##### .01 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1) — (71) (proposed text unchanged)

(72) [[“Tributary streams” means those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.]] “Tributary streams” has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

(73) — (78) (proposed text unchanged)

### Subtitle 02 DEVELOPMENT IN THE CRITICAL AREA RESULTING FROM STATE AND LOCAL AGENCY PROGRAMS

#### 27.02.01 General Provisions

Authority: Natural Resources Article, §8-1814,  
Annotated Code of Maryland

##### .01 Definitions.

A. (proposed text unchanged)

B. Terms Defined.

(1) — (30) (proposed text unchanged)

(30-1) “Lot coverage” has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

(31) — (59) (proposed text changed)

(60) [[“Tributary streams” means those perennial and intermittent streams in the Critical Area which are so noted on the most recent U.S. Geological Survey 7-1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.]] “Tributary streams” has the meaning stated in Natural Resources Article, §8-1802(a), Annotated Code of Maryland.

(61) — (65) (proposed text unchanged)

MARGARET McHALE

Chair

Critical Area Commission for the Chesapeake  
and Atlantic Coastal Bays

## Title 31 MARYLAND INSURANCE ADMINISTRATION

### Subtitle 09 LIFE INSURANCE AND ANNUITIES

#### 31.09.14 Retained Asset Accounts

Authority: Insurance Article, §§2-109(a), 12-208, and 16-108;  
Annotated Code of Maryland

##### Notice of Final Action

[09-360-F]

On December 22, 2009, the Insurance Commissioner adopted new Regulations .01 — .05 under new chapter, COMAR 31.09.14 Retained Asset Accounts. This action, which was proposed for adoption in 36:23 Md. R. 1835 — 1836 (November 6, 2009), has been adopted as proposed.

**Effective Date: February 8, 2010.**

RALPH S. TYLER  
Insurance Commissioner



For information concerning citizen participation in the regulation-making process, see inside front cover.

## Symbol Key

- Roman type indicates existing text of regulation.
- *Italic type* indicates proposed new text.
- [Single brackets] indicate text proposed for deletion.

## Promulgation of Regulations

An agency wishing to adopt, amend, or repeal regulations must first publish in the Maryland Register a notice of proposed action, a statement of purpose, a comparison to federal standards, an estimate of economic impact, an economic impact on small businesses, a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations. The opportunity for public comment must be held open for at least 30 days after the proposal is published in the Maryland Register.

Following publication of the proposal in the Maryland Register, 45 days must pass before the agency may take final action on the proposal. When final action is taken, the agency must publish a notice in the Maryland Register. Final action takes effect 10 days after the notice is published, unless the agency specifies a later date. An agency may make changes in the text of a proposal. If the changes are not substantive, these changes are included in the notice of final action and published in the Maryland Register. If the changes are substantive, the agency must repropose the regulations, showing the changes that were made to the originally proposed text.

Proposed action on regulations may be withdrawn by the proposing agency any time before final action is taken. When an agency proposes action on regulations, but does not take final action within 1 year, the proposal is automatically withdrawn by operation of law, and a notice of withdrawal is published in the Maryland Register.

## Title 03 COMPTROLLER OF THE TREASURY

### Subtitle 02 ALCOHOL AND TOBACCO TAX

#### 03.02.01 Alcoholic Beverages

Authority: Article 2B, §§2-101, 16-301, and 16-302,  
Annotated Code of Maryland.

#### Notice of Proposed Action

[10-061-P]

The Comptroller of the Treasury proposes to amend Regulations **.03** and **.11** and to adopt new Regulations **.20**, **.21**, and **.22** under **COMAR 03.02.01 Alcoholic Beverages**.

#### Statement of Purpose

The purpose of this action is to include in the definition of sale of alcoholic beverages requiring a license, the offer, gift, or sale of alcoholic beverages by an unlicensed vendor to a consumer in conjunction with a service or product paid for by the consumer; require a solicitor's permit for an independent broker who represents a licensed manufacturer, non-resident dealer, nonresident winery, or licensed wholesaler for the purpose of selling, promoting, or offering for sale alcoholic beverages to consumers at a special event for which a retail license is issued, or at on-premises promotions; define come-to-rest, and licensed premises and licensed location for purposes of the come-to-rest provision in Article 2B, §2-301(f)(2), Annotated Code of Maryland; require the licensed location to be the same as that stated on the Federal Basic Permit; require nonresident dealers and resident dealers to obtain a separate permit for each location under which alcoholic beverages are invoiced, and require invoices to include the business name stated on the application; and specify the requirements for a public storage permit and a public transportation permit.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 Joanne Tetlow, Esquire, Tax Consultant II, Comptroller of Maryland, 80 Calvert Street, Room 310, Annapolis, MD 21401, or call (410) 260-7494, or email to [jtetlow@comp.state.md.us](mailto:jtetlow@comp.state.md.us), or fax to (410) 974-5564. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### **.03 Retail Licensees — Handling of Alcoholic Beverages and Records.**

A. — C. (text unchanged)

D. Sale.

(1) Alcoholic beverage sales to consumers may not be solicited or consummated away from the licensed retail dealer's premises. A sale or delivery of alcoholic beverages may not be made for resale or to license holders, except to the holder of a Special and Temporary Class C license or as authorized by Article 2B, Annotated Code of Maryland.

(2) *Alcoholic beverages offered, given, or sold by an unlicensed vendor to a consumer in conjunction with, or as a part of, a service or product paid for by the consumer is a sale requiring a license under Article 2B, Annotated Code of Maryland.*

E. (text unchanged)

#### **.11 Solicitor's Permit.**

A. Definitions.

(1) — (4) (text unchanged)

(5) *"Solicitor independent broker" means any person employed by or who represents within this State any licensed*

manufacturer, nonresident dealer, nonresident winery, or licensed wholesaler for the purpose of selling, promoting, or offering for sale alcoholic beverages by contacting:

(a) Consumers at a special event for which a temporary or permanent retail license is issued; or

(b) Consumers at an on-premises promotion as defined in COMAR 03.02.05.01.

[(5)] (6) (text unchanged)

#### B. General Procedures.

(1) A person may not act as a salesperson for a Maryland licensed wholesaler, [or] as a representative for a manufacturer, nonresident dealer, or nonresident winery, or as a solicitor independent broker, unless the person has first applied for and received a solicitor's permit from the [Alcohol and Tobacco Tax Bureau of the Comptroller's Office] Comptroller, except as provided in §B(2) of this regulation.

(2) (text unchanged)

(3) Any adult person, except the holder of a retail license or employees or agents of a licensed retail dealer, may make application to the [Alcohol and Tobacco Tax Bureau] Comptroller for a solicitor's permit, on forms and in the manner the Comptroller requires. The application shall set forth the name and address of the person, firm, or corporation who employs the applicant or whom the applicant represents, and also the name and address of the applicant. The applicant may not be employed by or represent any person, firm, or corporation whose name does not appear on the application.

(4) Solicitors' permits shall be kept in possession at all times while engaged in the business of selling or offering for sale alcoholic beverages, and shall be exhibited upon demand by any licensee or authorized employee of the [Alcohol and Tobacco Tax Bureau] Comptroller.

(5) Except for a holder of a solicitor's permit which specifically designates the holder as a solicitor independent broker, [Holders] holders of a solicitor's permit may not contact consumers for the purpose of selling or offering for sale alcoholic beverages. If the person holding the permit is employed as a representative, the person may not be permitted to sell, promote, or offer for sale alcoholic beverages to licensed retail dealers, except for the account of a licensed wholesaler, who is a distributor for the products of the employer of the permittee.

(6) The holder of a solicitor's permit shall notify the [Alcohol and Tobacco Tax Bureau] Comptroller of any change of address within 10 days. Failure to do so may subject the solicitor's permit to suspension or revocation by the Comptroller.

(7) A solicitor shall notify immediately the [Alcohol and Tobacco Tax Bureau] Comptroller of any change of employment or representation status and shall surrender the solicitor's permit within 5 days for cancellation or amendment. Failure to surrender the permit within the 5 days may make that person ineligible for any other permit for a period of up to 3 years. It shall also be the duty of the employer or principal whose name is specified on the solicitor's application to notify the [Alcohol and Tobacco Tax Bureau] Comptroller within 5 days of the termination of the employment.

(8) — (9) (text unchanged)

#### **.20 Come to Rest.**

##### A. Definitions.

(1) Except as otherwise specified in Article 2B, Annotated Code of Maryland, "licensed premises" means the physical location for which the license is issued, including any buildings or grounds identified and made part of the

premises for purposes of the license application, and including additional licensed locations.

(2) "Licensed location" means the physical address of the licensed premises stated on the application.

(3) "Come to rest" means that the alcoholic beverages are physically unloaded from the transporter, truck, or other common carrier onto the floor, loading dock, or other part of the wholesaler's licensed premises.

B. Application Requirement. The Licensed Location shall be the same as that stated on the application for the Basic Permit under the Federal Alcohol Administration Act as required by the Alcohol and Tobacco Tax and Trade Bureau of the Department of Treasury.

C. Except for deliveries to the holder of a Class E, F, or G license, deliveries made under an Individual Storage Permit do not meet the come to rest requirements under this regulation.

#### **.21 Nonresident Dealer Permit and Resident Dealer Permit Invoices.**

A. The holder of a nonresident dealer permit or resident dealer permit shall:

(1) Obtain a separate permit for each location under which alcoholic beverages are invoiced to Maryland wholesalers or retailers; and

(2) Include on each invoice the business name as stated on the permit application.

B. Alcoholic beverages shipped to a Maryland wholesaler by the holder of a nonresident dealer permit or resident dealer permit may originate from a location other than the location on the permit as long as the invoice includes the permit name and address.

#### **.22 Public Storage or Transportation Permit.**

A. A public storage permit authorizes the holder to operate a warehouse for the storage of alcoholic beverages of licensees or authorized permit holders.

B. A public transportation permit authorizes the holder to transport alcoholic beverages into, within, or out of this State for licensees or authorized permit holders.

C. A Public Transportation Permit may be applied for by:

(1) A person engaged in the business of transporting alcoholic beverages for licensees into, within, and out of this State; or

(2) A licensed wholesaler in order to transport alcoholic beverages to retailers for another licensed wholesaler when there is a written delivery agreement between the wholesalers stating that there will be:

(a) No warehousing of the alcoholic beverages being transported;

(b) No unreasonable delay in transporting the alcoholic beverages;

(c) Segregation of the alcoholic beverages from the alcoholic beverages being transported under the transporter's own wholesaler license;

(d) A separate invoice for the alcoholic beverages being transported under the public transportation permit; and

(e) Delivery of the alcoholic beverages without performance of any other service, such as solicitation, shelf management, product rotation, or any other acts that under Article 2B, Annotated Code of Maryland, and the regulations may be legally performed by a licensed manufacturer, wholesaler, or permit holder.

D. A written delivery agreement that meets the requirements of §C(2) of this regulation satisfies the provision of Article 2B, §2-301(b)(1), Annotated Code of Maryland, that the

sale and delivery of alcoholic beverages shall be from the licensed premises of a wholesaler.

E. When transporting alcoholic beverages under a public transportation permit, the holder shall possess the following:

(1) A valid public transportation permit; and

(2) A valid vehicle identification card for each vehicle, issued by the Comptroller pursuant to Article 2B, §2-101(b)(6), Annotated Code of Maryland, which card shall include the vehicle's make, model, vehicle identification number, state of registration, and tag number.

F. Before accepting delivery, a licensed wholesaler shall verify that the transporter delivering the alcoholic beverages has in its possession the documentation required under §E of this regulation.

PETER FRANCHOT  
Comptroller of the Treasury

## Subtitle 02 ALCOHOL AND TOBACCO TAX

### 03.02.06 Fire Safety Performance Standard for Cigarettes

Authority: Business Regulation Article, §16-607(1),  
Annotated Code of Maryland

#### Notice of Proposed Action

[10-060-P]

The Comptroller of the Treasury proposes to adopt new Regulations .01 — .04 under a new chapter, **COMAR 03.02.06 Fire Safety Performance Standard for Cigarettes**.

#### Statement of Purpose

The purpose of this action is to specify certain requirements for certifications submitted to the Comptroller by manufacturers; to provide that copies of package markings required to be distributed by manufacturers and wholesalers may be made in an electronic format; to describe the Fire Safety Cigarette Certification List issued by the Comptroller, and when cigarettes will be removed from such list; to provide that cigarettes seized without a proper package marking will be presumed to have violated the performance standard under §16-602 of the Business Regulation Article, and be subject to the civil penalties as provided in §16-608 of the Business Regulation Article; and to provide for inspections of licensees by authorized personnel, and to define that personnel to include inspectors or other persons designated by the Comptroller.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 Joanne Tetlow, Esquire, Tax Consultant II, Comptroller of Maryland, 80 Calvert Street, Room 310, Annapolis, MD 21401, or call (410) 260-7494, or email to jtetlow@comp.state.md.us, or fax to (410) 974-5564. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### .01 Certification by the Comptroller.

A. Each written certification submitted to the Comptroller by a manufacturer as required under Business Regulation Article, §16-603(a), Annotated Code of Maryland, shall be submitted under oath in the same manner as prescribed in Business Regulation Article, §1-201(1), Annotated Code of Maryland.

B. When a certification submitted under Business Regulation Article, §16-603, Annotated Code of Maryland, is approved, the Comptroller shall send written notification of such approval to the manufacturer, including the effective date of the certification and the date upon which such certification shall expire.

C. Each certification submitted pursuant to Business Regulation Article, §16-602, Annotated Code of Maryland, shall state the date on which the cigarette or cigarettes listed therein were tested, provided that no such date of testing shall predate the date of submission of the certification by more than 36 months.

#### .02 Certification to Distributors.

A. If a wholesaler consents, a manufacturer may provide to a wholesaler the copies of the illustration required under Business Regulation Article, §16-605(a), Annotated Code of Maryland, in an electronic format.

B. If a retailer, subwholesaler, or vending machine operator consents, a wholesaler may provide the copies of the illustration required under Business Regulation Article, §16-605(b), Annotated Code of Maryland, in an electronic format.

#### .03 Fire Safety Cigarette Certification List.

A. The Comptroller shall prepare a Fire Safety Cigarette Certification List which list shall identify each cigarette:

(1) Whose certification has been approved by the Comptroller as meeting the performance standard under Business Regulation Article, §16-602, Annotated Code of Maryland; and

(2) That is a style of a brand family of a tobacco product manufacturer certified by the Attorney General.

B. If a cigarette is removed from the Fire Safety Cigarette Certification List by the Comptroller, prompt written notification shall be sent to the manufacturer setting forth the reasons for such action. As of the date on the written notification, a cigarette removed from the list is considered to be a noncomplying cigarette subject to the provisions of Business Regulation Article, §16-606, Annotated Code of Maryland.

C. The Fire Safety Cigarette Certification List may be updated by the Comptroller four times a year on the first day of each quarter of the calendar year.

D. A cigarette shall be removed from the Fire Safety Cigarette Certification List if it:

(1) Is a style of a brand family whose tobacco product manufacturer has not been certified by the Attorney General;

(2) Fails to be recertified in accordance with Business Regulation Article, §16-603(d), Annotated Code of Maryland; or

(3) Does not comply with federal law or regulations.

**.04 Enforcement.**

A. Cigarettes seized under Business Regulation Article, §16-610(a), Annotated Code of Maryland, are considered to be a violation of Business Regulation Article, §16-602, Annotated Code of Maryland, and are subject to penalties as provided in Business Regulation Article, §16-608, Annotated Code of Maryland.

B. A police officer or other authorized personnel may inspect the premises and records of a retailer, subwholesaler, vending machine operator, or wholesaler to determine whether cigarettes in their possession are in violation of Business Regulation Article, Title 16, Subtitle 6, Annotated Code of Maryland.

C. In addition to a police officer, inspectors employed by the Comptroller, or other persons designated by the Comptroller, shall be authorized personnel that may act in accordance with the provisions of Business Regulation Article, §16-610, Annotated Code of Maryland.

PETER FRANCHOT  
Comptroller of the Treasury

## Subtitle 04 INCOME TAX

### Notice of Proposed Action

[10-067-P]

The Comptroller of the Treasury, Revenue Administration Division, proposes to amend:

- (1) Regulation **.06** under **COMAR 03.04.02 Individual**;
- (2) Regulations **.04** and **.06** under **COMAR 03.04.03 Corporations**.
- (3) Regulation **.02** under **COMAR 03.04.07 Pass-Through Entity Nonresident Tax**; and
- (4) Regulation **.02** under **COMAR 03.04.08 Banks and Similar Institutions**;
- (5) Regulation **.01** under **COMAR 03.04.09 Credit for Employer-Provided Long-Term Care Insurance**;
- (6) Regulation **.08** under **COMAR 03.04.12 Nonresident Real Estate Withholding Tax**;
- (7) Regulations **.01** and **.02** under **COMAR 03.04.13 Credit for Wages Paid to Qualified Ex-Felon Employee**;

#### Statement of Purpose

The purpose of this action is to conform regulations to newly enacted legislation and clarify existing regulations.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 James M. Arnie, Director, Revenue Administration Division, Comptroller of Maryland, 110 Carroll Street, Room 105, Annapolis, MD 21411-0001, or call 410-260-7445, or email to jarnie@comp.state.md.us,

or fax to 410-974-3456. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

### 03.04.02 Individual

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

#### .06 Maryland Adjusted Gross Income of a Nonresident Individual.

A. — B. (text unchanged)

C. Subtractions from Federal Adjusted Gross Income. To the extent included in computing federal adjusted gross income, the following are subtracted from the federal adjusted gross income of a nonresident individual to determine Maryland adjusted gross income:

(1) (text unchanged)

(2) Amounts derived from:

(a) — (f) (text unchanged)

(g) Reforestation or timber stand expenses as provided for under Tax-General Article, §10-208(i), to the extent incurred for land located in this State; [and]

(h) Wage expenses for targeted jobs as provided for under Tax-General Article, §10-208(k), to the extent that the wages are paid for services performed in Maryland[.];

(i) Poultry or livestock manure-spreading equipment expenses as provided for under Tax-General Article, §10-208(m), Annotated Code of Maryland, if the equipment is used only in this State, and if the taxpayer:

(i) (text unchanged)

(ii) Owns the spreading equipment for at least 3 years after the taxable year in which the subtraction is made[.]; and

(j) *The amount by which the cost difference between a conventional on-site sewage disposal system and a system that utilizes nitrogen removal technology exceeds the amount of assistance the individual receives from the Department of the Environment under the Environment Article, §9-1108, Annotated Code of Maryland; and*

(3) (text unchanged)

D. (text unchanged)

### 03.04.03 Corporations

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

#### .04 Filing of Returns.

A. — B. (text unchanged)

C. Extension of Time to File.

(1) A corporation unable to file by the due date shall file an Application for Extension [of Time] to File Corporation Income Tax Return (Form 500E) to be granted an automatic extension of up to 7 months.

(2) — (3) (text unchanged)

D. (text unchanged)

#### .06 Other Forms, Returns, Schedules, and Statements.

A. Copy of Federal Return Required.

(1) (text unchanged)

(2) Corporations included in a consolidated filing for federal purposes shall attach a /copy of pages one through [four] five of the actual consolidated return and shall also provide a copy of the columnar schedule of income and expense, and of balance sheet items, reconciling the separate items of each member corporation to the consolidated totals.

B. — E. (text unchanged)

**03.04.07 Pass-Through Entity Nonresidential Tax**

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

**.02 Imposition and Computation of Tax.**

- A. (text unchanged)
- B. Allocation of Income for a Multistate Pass-Through Entity.

(1) A multistate pass-through entity that is a partnership (including a limited liability company taxed as a partnership and a business trust taxed as a partnership) shall allocate income to this State using:

(a) The apportionment formula for corporations under [COMAR 03.04.03.08A — D] *COMAR 03.04.03.08 A — E*; or

(b) (text unchanged)

(2) A multistate pass-through entity that is an S corporation shall allocate income to this State using:

(a) The apportionment formula for corporations under [COMAR 03.04.03.08A — D] *COMAR 03.04.03.08 A — E*; or

(b) (text unchanged)

C. — E. (text unchanged)

**03.04.08 Banks and Similar Institutions**

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) — (9) (text unchanged)
  - (10) Loan.
    - (a) — (b) (text unchanged)
    - (c) “Loan” does not include:
      - (i) Properties treated as loans under §595 of the Internal Revenue Code[.] *as in effect January 1, 1996*;
      - (ii) — (xiii) (text unchanged)
  - (11) — (20) (text unchanged)

**03.04.09 Credit for Employer-Provided Long-Term-Care Insurance**

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

**.01 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) (text unchanged)
  - (2) “Employer” has the meaning stated in §3401(d) of the Internal Revenue Code.
  - (3) (text unchanged)

**03.04.12 Nonresident Real Estate Withholding Tax**

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

**.08 Procedures for Requesting Early Refunds.**

A. An individual or a corporation that has paid withholding tax in excess of the amount owed may file an Application for Tentative Refund of Withholding on Sales of Real Property by Nonresidents (MW506R) with the Comptroller 60 days after the date the tax was paid to the clerk or the Department,[ but not later than November 1 of the calendar

year in which the tax was paid] *unless the tax was paid to the clerk or the Department after November 1 of the calendar year in which the tax was paid.*

B. — E. (text unchanged)

**03.04.13 Credit for Wages Paid to a Qualified Ex-Felon Employee**

Authority: Tax-General Article, §2-103,  
Annotated Code of Maryland

**.01 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) — (2) (text unchanged)
  - (3) “Employer” has the meaning stated in §3401(d) of the Internal Revenue Code.
  - (4) — (6) (text unchanged)

**.02 Credit Allowed.**

- A. (text unchanged)
- B. A business entity is not allowed the credit:
  - (1) — (3) (text unchanged)
  - (4) If the business entity is claiming a tax credit for the same employee for:
    - (a) Wages and child care expenses for a qualified opportunity employee under [Article 88A, §54, Annotated Code of Maryland] *Tax-General Article, §10-704.3, Annotated Code of Maryland*; or
    - (b) (text unchanged)

PETER FRANCHOT  
Comptroller of the Treasury

**Title 05  
DEPARTMENT OF  
HOUSING AND COMMUNITY  
DEVELOPMENT**

**Notice of Proposed Action**

[10-026-P]

The Secretary of Housing and Community Development proposes to to amend:

- (1) Regulation .08 under **COMAR 05.04.09 Group Home Financing Program**;
- (2) Regulation .09 under **COMAR 05.04.11 Special Opportunities Program**;
- (3) Regulation .15 under **COMAR 05.05.01 Multifamily Rental Financing Programs**;
- (4) Regulation .06 under **COMAR 05.05.02 Multi-Family Housing Revenue Bond Financing Program**;
- (5) Regulation .14 under **COMAR 05.05.05 Partnership Rental Housing Program**;
- (6) Regulation .11 under **COMAR 05.05.07 Maryland Housing Rehabilitation Program — Multifamily Rehabilitation Program**;
- (7) Regulation .11 under **COMAR 05.05.08 Nonprofit Rehabilitation Program**;
- (8) Regulation .08 under **COMAR 05.05.09 Shelter and Transitional Housing Facilities Grant Program**;
- (9) Regulation .10 under **COMAR 05.06.01 Maryland Housing Fund — Multifamily Program**;

(10) Regulation .07 under COMAR 05.06.04 **Special Housing Facility Projects**; and

(11) Regulation .07 under COMAR 05.13.01 **Business Development Program**.

#### Statement of Purpose

The purpose of this action is to amend the insurance requirements for all the Department's lending and loan insurance programs to conform to industry standards.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 George Eaton, Director of the Division of Credit Assurance/Maryland Housing Fund, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-514-7348, or email to Eaton@mdhousing.org, or fax to 410-514-7313. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

### Subtitle 04 SPECIAL LOAN PROGRAMS

#### 05.04.09 Group Home Financing Program

Authority: Housing and Community Development Article, §4-606, Annotated Code of Maryland; Executive Order 01.01.1992.27C

#### .08 Loan Conditions — General.

A. — B. (text unchanged)

[C.] — [G.] (proposed for repeal)

C. *Property, Liability, and Other Insurance.*

(1) *At or before closing of a loan, and at such other times as required by the Department, the borrower shall provide evidence that the borrower, contractor, and other parties, have obtained and maintained the following insurance:*

- (a) *Owner's liability;*
- (b) *Owner's property or hazard or contractor's builder's risk;*
- (c) *Contractor's liability;*
- (d) *Architect's errors and omissions;*
- (e) *Engineer's errors and omissions; and*
- (f) *Flood insurance, if the project is located in a flood hazard zone.*

(2) *All insurance required under §C(1) of this regulation shall meet the following requirements:*

- (a) *Be written by a company registered with the Maryland Insurance Administration;*
- (b) *Be in force at the time of closing;*
- (c) *Not be terminable without prior notification to the Department; and*
- (d) *Contain such other terms and coverage satisfactory to the Department.*

(3) *In addition to the requirements of §C(2) of this regulation, owner's liability insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in force for the duration of the loan.*

(4) *In addition to the requirements of §C(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in place through final closing or such later date as the Department requires.*

(5) *In addition to the requirements of §C(2) of this regulation, owner's property or hazard insurance shall:*

(a) *Name the Department as an additional insured, loss payee, and mortgagee; and*

(b) *Remain in force for the duration of the loan.*

#### 05.04.11 Special Housing Opportunities Program

Authority: Housing and Community Development Article, Title 4, Subtitle 2, Annotated Code of Maryland; Executive Order 01.01.1992.27C

#### .09 Loan Conditions.

A. — D. (text unchanged)

E. *Property [and], Liability, and Other Insurance.*

[(1)] — [(5)] (proposed for repeal)

(1) *At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor, and other parties, have obtained and maintained the following insurance:*

- (a) *Owner's liability;*
- (b) *Owner's property or hazard or contractor's builder's risk;*
- (c) *Contractor's liability;*
- (d) *Architect's errors and omissions;*
- (e) *Engineer's errors and omissions; and*
- (f) *Flood insurance, if the project is located in a flood hazard zone.*

(2) *All insurance required under §E(1) of this regulation shall meet the following requirements:*

- (a) *Be written by a company registered with the Maryland Insurance Administration;*
- (b) *Be in force at the time of closing;*
- (c) *Not be terminable without prior notification to the Department; and*
- (d) *Contain such other terms and coverage satisfactory to the Department.*

(3) *In addition to the requirements of §E(2) of this regulation, owner's liability insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in force for the duration of the loan.*

(4) *In addition to the requirements of §E(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in place through final closing or such later date as the Department requires.*

(5) *In addition to the requirements of §E(2) of this regulation, owner's property or hazard insurance shall:*

(a) *Name the Department as an additional insured, loss payee and mortgagee; and*

(b) *Remain in force for the duration of the loan.*

## Subtitle 05 RENTAL HOUSING PROGRAMS

### 05.05.01 Multifamily Rental Financing Programs

Authority: Housing and Community Development Article, §§4-401-4-409 and 4-1501-4-1511, Annotated Code of Maryland

#### .15 Loan Terms — Insurance Requirements.

A. (text unchanged)

B. Property, Liability, and Other Insurance.

[(1)] — [(5)] (proposed for repeal)

(1) *At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor, and other parties, have obtained and maintained the following insurance:*

(a) *Owner's liability;*

(b) *Owner's property or hazard or contractor's builder's risk;*

(c) *Contractor's liability;*

(d) *Architect's errors and omissions;*

(e) *Engineer's errors and omissions; and*

(f) *Flood insurance, if the project is located in a flood hazard zone.*

(2) *All insurance required under §B(1) of this regulation shall meet the following requirements:*

(a) *Be written by a company registered with the Maryland Insurance Administration;*

(b) *Be in force at the time of closing;*

(c) *Not be terminable without prior notification to the Department; and*

(d) *Contain such other terms and coverage satisfactory to the Department.*

(3) *In addition to the requirements of §B(2) of this regulation, owner's liability insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in force for the duration of the loan.*

(4) *In addition to the requirements of §B(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in place through final closing or such later date as the Department requires.*

(5) *In addition to the requirements of §B(2) of this regulation, owner's property or hazard insurance shall:*

(a) *Name the Department as an additional insured, loss payee, and mortgagee; and*

(b) *Remain in force for the duration of the loan.*

(6) *For sponsors that are political subdivisions, the Department shall evaluate any self-insurance program to determine if adequate coverage and terms acceptable to the Department can be provided and accept coverage under the self-insurance program subject to this determination.*

#### 05.05.02 Multi-family Housing Revenue Bond Financing Program

Authority: Housing and Community Development Article, §2-111 and Title 4, Subtitle 2; State Finance and Procurement Article, §§5-7B-01-5-7B-10; Annotated Code of Maryland; Executive Orders 01.01.1992.27C and 01.01.1998.04

#### .06 Loan Terms and Requirements — General.

A. — F. (text unchanged)

[G.] (proposed for repeal)

#### G. Property, Liability, and Other Insurance

(1) *At or before closing of a loan, and at such other times as required by the Administration, the sponsor shall provide evidence that the sponsor, contractor and other parties, have obtained and maintained the following insurance:*

(a) *Owner's liability;*

(b) *Owner's property or hazard or contractor's builder's risk;*

(c) *Contractor's liability;*

(d) *Architect's errors and omissions;*

(e) *Engineer's errors and omissions; and*

(f) *Flood insurance, if the project is located in a flood hazard zone.*

(2) *All insurance required under §G(1) of this regulation shall meet the following requirements:*

(a) *Be written by a company registered with the Maryland Insurance Administration;*

(b) *Be in force at the time of closing;*

(c) *Not be terminable without prior notification to the Administration; and*

(d) *Contain such other terms and coverage satisfactory to the Administration.*

(3) *In addition to the requirements of §G(2) of this regulation, owner's liability insurance shall:*

(a) *Name the Administration as an additional insured; and*

(b) *Remain in force for the duration of the loan.*

(4) *In addition to the requirements of §G(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

(a) *Name the Administration as an additional insured; and*

(b) *Remain in place through final closing or such later date as the Administration requires.*

(5) *In addition to the requirements of §G(2) of this regulation, owner's property or hazard insurance shall:*

(a) *Name the Administration as an additional insured, loss payee and mortgagee; and*

(b) *Remain in force for the duration of the loan.*

H. — P. (text unchanged)

#### 05.05.05 Partnership Rental Housing Program

Authority: Housing and Community Development Article, Title 4, Subtitle 12; State Finance and Procurement Article, §§5-7B-01-5-7B-10; Annotated Code of Maryland; Executive Orders 01.01.1992.27C and 01.01.1998.04

#### .14 Terms and Conditions — Property, Liability, and Other Insurance.

[A.] — [F.] (proposed for repeal)

A. *At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor and other parties, have obtained and maintained the following insurance:*

(1) *Owner's liability;*

(2) *Owner's property or hazard or contractor's builder's risk;*

(3) *Contractor's liability;*

(4) *Architect's errors and omissions;*

(5) *Engineer's errors and omissions; and*

(6) *Flood insurance, if the project is located in a flood hazard zone.*

B. *All insurance required under §A of this regulation shall meet the following requirements:*

(1) *Be written by a company registered with the Maryland Insurance Administration;*

- (2) *Be in force at the time of closing;*  
 (3) *Not be terminable without prior notification to the Department; and*  
 (4) *Contain such other terms and coverage satisfactory to the Department.*

C. *In addition to the requirements of §A of this regulation, owner's liability insurance shall:*

- (1) *Name the Department as an additional insured; and*  
 (2) *Remain in force for the duration of the loan.*

D. *In addition to the requirements of §A of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

- (1) *Name the Department as an additional insured; and*  
 (2) *Remain in place through final closing or such later date as the Department requires.*

E. *In addition to the requirements of §A of this regulation, owner's property or hazard insurance shall:*

- (1) *Name the Department as an additional insured, loss payee and mortgagee; and*  
 (2) *Remain in force for the duration of the loan.*

F. *For local governments, the Department shall:*

- (1) *Evaluate any self-insurance program to determine if adequate coverage and terms acceptable to the Department can be provided; and*  
 (2) *Accept coverage under the self-insurance subject to this determination.*

### **05.05.07 Maryland Housing Rehabilitation Program — Multifamily Rehabilitation Program**

Authority: Housing and Community Development Article, §2-111 and Title 4, Subtitle 9; State Finance and Procurement Article, §§5-7B-01-5-7B-10; Annotated Code of Maryland; Executive Orders 01.01.1992.27C and 01.01.1998.04

#### **.11 Loan Conditions — General.**

A. — B. (text unchanged)

[C.] (proposed for repeal)

C. *Property, Liability, and Other Insurance.*

(1) *At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor and other parties, have obtained and maintained the following insurance:*

- (a) *Owner's liability;*  
 (b) *Owner's property or hazard or contractor's builder's risk;*  
 (c) *Contractor's liability;*  
 (d) *Architect's errors and omissions;*  
 (e) *Engineer's errors and omissions; and*  
 (f) *Flood insurance, if the project is located in a flood hazard zone.*

(2) *All insurance required under §C(1) of this regulation shall meet the following requirements:*

- (a) *Be written by a company registered with the Maryland Insurance Administration;*  
 (b) *Be in force at the time of closing;*  
 (c) *Not be terminable without prior notification to the Department; and*  
 (d) *Contain such other terms and coverage satisfactory to the Department.*

(3) *In addition to the requirements of §C(2) of this regulation, owner's liability insurance shall:*

- (a) *Name the Department as an additional insured; and*  
 (b) *Remain in force for the duration of the loan.*

(4) *In addition to the requirements of §C(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

(a) *Name the Department as an additional insured; and*

(b) *Remain in place through final closing or such later date as the Department requires.*

(5) *In addition to the requirements of §C(2) of this regulation, owner's property or hazard insurance shall:*

(a) *Name the Department as an additional insured, loss payee, and mortgagee; and*

(b) *Remain in force for the duration of the loan.*

(6) *At the request of a local government sponsor, the Department may evaluate any self-insurance program and determine if adequate coverage and terms acceptable to the Department can be provided to accept coverage under the program.*

D. (text unchanged)

### **05.05.08 Nonprofit Rehabilitation Program**

Authority: Housing and Community Development Article, Title 4, Subtitle 9; State Finance and Procurement Article, §§5-7B-01-5-7B-10; Annotated Code of Maryland; Executive Orders 01.01.1992.27C and 01.01.1998.04

#### **.11 Loan Conditions — General.**

A. — B. (text unchanged)

[C.] (proposed for repeal)

C. *Property, Liability, and Other Insurance.*

(1) *At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor and other parties, have obtained and maintained the following insurance:*

- (a) *Owner's liability;*  
 (b) *Owner's property or hazard or contractor's builder's risk;*  
 (c) *Contractor's liability;*  
 (d) *Architect's errors and omissions;*  
 (e) *Engineer's errors and omissions; and*  
 (f) *Flood insurance, if the project is located in a flood hazard zone.*

(2) *All insurance required under §C(1) of this regulation shall meet the following requirements:*

- (a) *Be written by a company registered with the Maryland Insurance Administration;*  
 (b) *Be in force at the time of closing;*  
 (c) *Not be terminable without prior notification to the Department; and*  
 (d) *Contain such other terms and coverage satisfactory to the Department.*

(3) *In addition to the requirements of §C(2) of this regulation, owner's liability insurance shall:*

- (a) *Name the Department as an additional insured; and*  
 (b) *Remain in force for the duration of the loan.*

(4) *In addition to the requirements of §C(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:*

- (a) *Name the Department as an additional insured; and*  
 (b) *Remain in place through final closing or such later date as the Department requires.*

(5) *In addition to the requirements of §C(2) of this regulation, owner's property or hazard insurance shall:*

- (a) *Name the Department as an additional insured, loss payee and mortgagee; and*



(b) Remain in force for the duration of the loan.

(6) For local government sponsors, the Department shall evaluate any self-insurance program, and may determine if adequate coverage and terms acceptable to the Department can be provided, to accept coverage under the program.

D. — F. (text unchanged)

**05.05.09 Shelter and Transitional Housing Facilities Grant Program**

Authority: Chapter 46, Acts of 2006; Ch. 488, Acts of 2007; and Ch. 336, Acts of 2008

**.08 Terms and Conditions — Property, Liability, and Other Insurance.**

[A.] — [F.] (proposed for repeal)

A. At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor, and other parties, have obtained and maintained the following insurance:

- (1) Owner's liability;
- (2) Owner's property or hazard or contractor's builder's risk;
- (3) Contractor's liability;
- (4) Architect's errors and omissions;
- (5) Engineer's errors and omissions; and
- (6) Flood insurance, if the project is located in a flood hazard zone.

B. All insurance required under §A of this regulation shall meet the following requirements:

- (1) Be written by a company registered with the Maryland Insurance Administration;
- (2) Be in force at the time of closing;
- (3) Not be terminable without prior notification to the Department; and
- (4) Contain such other terms and coverage satisfactory to the Department.

C. In addition to the requirements of §A of this regulation, owner's liability insurance shall:

- (1) Name the Department as an additional insured; and
- (2) Remain in force for the duration of the loan.

D. In addition to the requirements of §A of this regulation, contractor's liability and contractor's builder's risk insurance shall:

- (1) Name the Department as an additional insured; and
- (2) Remain in place through final closing or such later date as the Department requires.

E. In addition to the requirements of §A of this regulation, owner's property or hazard insurance shall:

- (1) Name the Department as an additional insured, loss payee, and mortgagee; and
- (2) Remain in force for the duration of the loan.

F. For local governments, the Department shall:

- (1) Evaluate any self-insurance program to determine if adequate coverage and terms acceptable to the Department can be provided; and
- (2) Accept coverage under the self-insurance program subject to the determination.

**Subtitle 06 HOUSING INSURANCE**

**05.06.01 Maryland Housing Fund — Multifamily Program**

Authority: Housing and Community Development Article, Title 3, Subtitle 2, Annotated Code of Maryland

**.10 Environmental and Insurance Requirements.**

A. — B. (text unchanged)

[C.] (proposed for repeal)

C. Property, Liability, and Other Insurance.

(1) At or before closing of a loan, and at such other times as required by the Department, the borrower shall provide evidence that the borrower, contractor, and other parties, have obtained and maintained the following insurance:

- (a) Owner's liability;
- (b) Owner's property or hazard or contractor's builder's risk;
- (c) Contractor's liability;
- (d) Architect's errors and omissions;
- (e) Engineer's errors and omissions; and
- (f) Flood insurance, if the project is located in a flood hazard zone.

(2) All insurance required under §C(1) of this regulation shall meet the following requirements:

- (a) Be written by a company registered with the Maryland Insurance Administration;
- (b) Be in force at the time of closing;
- (c) Not be terminable without prior notification to the Department; and
- (d) Contain such other terms and coverage satisfactory to the Department.

(3) In addition to the requirements of §C(2) of this regulation, owner's liability insurance shall:

- (a) Name the Department as an additional insured; and
- (b) Remain in force for the duration of the loan.

(4) In addition to the requirements of §C(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:

- (a) Name the Department as an additional insured; and
- (b) Remain in place through final closing or such later date as the Department requires.

(5) In addition to the requirements of §C(2) of this regulation, owner's property or hazard insurance shall:

- (a) Name the Department as an additional insured, loss payee, and mortgagee; and
- (b) Remain in force for the duration of the loan.

**05.06.04 Special Housing Facility Projects**

Authority: Housing and Community Development Article, Title 3, Subtitle 2, Annotated Code of Maryland; Executive Order 01.01.1992.27C

**.07 Eligible Loans — Environmental and Insurance Conditions.**

A. — B. (text unchanged)

[C.] (proposed for repeal)

C. Property, Liability, and Other Insurance.

(1) At or before closing of a loan, and at such other times as required by the Department, the sponsor shall provide evidence that the sponsor, contractor, and other parties, have obtained and maintained the following insurance:

- (a) Owner's liability;
- (b) Owner's property or hazard or contractor's builder's risk;
- (c) Contractor's liability;
- (d) Architect's errors and omissions;
- (e) Engineer's errors and omissions; and
- (f) Flood insurance, if the project is located in a flood hazard zone.

(2) All insurance required under §C(1) of this regulation shall meet the following requirements:

- (a) Be written by a company registered with the Maryland Insurance Administration;
- (b) Be in force at the time of closing;
- (c) Not be terminable without prior notification to the Department; and
- (d) Contain such other terms and coverage satisfactory to the Department.

(3) In addition to the requirements of §C(2) of this regulation, owner's liability insurance shall:

- (a) Name the Department as an additional insured; and

(b) Remain in force for the duration of the loan.

(4) In addition to the requirements of §C(2) of this regulation, contractor's liability and contractor's builder's risk insurance shall:

- (a) Name the Department as an additional insured; and

(b) Remain in place through final closing or such later date as the Department requires.

(5) In addition to the requirements of §C(2) of this regulation, owner's property or hazard insurance shall:

- (a) Name the Department as an additional insured, loss payee, and mortgagee; and

(b) Remain in force for the duration of the loan.

### Subtitle 13 NEIGHBORHOOD BUSINESS DEVELOPMENT

#### 05.13.01 Business Development Program

Authority: Housing and Community Development Article, §§2-201 and 2-111, Title 4, Subtitle 5, and Title 6, Subtitle 3, Annotated Code of Maryland

#### .07 Terms and Conditions of Financial Assistance.

A. — D. (text unchanged)

[E.] (proposed for repeal)

E. Property, Liability, and Other Insurance.

(1) At or before closing of the financial assistance, and at such other times as required by the Department, the applicant shall provide evidence that the applicant, contractor, and other parties, have obtained and maintained the following insurance:

- (a) Owner's liability;
- (b) Owner's property or hazard or contractor's builder's risk;
- (c) Contractor's liability;
- (d) Business income;
- (e) Architect's errors and omissions; and
- (f) Engineer's errors and omissions.

(2) All insurance required under §A of this regulation shall meet the following requirements:

- (a) Be written by a company registered with the Maryland Insurance Administration, or a company approved by the Department in the event the property and company are located out-of-State;
- (b) Be in force at the time of closing;

(c) Not be terminable without prior notification to the Department; and

(d) Contain such other terms and coverage satisfactory to the Department.

(3) In addition to the requirements of §B of this regulation, owner's liability and business income insurance shall:

- (a) Name the Department as an additional insured; and

(b) Remain in force for the duration of the loan.

(4) In addition to the requirements of §B of this regulation, contractor's liability insurance shall:

- (a) Name the Department as an additional insured; and

(b) Remain in place through final closing or such later date as the Department requires.

(5) In addition to the requirements of §B of this regulation, owner's property or hazard insurance and builder's risk insurance shall:

- (a) Name the Department as an additional insured, loss payee, and mortgagee; and

(b) Remain in force for the duration of the loan.

RAYMOND A. SKINNER  
Secretary of Health and Mental Hygiene

## Title 08 DEPARTMENT OF NATURAL RESOURCES

### Notice of Proposed Action

[10-032-P]

The Secretary of Natural Resources proposes to:

- (1) Repeal existing Regulations .01 — .26 and adopt new Regulation .01 — .10 under **COMAR 08.01.04 Procedures for Contested Case Hearings**;
- (2) Amend Regulation .09 under **COMAR 08.01.06 Public Information Act Requests**;
- (3) Amend Regulation .12 under **COMAR 08.02.14 Aquaculture**;
- (4) Amend Regulation .04 under **COMAR 08.02.21 Yellow Perch**;
- (5) Amend Regulation .02 under **COMAR 08.03.04 Forest Wildlife**;
- (6) Amend Regulation .11 under **COMAR 08.03.09 Wildlife Possession**;
- (7) Amend Regulations .03 and .04 under **COMAR 08.03.14 Waterfowl Outfitting and Guiding**;
- (8) Amend Regulation .28 under **COMAR 08.03.15 Wildlife Damage Control Permits**;
- (9) Amend Regulation .01 under **COMAR 08.04.09 Manufacturer's and Dealer's License**;
- (10) Amend Regulation .07 under **COMAR 08.07.07 Licensed Tree Expert**;
- (11) Amend Regulation .01 under **COMAR 08.08.08 Appeals**;
- (12) Amend Regulation .03 under **COMAR 08.15.03 Exemption**;
- (13) Amend Regulation .13 under **COMAR 08.19.04 State Forest Conservation Program**; and

(14) Amend Regulations .01 and .03 under **COMAR 08.19.06 Additional Requirements for State and Local Programs**.

**Statement of Purpose**

The purpose of this action is to clarify the Department's contested case regulations. This action repeals and reenacts the Department's procedural regulations for contested cases to comply with the Maryland Administrative Procedure Act and accurately reflect the Department's current practices. The amendments in this action explain whether certain hearings are contested cases.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Eric Schwaab, Deputy Secretary, Department of Natural Resources, 580 Taylor Ave., Annapolis, MD 21401, or call 410-260-8102, or email to eschwaab@dnr.state.md.us, or fax to 410-260-8111. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**Subtitle 01 OFFICE OF THE SECRETARY**

**08.01.04 Procedures for Contested Case Hearings**

Authority: Natural Resources Article, §1-104; State Government Article, [§10-204] §10-206; Annotated Code of Maryland

**.01 Scope.**

A. This chapter applies to contested case hearings that the Secretary is required to initiate by:

- (1) Statute;
- (2) Constitution; or
- (3) A regulation that expressly or by clear implication requires a hearing to be held in accordance with the Administrative Procedure Act and this chapter.

B. This chapter does not apply to conferences, investigations, or to proceedings at which the general public has been assembled to provide comments and opinions on a permit or license proposed to be issued by the Department.

C. These procedures are intended to supplement the procedures required by law. If the provisions of this chapter conflict with a statute or regulation concerning a specific type of contested case, the more specific statute or regulation controls as to the issue in conflict. If a conflict occurs between this chapter and the Administrative Procedure Act, the Administrative Procedure Act controls.

**.02 Definitions.**

- A. The following terms have the meanings indicated.
- B. Terms Defined.

(1) "Administrative Procedure Act" means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(2) "Administrative Law Judge" means an Administrative Law Judge of the Office of Administrative Hearings.

(3) "Contested Case" has the meaning stated in State Government Article, § 10-202(d), Annotated Code of Maryland.

(4) "Department" means the Department of Natural Resources.

(5) "Office of Administrative Hearings" has the meaning stated in State Government Article, § 9-1602, Annotated Code of Maryland.

(6) "Party" means a person or agency named or admitted as a party, including the Department.

(7) "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

(8) "Secretary" means the Secretary of Natural Resources or a designee of the Secretary. For purposes of this chapter Secretary includes an official empowered by statute to render the final agency decision in a contested case.

**.03 Delegation.**

A. The Secretary may:

(1) Conduct a contested case hearing in accordance with the Administrative Procedure Act and any other applicable law;

(2) Delegate the authority to conduct a contested case hearing to the Office of Administrative Hearings in accordance with State Government Article, § 10-205, Annotated Code of Maryland; or

(3) With the prior written approval of the Chief Administrative Law Judge of the Office of Administrative Hearings, delegate the authority to conduct a contested case hearing to a person not employed by the Office of Administrative Hearings.

**.04 Notice of Agency Action.**

A. The Secretary shall give reasonable notice of the agency's action in accordance with State Government Article, § 10-207, Annotated Code of Maryland when the Department is required by law to:

- (1) Provide a contested case hearing; or
- (2) Provide the opportunity to request a contested case hearing.

B. Unless a relevant statute or regulation provides otherwise, a notice of agency action shall be provided to the parties or the parties' representatives by certified mail.

**.05 Revocation of Delegation.**

A. For a reason specified in §B of this regulation, the Secretary may revoke, in whole or in part, the authority delegated to the Office of Administrative Hearings to conduct a contested case hearing at any time before the earlier of:

- (1) The issuance of a ruling on a substantive issue; or
- (2) The taking of oral testimony from the first witness.

B. The Secretary may revoke the delegation of authority if, in the opinion of the Secretary, a contested case involves:

- (1) Unanticipated, novel, or unique legal, scientific, or factual issues; or
- (2) Significant social, fiscal, legal, or policy issues.

C. The Secretary shall provide written notice of a revocation of hearing authority to all parties and the Office of Administrative Hearings.

**.06 Proposed Decision.**

A. The Office of Administrative Hearings shall issue a proposed decision in accordance with the Secretary's delegation.

B. Unless otherwise provided by law or the Department's delegation, the Office of Administrative Hearings shall submit the proposed decision to the Secretary and each party.

C. The proposed decision shall:

- (1) Be in writing;
- (2) Contain findings of fact and conclusions of law; and
- (3) Include an explanation of procedures and time limits for submitting exceptions to the Secretary.

**.07 Exceptions — Requests for Oral Argument.**

A. Filing Exceptions; Oral Argument Request.

(1) Within 15 calendar days after the Office of Administrative Hearings submits a proposed decision to the parties, a party may file written exceptions to the Secretary. The party filing the exceptions shall mail or deliver a copy of the exceptions to all parties.

(2) A party filing exceptions may request the opportunity to present oral argument to the Secretary that the proposed decision should be reversed, affirmed, or remanded.

B. A party may submit a written reply to the exceptions and participate in the oral argument. A reply to exceptions must be filed with the Secretary and delivered to all parties within 15 calendar days after receipt of the exceptions.

C. If oral argument is requested, the Secretary shall notify all parties that oral arguments will be heard at a certain date, time, and place. Oral argument shall be scheduled to allow the parties time to reply to the exceptions.

D. The Secretary may require the parties who filed exceptions to bear the cost of transcribing the relevant portions of the record. Each party shall bear the cost of its own copy of the transcript.

E. The Secretary may extend the time for filing exceptions or replies to exceptions.

**.08 Final Decision.**

A. A final decision in a contested case shall contain:

- (1) Findings of fact;
- (2) Conclusions of law;
- (3) An order; and
- (4) A statement of the right to seek judicial review.

B. If the Office of Administrative Hearings has issued a proposed decision or order and no exceptions are filed within 15 calendar days after a proposed decision or order is submitted to the parties, the Secretary may proceed to make the final decision.

C. If a party files exceptions, the Secretary shall:

(1) Consider each part of the record that the parties cite in their exceptions, replies to exceptions, and oral arguments before making a final decision; and

(2) Except as otherwise provided by law or by agreement of the parties, make the final decision within 30 days after the exceptions are filed or the argument is presented, whichever is later.

D. The Department shall mail or deliver the final decision to all parties.

**.09 Reconsideration and Revision.**

On the initiative of the Secretary or on motion of any party filed at any time the Secretary may revise a final decision if the decision was based on fraud, mistake, or inadvertence.

**.10 Petition for Judicial Review.**

A party that is adversely affected by a final decision or order may file a petition for judicial review as provided by State Government Article, § 10-222, Annotated Code of Maryland.

**08.01.06 Public Information Act Requests**

Authority: Natural Resources Article, §1-104;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.09 Review of Denial.**

A. (text unchanged)

B. Hearing Procedures.

(1) If an applicant requests a hearing, the hearing shall be conducted by the Secretary, an administrative law judge employed by the Office of Administrative Hearings, or [a] the Secretary's designee.

(2) The hearing shall be governed by State Government Article, [§ 10-201 — 10-217] Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 08.01.04.

(3) — (5) (text unchanged)

**Subtitle 02 FISHERIES SERVICE**

**08.02.14 Aquaculture**

Authority: Natural Resources Article, §1-104;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.12 Suspension or Revocation of Permits.**

A. — C. (text unchanged)

D. Hearings shall be conducted in accordance with the contested case procedures set forth in State Government Article, [§ 10-201 et seq.] Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.

**08.02.21 Yellow Perch**

Authority: Natural Resources Article, §1-104;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.04 General Requirements.**

A. — B. (text unchanged)

C. Penalties.

(1) — (2) (text unchanged)

(3) Prior to suspending a permit under this chapter, the Department shall give the licensee notice of its intended action and an opportunity to appear at a [hearing.] hearing conducted in accordance with the contested case procedures set forth in State Government Article, [§ 10-201 et seq.] Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.

(4) (text unchanged)

**Subtitle 03 WILDLIFE**

**08.03.04 Forest Wildlife**

Authority: Natural Resources Article, §1-104;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.02 Deer Management Permit.**

A. — F. (text unchanged)

G. Appeal Procedure. If an application for a deer management permit is denied, the Service shall notify the applicant of the grounds upon which the denial is based. An indi-

vidual who has received a notice that the Service has denied or refused an individual's application may file, within 21 days after the notice was mailed, a letter to the Director of the Service requesting a formal hearing. Upon receipt of the letter, the Service shall schedule a hearing before the Office of Administrative Hearings in accordance with the [Maryland] Administrative Procedure [Act] Act, *State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04*.

H. (text unchanged)

I. *The Department shall provide an opportunity for a contested case hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04 when suspending or revoking a deer management permit.*

**08.03.09 Wildlife Possession**

Authority: Natural Resources Article, §1-104;  
 State Government Article, §10-206;  
 Annotated Code of Maryland

**.11 Deer Cooperator Permit.**

A. — L. (text unchanged)

M. Appeal Procedure. An individual who has applied to the Department for a deer cooperator permit, or submitted an operational plan proposal as an approved deer cooperator permittee, and has been denied a permit or operational plan approval, may file, within 15 days after the decision was mailed, a petition for a hearing with the Director of the Service. The Director of the Service shall render a decision in writing to the complainant within 15 days after the date of the hearing. If the complainant is further aggrieved, the complainant may initiate proceedings for an appeal to the Assistant Secretary of the Resource Management Service, Tawes State Office Building, Annapolis, Maryland 21401. *The appeal procedure for the denial of a deer cooperator permit, or operational plan approval is not a contested case hearing under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

N. (text unchanged)

O. [Violation. A violation of any provision or restriction on the approval document constitutes a violation of this regulation.] *The Service shall provide the opportunity for a contested case hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04 when suspending or revoking a deer cooperator permit.*

P. *Violation. A violation of any provision or restriction on the approval document constitutes a violation of this regulation.*

**08.03.14 Waterfowl Outfitting and Guiding**

Authority: Natural Resources Article, §1-104;  
 State Government Article, §10-206;  
 Annotated Code of Maryland

**.03 Qualifications for Waterfowl Outfitter License.**

A — E. (text unchanged)

F. If an application for a waterfowl outfitter license is denied, the Service shall send the applicant a notice of the grounds upon which the denial is based. An individual who has received a notice that the Service has denied or refused an individual's application may file, within 21 days after the notice was mailed, a letter to the Director of the Service requesting a [formal] *contested case hearing*. Upon receipt of the letter, the Service shall schedule a *contested case hear-*

*ing before the Office of Administrative Hearings in accordance with the procedures of [Maryland] the Administrative Procedures Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

**.04 Qualifications for Waterfowl Hunting Guide License.**

A. — E. (text unchanged)

F. If an application for a waterfowl hunting guide license is denied, the Service shall send the applicant a notice of the grounds upon which the denial is based. An individual who has received a notice that the Service has denied or refused an individual's application may file, within 21 days after the notice was mailed, a letter to the Director of the Service requesting a [formal] *contested case hearing*. Upon receipt of the letter, the Service shall schedule a *contested case hearing* before the Office of Administrative Hearings in accordance with the procedures of [Maryland] the Administrative Procedures Act, *State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

**08.03.15 Wildlife Damage Control Permits**

Authority: Natural Resources Article, §1-104;  
 State Government Article, §10-206;  
 Annotated Code of Maryland

**.28 Penalties.**

A. — D. (text unchanged)

E. If the Service denies an application for a wildlife damage control permit, the Service shall notify the applicant of the basis of the denial. An applicant who has received a notice that the Service has denied or refused an individual's application may file, within 21 days after the notice is mailed, a letter to the Director of the Service requesting a [formal] *contested case hearing*. Upon receipt of the letter, the Service [will] *shall schedule a contested case hearing* before the Office of Administrative Hearings in accordance with the procedures of [Maryland] the Administrative Procedures Act, *State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

F. *The Department shall provide the opportunity for a contested case hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04 when suspending or revoking a wildlife damage control permit.*

**Subtitle 04 BOATING**

**08.04.09 Manufacturer's and Dealer's License**

Authority: Natural Resources Article, §1-104;  
 State Government Article, §10-206;  
 Annotated Code of Maryland

**.01 Manufacturer's and Dealer's License.**

A. (text unchanged)

B. Cancellation or Denial of License. The Department may cancel or refuse to issue a license for any violation of the State Boat Act including any of the following:

(1) — (3) (text unchanged)

(4) *Before cancelling, revoking, or refusing to renew a license, the Department shall provide a contested case hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

**Subtitle 07 FORESTS AND PARKS****08.07.07 Licensed Tree Expert**

Authority: Natural Resources Article, §1-404;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.07 Violation of Regulations.**

A. Pursuant to Natural Resources Article, §5-421(b), Annotated Code of Maryland, the Department of Natural Resources may temporarily suspend, for a period not to exceed 2 years, the license of a licensed tree expert who violates this chapter. This power of suspension is in addition to, and not in limitation of, the Department of Natural Resources' power to revoke or suspend a tree expert license pursuant to Natural Resources Article, §5-421(a), Annotated Code of Maryland.

B. *Before the suspension, revocation, or denial of a tree expert license, the Department shall provide a contested case hearing conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

**Subtitle 08 DEEP CREEK LAKE****08.08.08 Appeals**

Authority: Natural Resources Article, §1-104;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.01 Right of Appeal.**

A. (text unchanged)  
B. The Secretary shall [conduct] *provide a contested case hearing on the appeal and issue a final decision in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

C. A person who is aggrieved by a final decision of the Secretary may seek judicial review of the decision in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland *and COMAR 08.01.04.*

**Subtitle 15 YOUGHIOGHENY WILD RIVER****08.15.03 Exemption**

Authority: Natural Resources Article, §1-104;  
State Government Article, §10-206;  
Annotated Code of Maryland

**.03 Exceptions.**

A. — B. (text unchanged)  
C. *The application procedure for an exception under this regulation is not a contested case hearing under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland and COMAR 08.01.04.*

**Subtitle 19 FOREST CONSERVATION****08.19.04 State Forest Conservation Program**

Authority: Natural Resources Article, §1-104; State Government Article,  
§10-206;  
Annotated Code of Maryland

**.13 Approval Decision and Appeal**

A. (text unchanged)  
B. Appeal of Final Forest Conservation Plan Decision.  
(1) — (3) (text unchanged)  
(4) The contested case hearing shall be conducted under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland *and COMAR 08.01.04.*

(5) (text unchanged)  
C. — D. (text unchanged)

**08.19.06 Additional Requirements for State and Local Programs**

Authority: Natural Resources Article, §1-104; State Government Article,  
§10-206;  
Annotated Code of Maryland

**.01 Qualified Professional.**

A. — D. (text unchanged)  
E. Hearing.  
(1) (text unchanged)  
(2) A hearing under this section is a contested case hearing and shall be conducted under State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland *and COMAR 08.01.04.*

**.03 Enforcement.**

A. — B. (text unchanged)  
C. Hearings.  
(1) The Department shall give notice and hold a hearing under this chapter in conformance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland *and COMAR 08.01.04.*  
(2) — (3) (text unchanged)  
D. — E. (text unchanged)  
F. Contested Case Hearings.  
(1) (text unchanged)  
(2) A hearing under this regulation shall be conducted in conformance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland *and COMAR 08.01.04.*  
(3) (text unchanged)  
G. (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

# Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

**Subtitle 07 HOSPITALS****10.07.01 Acute General Hospitals and Special Hospitals**

Authority: Health-General Article, §§19-308, 19-308.8, and 19-319;  
Public Safety Article, §14-110.1;  
Annotated Code of Maryland

**Notice of Proposed Action**

[09-189-R-1]

The Secretary of Health and Mental Hygiene proposes to amend Regulations **.01 — .05, .07 — .09, and .32** and to adopt new Regulation **.28** under **COMAR 10.07.01 Acute General Hospitals and Special Hospitals**. Because substantive changes have been made to the original proposal as published in 36:14 Md. R. 989 — 992 (July 6, 2009), this action is being repropose at this time.

**Statement of Purpose**

The purpose of this action is to amend these regulations as follows:

(1) **Emergency and Disaster Planning.** The proposal requires hospitals to develop an emergency and disaster plan that will be followed before, during, and after an emergency or disaster. House Bill 770, Ch. 472, Acts of 2006, mandates that the plan address:

(a) Evacuation, transportation, or shelter-in-place of patients;

(b) Notification to families, staff, and the Department regarding actions to safeguard patients;

(c) Staff coverage, organization, and assignment of responsibilities; and

(d) Continuity of operations by the hospital, including procurement of essential goods, equipment, and services, and relocation of operations to alternative facilities. Since Hurricane Katrina, most hospitals have reviewed or are in the process of reviewing and updating their emergency and disaster plans based on lessons learned. The Joint Commission accreditation standards, which currently govern all Maryland hospitals, are comprehensive in this area. However, The Joint Commission standards do not require a hospital to have a tracking system for each patient in the event that patients are displaced or relocated as a result of an emergency or disaster, nor does The Joint Commission require there to be an executive summary sheet of the hospital's emergency or disaster plan to be made available to patients and families. Therefore, while the majority of standards for emergency planning are already in effect, this action adds new requirements. The cost of these changes is expected to be minimal as the regulations allow for flexibility in accomplishing additional requirements of House Bill 770, Ch. 472, Acts of 2006.

(2) **Update of Licensing Standards.** Hospitals are eligible for participation in the federal Medicare and Medicaid Programs if the hospital complies with the latest Joint Commission accreditation standards. State licensure is also based on a hospital's compliance with Joint Commission standards. In addition, hospitals have used the American Institute of Architects "Guidelines for Design and Construction of Health Care Facilities" to supplement The Joint Commission standards on physical plants. This action aligns regulations with the current editions of The Joint Commission standards and the American Institute of Architects construction guidelines.

(3) **Reorganization of Regulations Concerning Residential Treatment Centers.** This action eliminates references to the regulation of residential treatment centers in COMAR 10.07.01. Residential treatment centers will remain regulated under Health-General Article, §19-308, Annotated Code of Maryland, and COMAR 10.07.04, which will be revised in the near future.

(4) The names of The Joint Commission and a hospital's risk management program will be updated in this action.

In response to comments received following the publication of the original proposal, the following substantive changes are now being proposed:

(1) Language has been added to allow for the possibility of hospital accreditation by an organization other than The Joint Commission.

(2) A reference to The Joint Commission's accreditation standards for emergency preparedness has been corrected to exclude certain pages of the standards.

(3) A definition of accreditation organization has been added.

(4) A hospital is now required to notify the Department of a change in name, administrator, or contact information; or when a hospital makes major renovations or construction in patient care areas or establishes a new patient care service.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 an impact on individuals with disabilities as follows:

The proposed action provides safeguards for all hospital patients by ensuring that hospitals have plans for continuity of care before, during, and after an emergency or disaster.

Compliance with The Joint Commission standards and American Institute of Architects "Guidelines for Design and Construction" ensure that a hospital provides quality care in a building that meets minimum physical plant standards to serve all in the community.

**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 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhhm.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

Ed. Note: Pursuant to State Government Article, §10-113, Annotated Code of Maryland, if a promulgating agency substantively alters the text of regulations that have been previously proposed in the Maryland Register, the altered text must be published in the Maryland Register as though it were initially proposed. The text of regulations appearing immediately below has been altered substantively from the initially proposed text.

Symbols: Roman type indicates existing text of regulations. *Italic* type indicates initially proposed new text. **Helvetica Bold Italic** type indicates new text that substantively alters the text as initially proposed. [Single brackets] indicate existing text proposed for repeal. [Triple brackets] indicate text proposed for deletion which substantively alters the originally proposed text.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Guidelines for Design and Construction of Health Care Facilities, 2006 edition, and Hospital Accreditation Standards, 2009 edition, have been declared documents generally available to the public and appropriate for incorporation by reference. For this reason, they will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of these documents are filed in special public depositories located throughout the State. A list of these depositories was published in 36:3 Md. R. 194 (January 30, 2009), and is available online at www.dsd.state.md.us. These documents may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

**.01 Definitions.**

- A. (text unchanged)  
B. Terms Defined.

(1) "Accredited hospital" means a hospital accredited by *The Joint Commission* or **other accreditation organization approved by the Department**.

(2) (originally proposed text unchanged)

(2-1) "**Accreditation organization**" means a private entity that conducts inspections and surveys of health care facilities based on nationally recognized and developed standards.

(3) — (14) (originally proposed text unchanged)

(15) "*The Joint Commission*" means the voluntary national healthcare accreditation service recognized for Medicare certification purposes by Public Law 89-97 and for **Maryland State licensure purposes by Health-General Article, §19-2302, Annotated Code of Maryland**.

(16) — (19) (originally proposed text unchanged)

(20) "Nonaccredited hospital" means a:

(a) Hospital not accredited by *The Joint Commission* or **other accreditation organization approved by the Department**; or

(b) (originally proposed text unchanged)

(21) — (28) (originally proposed text unchanged)

**.02 — .03** (originally proposed text unchanged)

**.04 Licensure Application Procedure.**

A. — B. (originally proposed text unchanged)

C. **License Renewal.** An application for the renewal of the license shall be made: [at least 60 days before expiration of the issued license] **[[[within 30 calendar days of the exit date of the triennial survey by The Joint Committee.]]]**

(1) **By a nonaccredited hospital at least 60 days before expiration of the issued license; or**

(2) **By an accredited hospital within 30 calendar days of the exit date of the triennial survey conducted by an accreditation organization approved by the Department.**

D. (originally proposed text unchanged)

E. **In order to ensure that the hospital's licensure information is current, the hospital shall immediately notify the Department in writing of any change in the hospital's:**

(1) **Name;**

(2) **Administrator; or**

(3) **Contact information such as mailing address and telephone number.**

F. **In order to ensure the completion of any review or inspection by the Department of any major renovations, construction of patient care areas, or the establishment of a service not previously provided by the hospital, the hos-**

**pital shall notify the Department 60 days before its occupancy or operation.**

**.05** (originally proposed text unchanged)

**.07 Inspections.**

A. **New Hospitals.** A hospital that *began* initial operation on or after July 1, 1982, shall be inspected for compliance with the safety and sanitation components of the regulations promulgated by the Department until the hospital receives accreditation by **[[[The Joint Commission]]] an accreditation organization approved by the Department**. If the hospital has not applied for accreditation by **[[[The Joint Commission]]] an accreditation organization approved by the Department** within 1 year after beginning operation or has had its application for accreditation rejected, the Department shall inspect the hospital for compliance with the standards adopted under this subtitle.

B. **Accredited Hospitals and Accredited Special Rehabilitation Hospitals.** **[[[Except as provided in §D of this regulation, an]]] An accredited hospital and an accredited special rehabilitation hospital shall be subject to inspection under this chapter by the Department [[only for the purpose of complaint investigation]] to:**

(1) **Determine compliance with a quality requirement;**

(2) **Follow up on any serious problem identified by an accreditation organization approved by the Department;**

(3) **Investigate a complaint; or**

(4) **Validate the findings of an accreditation organization approved by the Department.**

C. — D. (originally proposed text unchanged)

**.08 — .09** (originally proposed text unchanged)

**.28 Emergency and Disaster Plan.**

A. **A licensed acute general hospital or special hospital shall comply with the Emergency Management [[EM.02.02.13 standard of the Hospital Accreditation Standards (2009 Edition), pages 61-63]] standards outlined in the Hospital Accreditation Standards (2009 Edition), pages 47-68 with the exception of standard EM.02.02.13, pages 61-65.**

B. — C. (originally proposed text unchanged)

**.32** (originally proposed text unchanged)

JOHN M. COLMERS

Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.12 Disposable Medical Supplies and Durable Medical Equipment**

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

**Notice of Proposed Action**

[10-039-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .04, .05, and .07 under COMAR **10.09.12 Disposable Medical Supplies and Durable Medical Equipment**.

**Statement of Purpose**

The purpose of this action is to:

(1) Provide specific language pertaining to coverage of certain durable medical equipment;



(2) Reduce Maryland Medicaid providers' reimbursement rates from 100 percent of Medicare's current reimbursement rate to 98 percent of Medicare's reimbursement rate effective October 1, 2009; and

(3) Require Maryland Medicaid providers to contact Medicaid recipients before delivering prescribed and approved services.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action will reduce the Department's expenditures for fee-for-service durable medical equipment and disposable medical supplies by \$403,449 during FY2010.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	\$403,449
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$403,449
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. and D. The FY 2010 projected Departmental expenditure for durable medical equipment and disposable medical supplies is \$26,896,633. The proposed action will reduce reimbursement rates by 2 percent during the period October 1, 2009 through June 30, 2010, resulting in Program savings of \$403,449. Approximately 62 percent of this amount is federal funds.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows. Departmental reimbursement for durable medical equipment and disposable medical supplies will be reduced by this proposal by 2 percent. Revenue to small businesses for the provision of durable medical equipment and disposable medical supplies will therefore be reduced by 2 percent.

**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 Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.04 Covered Services.**

A. The following medically necessary items are covered when ordered by a prescriber:

- (1) — (4) (text unchanged)
- (5) Prosthetic devices which include:

(a) (text unchanged)

(b) Breast prostheses, including surgical brassiere; [and]

(c) Upper and lower extremity, full and partial, to include stump cover or harnesses where necessary; and

(d) Speech generating devices for recipients enrolled under fee-for-service or a Managed Care Organization.

(6) — (8) (text unchanged)

B. — F. (text unchanged)

**.05 Limitations.**

The Program does not cover:

A — C. (text unchanged)

D. The following durable medical equipment:

(1) (text unchanged)

(2) Self-help devices including, but not limited to, grab bars, [bath seats and] shower stools, and commode seats;

(3) — (20) (text unchanged)

E. — N. (text unchanged)

**.07 Payment Procedures.**

A. — C. (text unchanged)

D. [The] *Effective October 1, 2009, the* Department shall pay providers [100] 98 percent of the current Medicare rate for prosthetic devices. For prosthetic devices for which Medicare has not established a rate, the Department shall pay providers the manufacturer's suggested retail price of the item, less [25] 26.5 percent. The payment shall include all fitting, dispensing, and follow-up care.

E. (text unchanged)

F. The Department shall reimburse providers for the purchase of covered services at the lowest of the provider's customary charge or:

(1) For items for which Medicare has established a rate:

(a) Disposable medical supplies and durable medical equipment at [100] 98 percent of the current Medicare purchase reimbursement rate; and

(b) For medical equipment for which Medicare has established a capped rental rate, the purchase price shall be ten times the current Medicare monthly rental rate *less 2 percent*; or

(2) For items for which Medicare has not established a rate:

(a) Disposable medical supplies not including incontinence supplies at the provider's *choice of the manufacturer's suggested retail price minus 41.2 percent or the provider's wholesale cost plus [40] 37.2 percent*;

(b) — (c) (text unchanged)

(d) Other durable medical equipment at the provider's choice of the manufacturer's suggested retail price minus [40] 41.2 percent or provider's wholesale cost plus [30] 27.4 percent.

G. The Department shall reimburse providers for the monthly rental of covered services as follows:

(1) For items for which Medicare has established a capped rental rate, 100 percent of the current Medicare rental rate *less 2 percent*;

(2) For items for which Medicare has established a purchase rate only, 10 percent of the current Medicare purchase reimbursement rate *less 2 percent*; and

(3) For items for which Medicare has not established a rate, 10 percent of the purchase price as determined in [§F] §F(2) of this regulation.

H. (text unchanged)

I. The Department shall pay for repairs to purchased durable medical equipment according to the following:

(1) [Wholesale] *The provider's choice of wholesale cost plus [40] 37.2 percent or the manufacturer's suggested retail price minus 31.4 percent to the provider for all materials;*

(2) (text unchanged)

J. — W. (text unchanged)

X. *Durable medical equipment and disposable medical supply rates may be increased at the Program's discretion, when the Program determines in its sole discretion that the Medicare rate creates a barrier to accessing medical equipment and supplies.*

Y. *Refills.*

(1) *For durable medical equipment or disposable supplies, or both that are supplied as refills to the original order, providers shall contact the recipient or designee before dispensing the refill in order to ensure that the refilled item is necessary and to confirm any changes and modifications to the order.*

(2) *The provider shall maintain documentation of contact and confirmation of any changes and modifications of the order for audit purposes.*

(3) *The provider shall contact the recipient or designee regarding refills no earlier than 7 business days before the anticipated delivery date or anticipated shipping date.*

(4) *For subsequent deliveries of refills, the provider shall deliver the items no earlier than 5 days before the end of usage for the current product.*

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**Notice of Proposed Action**

[10-033-P]

The Department of Health and Mental Hygiene proposes to amend:

(1) Regulation .06 under **COMAR 10.09.11 Maryland Children's Health Program;**

(2) Regulations .05, .05-1, and .05-2 under **COMAR 10.09.24 Medical Assistance Eligibility;** and

(3) Regulation .05 under **COMAR 10.09.43 Maryland Children's Health Program (MCHP) Premium.**

**Statement of Purpose**

The purpose of this action is to expand federal Medical Assistance coverage to low-income children and pregnant women who are lawful U.S. residents, as described under the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). This population was previously required to complete a 5-year waiting period to be eligible for federal Medical Assistance and formerly received medical coverage under Maryland's State-Funded Medical Assistance program during the 5-year period.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** This proposal will allow the State to claim a federal match on all services reimbursed through the Maryland Medical Assistance program for lawful U.S. resident immigrant children and pregnant women. Currently these popula-

tions have only been covered for emergency and inpatient hospital services. In the past, this allowed the State to collect a 25 percent federal match. These regulations will allow the State to collect a 62 percent match for the time period beginning December 1, 2009 through the remainder of the fiscal year. As a result, the State will receive an additional \$4.7 million in federal funds for the remainder of fiscal year 2010.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$4.7 million
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(+)	Minimal
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. Federal match at ARRA (stimulus) rate of 62% begins for this population as of December 1, 2009.

D. The impact is minimal to the regulated industry because DHMH is already paying providers for the services.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhhm.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**10.09.11 Maryland Children's Health Program**

Authority: Health-General Article, §§2-104(b), 15-103, 15-301, and 15-301.1,

Annotated Code of Maryland

**.06 Nonfinancial Eligibility Requirements.**

A. — H. (text unchanged)

I. Documentation of Citizenship and Identity.

(1) (text unchanged)

(2) The requirements at §I of this regulation shall be met for all Medical Assistance coverage groups except for:

(a) — (b) (text unchanged)

(c) Newborns deemed eligible who are born to an otherwise eligible non-qualified alien woman meeting the requirements of Regulation [.05-2B] .05-2 of this chapter who has filed an application and has been determined eligible for Medical Assistance for the newborn's date of birth;

(d) Pregnant women who are determined presumptively eligible for Medical Assistance through [provider attestation] *an accelerated eligibility process;*

(e) — (h) (text unchanged)

(3) — (7) (text unchanged)

**10.09.24 Medical Assistance Eligibility**

Authority: Health-General Article, §§2-104(b), 15-103, 15-301, and 15-301.1  
Annotated Code of Maryland

**.05 Nonfinancial Eligibility Requirements — Citizenship.**

A. — B. (text unchanged)

C. Qualified Aliens. According to §431 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (PRWORA), qualified aliens admitted to the United States shall include:

(1) (text unchanged)

(2) The following types of aliens, who are not subject to the 5-year bar specified in §D of this regulation:

(a) *Alien children and pregnant women who are lawfully residing in the United States, including legal permanent residents who have resided in the United States for less than 5 years as described under §214 of the Children’s Health Insurance Program Authorization Act of 2009 (CHIPRA);*

[(a)] (b) — [(h)] (i) (text unchanged)

D. Five-Year Bar to Federal Medical Assistance for Qualified Aliens.

(1) Except for coverage of emergency medical services specified at Regulation [.05-2B] .05-2 of this chapter, qualified aliens in the categories specified in §C(1) of this regulation who entered the United States on or after August 22, 1996, [are] *were* not eligible for federally-funded Medical Assistance for 5 years from the date that the qualified alien:

(a) — (b) (text unchanged)

(2) The 5-year bar specified in §D(1) of this regulation shall also [apply] *be applied* to qualified aliens who entered the United States before August 22, 1996, but did not remain continuously present in the United States from the last date of entry before August 22, 1996 until the date of qualified alien status.

(3) — (4) (text unchanged)

(5) *Effective December 1, 2009, as authorized by the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), the 5-year bar will no longer apply to Medical Assistance or Children’s Health Insurance Program eligibility for pregnant women and children who are qualified aliens.*

**.05-1 Documentation of Citizenship and Identity.**

A. (text unchanged)

B. The requirements of this regulation shall be met for all Medical Assistance coverage groups except for:

(1) — (2) (text unchanged)

(3) Newborns deemed eligible who are born to an otherwise eligible non-qualified alien woman meeting the requirements of Regulation [.05-2B] .05-2 of this chapter who has filed an application and has been determined eligible for Medical Assistance for the newborn’s date of birth;

(4) Pregnant women who are determined presumptively eligible for Medical Assistance through [provider attestation] *an accelerated eligibility process;*

(5) — (8) (text unchanged)

C. — G. (text unchanged)

**.05-2 Nonfinancial Eligibility Requirements — Emergency Medical Services for Ineligible or Illegal Aliens.**

[A. State-Funded Medical Assistance for Ineligible Aliens. If authorized by the State’s annual budget allocation, a qualified alien, as specified at Regulation .05C of this chapter, shall be covered for full Medical Assistance benefits

funded by the State, except for abortion, waiver, or long-term care services, if the individual:

(1) Satisfies all of the requirements under COMAR 10.09.11 or this chapter, except the alien eligibility requirements specified at COMAR 10.09.11.06A or Regulation .05A of this chapter; and

(2) Would be categorically needy eligible as a:

(a) Pregnant or postpartum woman; or

(b) Child younger than 19 years old.

B. Emergency Medical Services for Ineligible or Illegal Aliens.]

[(1)] A. An alien [who does not satisfy the requirements under Regulation .05A of this chapter] shall be eligible for federal Medical Assistance coverage of emergency medical services, as specified under [§B(2)] §§B and C of this regulation, if the alien is determined by the Department to:

[(a)] (1) [Receive] *Have received* emergency medical services described under [§B(2)] §§B and C of this regulation that are necessary for treatment of an emergency medical condition; and

[(b)] (2) (text unchanged)

[(i)] (a) — [(ii)] (b) (text unchanged)

[(2)] B. (text unchanged)

[(a)] (1) — [(c)] (3) (text unchanged)

[(3)] C. (text unchanged)

[(4)] D. (text unchanged)

[(a)] (1) — [(b)] (2) (text unchanged)

**10.09.43 Maryland Children’s Health Program (MCHP) Premium**

Authority: Health-General Article, §§2-104(b), 15-103, 15-301, and 15-301.1  
Annotated Code of Maryland

**.05 Nonfinancial Eligibility Requirements.**

A. Citizenship. In order to be eligible for full benefits under MCHP Premium, an applicant shall be one of the following:

(1) (text unchanged)

(2) A person [who resided] *residing* in the United States [before August 22, 1996, and] who is:

(a) — (d) (text unchanged)

(3) An individual [who entered] *residing in* the United States [on or after August 22, 1996 and] who is:

(a) — (j) (text unchanged)

(4) An individual [who entered] *residing in* the United States [on or after August 22, 1996 and] who[.]

[(a) Is] *is* a qualified alien as defined under Regulation .02B of this chapter[; and

(b) Has resided in the United States for a period of at least 5 years with the status of qualified alien].

B. — G. (text unchanged)

JOHN COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE PROGRAMS**

**10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder**

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-130, Annotated Code of Maryland

**Notice of Proposed Action**

[10-071-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .02 — .08, .14, .15, .17, .18, .21, and .22, repeal existing Regulations .10 and .19, and adopt new Regulations .10 and .19 under **COMAR 10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder**.

**Statement of Purpose**

The purpose of this action is to delete Supported Employment and add Adult Life Planning as a waiver service, and to incorporate technical amendments to existing waiver services.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The addition of a new covered service and reduction of current covered services are expected to offset, with no significant economic impact.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies: Maryland State Department of Education	(E+)	Non-quantifiable
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups: Autism Waiver Providers	(+)	Non-quantifiable
F. Direct and indirect effects on public:	NONE	

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

B. and E. The addition of Adult Life Planning Services will result in Program expenditures to providers of this service. However, the cost will be offset by Program savings resulting from reduction of reimbursement for Family Training. The elimination of Supported Employment as a waiver service has no impact, since there have been no Program expenditures for this service.

**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 an impact on individuals with disabilities as follows: The addition of Adult Life Planning as a waiver service is expected to benefit individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.02 Participant Eligibility.**

- A. (text unchanged)
- B. Technical Eligibility for the Autism Waiver. An applicant or participant shall be determined by the multidisciplinary team to meet the waiver’s technical eligibility-criteria if the individual:
  - (1) — (3) (text unchanged)
  - (4) Uses at least one waiver service [within a 12-month period] *monthly, unless otherwise authorized by the Maryland State Department of Education;*
  - (5) — (10) (text unchanged)
- C. — D. (text unchanged)

**.03 Care Planning Process.**

- A. Multidisciplinary Team.
  - (1) (text unchanged)
  - (2) The multidisciplinary team shall include:
    - (a) The applicant’s or participant’s service coordinator *who shall attend at least one statewide Autism Waiver training session per year;*
    - (b) — (e) (text unchanged)
- A-1. Risk Assessment.
  - (1) *Upon initial review, or if the participant’s status changes, the service coordinator shall conduct a risk assessment to ensure the applicant can be safely maintained in a home and community-based setting utilizing Autism Waiver services.*
  - (2) *A risk assessment shall be conducted by the service coordinator using the Autism Waiver Risk Assessment form.*
- B. (text unchanged)

**.04 Conditions for Participation — General.**

- To provide Autism Waiver services, the provider:
  - A. — C. (text unchanged)
  - D. Shall assure that professional employees who render or delegate services under this chapter have the appropriate experience and health-related license or professional certification to meet the participant’s needs, *including equivalency review by an accredited agency for credentials obtained outside of the United States, before rendering services to any Autism Waiver participant;*
  - E. Shall assure that direct care workers who render services under this chapter:
    - (1) Have at least a high school degree or GED, *including equivalency review by an accredited agency for credentials obtained outside of the United States, before rendering services to any Autism Waiver participant;*
    - (2) [Are adequately and appropriately trained] *Receive adequate and appropriate training, within 60 days of employment and annually thereafter, pertaining to care for children with autism spectrum disorder[.] including:*
      - (a) *Training concerning abuse, neglect, and exploitation; and*
      - (b) *Positive behavioral interventions and restraints;*

(3) — (6) (text unchanged)

F. — J. (text unchanged)

K. With the exception of [residential habilitation] *respite care and environmental accessibility adaptations* providers, shall submit *separate*, written treatment plans to service coordinators *within 30 calendar days of the initiation of services in accordance with State guidelines for each individual service and at least once in [a] each 12-month period thereafter, or more frequently if the treatment plan changes;*

L. (text unchanged)

M. If an agency, shall:

(1) Pay for the criminal background check; [and]

(2) Maintain the original child care criminal history report for all agency and contracted employees as well as any updated criminal history reports from the Department of Public Safety and Correctional Services in the employee's personnel record; *and*

(3) *Submit monthly Criminal Justice Information System's update reports to the Maryland State Department of Education;*

N. If self-employed, shall:

(1) — (2) (text unchanged)

(3) Pay for the criminal background check; [and]

(4) Not have been convicted of, received probation before judgment for, or entered a plea of *nolo contendere* to, a felony or crime involving moral turpitude or theft, or have other criminal history that indicated behavior that is potentially harmful to participants; *and*

(5) *Submit monthly Criminal Justice Information System's update reports to the Maryland State Department of Education.*

O. — R. (text unchanged)

S. Shall agree to maintain and have available *to the Department or the Maryland State Department of Education* personnel records and written documentation describing waiver services rendered, including dates and hours of services provided to participants, for a period of 6 years, in a manner approved by the Department or its designee;

T. — Y. (text unchanged)

Z. Shall implement and follow the Reportable Event policy in accordance with the Department's established policy by:

(1) — (2) (text unchanged)

(3) Notifying the local department of social services immediately if the provider has a reason to believe that the participant has been subject to abuse, neglect, self-neglect, or exploitation, in accordance with COMAR 07.06.04; [and]

AA. May not:

(1) (text unchanged)

(2) Render supervision to the direct care worker of the provider's own child[.];

BB. *With the exception of environmental accessibility adaptations providers, shall submit to the service coordinator monthly service tracking forms for each participant served within 20 calendar days of the end of each month;*

CC. *Shall attend at least one Autism Waiver training conducted by the State each year and shall participate in:*

(1) *One training annually regarding the prevention, identification, and reporting of abuse, neglect, and exploitation;*

(2) *One training annually regarding positive behavioral intervention and restraints; and*

(3) *All statewide Autism Waiver trainings during any year in which the provider is under recommendation for disenrollment from the waiver or has had Medicaid payments suspended; and*

DD. *Shall satisfactorily complete all aspects of the Autism Waiver provider application process.*

**.05 Specific Conditions for Participation — Residential Habilitation Services.**

To provide the services covered under Regulation .11 of this chapter, the provider agency shall:

A. — H. (text unchanged)

I. Demonstrate the capability and capacity of providing Autism Waiver residential habilitation services by submitting documentation of experience and a written implementation plan which includes *at a minimum* policies and procedures[.] *regarding:*

- (1) *Abuse, neglect, and exploitation;*
- (2) *Positive behavior interventions and restraints;*
- (3) *Implementation of treatment plans;*
- (4) *Transportation of participants;*
- (5) *Maintenance of required documentation;*
- (6) *Training and supervision of staff; and*
- (8) *Quality assurance;*

J. — M. (text unchanged)

N. For continued approval, maintain written documentation of compliance with applicable health, fire safety, and zoning regulations as a condition of occupancy of any facility used by the program; [and]

O. Assure that the participant's needs are met for shelter, food, clothing, and furnishings[, although these services are not reimbursed by Medicaid.] ;

P. *Maintain daily contact logs completed on the same day the service is provided and reflective of the individual plan's goals and activities; and*

Q. *Provide to the service coordinator, every 6 months, summaries for all participants regarding the participants status relative to each goal in the residential habilitation individual plan.*

**.06 Specific Conditions for Participation — Intensive Individual Support Services.**

To provide the service covered under Regulation .15 of this chapter, the provider shall:

A. — F. (text unchanged)

G. Demonstrate the capability and capacity of providing intensive individual support services by submitting documentation of experience and a written implementation plan which includes *at a minimum* policies and procedures[.] *regarding:*

- (1) *Abuse, neglect, and exploitation;*
- (2) *Positive behavior interventions and restraints;*
- (3) *Implementation of treatment plans;*
- (4) *Emergency backup plans;*
- (5) *Transportation of participants;*
- (6) *Maintenance of required documentation;*
- (7) *Training and supervision of staff; and*
- (8) *Quality assurance;*

H. — I. (text unchanged)

J. Document arrangements to obtain medical services for participants in an emergency; [and]

K. Provide the treatment plan to the participant's service coordinator within 30 calendar days of initiation of service, and at least annually thereafter, or more frequently if the treatment plan changes[.] ;

L. *Maintain daily contact logs completed on the same day the service is provided and reflective of treatment plan goals and activities; and*

M. *Provide to the service coordinator, every 6 months, summaries for all participants regarding participants status*

relative to each goal in the intensive individual support services treatment plan.

**.06-1 Specific Conditions for Participation — Therapeutic Integration Services.**

To provide one or more of the services covered under Regulation .14 of this chapter, the provider shall:

A. — G. (text unchanged)

H. Demonstrate the capability and capacity of providing therapeutic integration services by submitting documentation of experience and a written implementation plan which includes at a minimum policies and procedures[;] regarding:

- (1) Abuse, neglect, and exploitation;
- (2) Positive behavior interventions and restraints;
- (3) Implementation of treatment plans;
- (4) Emergency backup plans;
- (5) Transportation of participants;
- (6) Maintenance of required documentation;
- (7) Training and supervision of staff; and
- (8) Quality assurance;

I. — L. (text unchanged)

M. For continued approval, maintain written documentation of compliance with applicable health, fire safety, and zoning regulations as a condition of occupancy of any facility used by the program; [and]

N. Provide the treatment plan to the participant's service coordinator within 30 calendar days of initiation of service and at least annually or more frequently if the treatment plan changes[.];

O. Maintain daily contact logs completed on the same day the service is provided and reflective of individual plan goals and activities; and

P. Provide to the service coordinator, every 6 months, summaries for all participants regarding participants status relative to each goal in the therapeutic integration treatment plan.

**.07 Specific Conditions for Participation — Respite Care.**

A. — D. (text unchanged)

E. A respite care provider shall demonstrate the capability and capacity of providing respite care services by submitting documentation of experience and a written implementation plan which includes at a minimum policies and procedures regarding:

- (1) Abuse, neglect, and exploitation;
- (2) Positive behavior interventions and restraints;
- (3) Emergency backup plans;
- (4) Transportation of participants;
- (5) Maintenance of required documentation;
- (6) Training and supervision of staff; and
- (7) Quality assurance.

**.08 Specific Conditions for Participation — Family Training.**

A. — D. (text unchanged)

E. The provider shall demonstrate the capability and capacity of providing family training services by submitting documentation of experience and a written implementation plan.

F. The provider shall maintain family training contact logs completed on the same day the service is provided that are reflective of the family training plan goals and activities.

G. The provider shall provide to the service coordinator, every 6 months, summaries for all families regarding participants status relative to each goal in the family training plan.

**.10 Specific Conditions for Participation — Adult Life Planning Services.**

A. To provide the services covered under Regulation .19 of this chapter, the provider shall:

(1) Be an individual with a Master's Degree in Human Services; and

(2) Have 5 years of full-time experience serving adults with autism disabilities.

B. Adult life planning service providers shall work with the participants and the participants families to develop a treatment plan incorporating the principles of self-determination, person-centered planning, decision making, and planning for adulthood.

C. The provider shall submit the treatment plan to the participant's service coordinator within 30 calendar days of initiation of service delivery, and at least annually thereafter, or more frequently if the plan changes.

D. At the completion of each year of adult life planning services, the provider shall provide a report of documented evidence of progress towards self-determination, community integration, and coordination with adult services.

E. The provider shall maintain Adult Life Planning contact logs completed on the same day the service is provided and reflective of the Adult Life Planning treatment plan goals and activities.

**.14 Covered Services — Therapeutic Integration Services.**

Therapeutic integration services under this regulation:

A. [Are available as a structured after-school or extended day program, lasting] Shall last a minimum of 2 hours, not including transportation time, and a maximum of 4 hours [including] , which may include transportation time, for participants identified by the multidisciplinary team as needing these [extended hours] services;

[B. Are not available as a weekend program or summer camp;]

[C.] B. — [M.] L. (text unchanged)

**.15 Covered Services — Intensive Individual Support Services.**

A. Intensive individual support services:

(1) — (4) (text unchanged)

[(5) Shall be available 24 hours a day, 7 days a week as approved in the participant's plan of care, if necessary for short-term or crisis intervention; ]

[(6) (5) May be provided by more than one direct care worker [during a 24-hour period] necessitating ongoing coordination between the direct care workers;

[(7) (6) — [(12) (11) (text unchanged)

B. — C. (text unchanged)

**.17 Covered Services — Family Training.**

A. Family training shall be provided as specified in the [participant's Autism Waiver plan of care.] family training plan, and:

(1) Shall be based on family-oriented goals to benefit the participant;

(2) Shall be provided to one family at a time;

(3) May not include advocacy regarding a participant's IEP; and

(4) May not include training and supervision of direct care workers.

B. A participant's family:

(1) (text unchanged)

(2) May be instructed in the treatment regimens, behavior intervention and modeling, skills training, and use of equipment specified in the participant's Autism Waiver plan of care; [and]

(3) Shall be provided with training updates as necessary to maintain the participant safely at home[.] ; and

(4) *Shall be present to receive family training services.*

C. (text unchanged)

D. *Family training does not include activities with family members that are not covered under §C of this regulation.*

**.18 Covered Services — Environmental Accessibility Adaptations.**

A. (text unchanged)

B. Environmental accessibility adaptations include:

(1) — (5) (text unchanged)

(6) Raised electrical switches and sockets; [and]

(7) Safety screen doors[.] ; and

(8) *Individual tracking devices.*

C. — J. (text unchanged)

**.19 Covered Services — Adult Life Planning Services.**

A. *Adult life planning services shall be provided as specified in the adult life planning treatment plan.*

B. *Adult life planning services shall:*

(1) *Result in the participant's transition from Autism Waiver services to comparable, necessary adult life services;*

(2) *Be based on the participant's need for services and support after disenrollment from the Autism Waiver; and*

(3) *Be provided only to participants age 18 years old or older.*

**.21 Limitations.**

A. (text unchanged)

B. Residential habilitation services may not be reimbursed for the same date of service as intensive individual support services, *therapeutic integration services*, or respite care.

C. Therapeutic integration services[.] and intensive individual support services [, and supported employment] under this chapter and school health-related services under COMAR 10.09.50 may not be reimbursed for the same period of the same day.

D. — E. (text unchanged)

F. The Program may reimburse for a participant not more than:

(1) (text unchanged)

[(2) Two units of supported employment services for a date of service; ]

(2) *20 hours of therapeutic integration services per week;*

(3) (text unchanged)

(4) [30] *25 hours of intensive individual support services per week;*

(5) (text unchanged)

(6) *168 hours of respite care [per] between January 1 and June 30, and 168 hours between July 1 and December 31 of each calendar year;*

(7) (text unchanged)

(8) [60] *40 units of family training per calendar year;* [and]

(9) *A total of \$1,500 for environmental accessibility adaptations over a 36-month period[.] ;*

(10) *8 hours of intensive individual support services per day;*

(11) *15 hours of adult life planning services per calendar year; for participants 18 years old or older;*

(12) *A lifetime maximum of 45 hours of adult life planning services per participant, for participants 18 years old or older; and*

(13) *15 units of residential habilitation services per calendar year at either the regular or intensive level when the participant is absent for the purposes of family visitation, hospitalization, or other overnight stays.*

G. Respite services may not be reimbursed for the same period of the same day as:

(1) — (4) (text unchanged)

[(5) Supported employment.]

(5) *Adult life planning services.*

H. (text unchanged)

I. *Adult life planning services under this chapter and school health-related services under COMAR 10.09.50 may not be reimbursed for the same period of the day.*

**.22 Payment Procedures.**

A. — C. (text unchanged)

D. Payments.

(1) (text unchanged)

(2) The Program shall pay according to the following fee-for-service schedule:

(a) — (e) (text unchanged)

(f) [Supported employment] *Adult life planning services: reimbursed at the [all-inclusive,] maximum rate of [\$96.25 for each half day of service totaling 2 to 4 hours] \$95.53 per hour;*

(g) (text unchanged)

(3) — (4) (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 14 CANCER CONTROL**

**10.14.02 Reimbursement for Breast and Cervical Cancer Diagnosis and Treatment**

Authority: Health-General Article, §§2-102, 2-104, and 2-105, Annotated Code of Maryland

**Notice of Proposed Action**

[10-040-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations **.01 — .07** and **.09 — .16**, adopt new Regulations **.21** and **.22**, and recodify existing Regulation **.21** to be Regulation **.23** under **COMAR 10.14.02 Reimbursement for Breast and Cervical Cancer Diagnosis and Treatment**.

**Statement of Purpose**

The purpose of this action is to amend the current regulations for the Breast and Cervical Cancer Diagnosis and Treatment Program (BCCDTP) to allow the BCCDTP the option to pay for Maryland Health Insurance Plan (MHIP) coverage (by subsidizing premiums, pre-existing condition buy-downs, patient contribution amounts, deductibles, and any other applicable MHIP fees) for certain BCCDTP patients so that those patients' bills are paid by MHIP to the extent possible. The proposal also expands the billing time limitations for providers seeking reimbursement for services provided to BCCDTP patients and makes conforming technical changes. Lastly, the proposal specifies that organ transplants are a nonreimbursable medical procedure under the BCCDTP.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** There will be general fund savings recognized in future fiscal years as the BCCDTP begins the process of enrolling some of its patients in MHIP. However, the estimated general fund savings are difficult to quantify due to multiple factors such as the number of BCCDTP patients that will be eligible for MHIP, the cost of providing treatment through BCCDTP versus the cost of enrolling an individual in MHIP, and future potential increases in MHIP premiums and other fees.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency: Breast and Cervical Cancer Diagnosis and Treatment		(E-)	Indeterminate
B. On other State agencies:		(E+)	\$8.1 million
C. On local governments:		NONE	
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:		NONE	
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. There will be general fund savings recognized in future fiscal years as the BCCDTP begins the process of enrolling some of its patients in MHIP. The estimated total general fund savings are difficult to quantify due to multiple factors such as the number of BCCDTP patients that will be eligible for MHIP, the cost of providing treatment through BCCDTP versus the cost of enrolling an individual in MHIP, and future potential increases in MHIP premiums and other fees. However, it is estimated that it will cost the BCCDTP approximately \$5,000 — \$6,000 per year to enroll a BCCDTP patient who is eligible for MHIP into MHIP (includes premiums, fees, and any pre-existing condition buy-downs) for health coverage. This would yield a savings to the BCCDTP which averages costs of \$12,428 per year to provide breast cancer treatment to a BCCDTP patient.

B. The fiscal impact on MHIP would be to increase enrollment by an estimated 450 additional members, with an estimated annual per member plan cost of \$17,914 (net of paid premiums), based on MHIP costs for those treated and/or diagnosed with breast or cervical cancer. MHIP will reach its sustainable enrollment of 17,734 members in early 2010, at which time it may have limited capacity to provide immediate coverage to BCCDTP patients, and any available capacity for the plan to cover other medically uninsurable eligible individuals will be reduced by the proposed enrollment of BCCDTP patients.

**Economic Impact on Small Businesses**

Twenty-five percent of MHIP subscribers are self employed, and another 33 percent work for employers that do not offer health coverage, many of which are small businesses. The proposed actions utilization of approximately 450 MHIP enrollment slots will reduce the availability of MHIP coverage for some new applicants who are sole proprietors and small business employees who otherwise lack access to health insurance coverage.

**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 Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dohmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.01 Scope.**

A. [These regulations define] *This chapter defines* the reimbursed services for the diagnosis and treatment of breast cancer, cervical cancer, or precancerous cervical lesions, [outline] *outlines* the requirements for patient eligibility, and [outline] *outlines* the reimbursement and billing procedures for the reimbursed services.

B. [These regulations] *This chapter also [define] defines* the:

(1) Responsibilities and duties of the Department, the participating local health department, the hospital-coordinated breast and cervical cancer screening program, the medical provider who determines patient eligibility and refers patients to the Program, and the following participating providers:

- (a) — (k) (text unchanged)
- (2) (text unchanged)

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.

(1) — (22) (text unchanged)  
 (22-1) “Explanation of benefits” means the statement sent to a patient or provider; or both, in a health plan that lists:

- (a) The health care services provided;
- (b) The amounts paid by the plan; and
- (c) The total amount billed to the patient.

(23) — (31) (text unchanged)

(31-1) “Insurer” means a private carrier, nonprofit health service plan, or health maintenance organization that administers or provides reimbursement for health care benefits on an expense-incurred basis.

(32) — (37) (text unchanged)

(37-1) “Maryland Health Insurance Plan (MHIP)” means the nonprofit entity established under Insurance Article, §§14-501 — 14-509, Annotated Code of Maryland, to provide affordable, comprehensive health coverage for medically uninsurable Maryland residents.

(38) — (61) (text unchanged)

(62) “Program” means the [policies and procedures set up by the Department to reimburse for] *Breast and Cervical Cancer Diagnosis and Treatment Program within the Department established to:*

(a) *Reimburse for breast and cervical cancer diagnostic and treatment services provided by participating medical care providers to eligible patients; and*

(b) *Pay for MHIP coverage for eligible patients in lieu of providing direct reimbursement to participating medical care providers.*

(63) — (73) (text unchanged)

**.03 Patient Eligibility.**

- A. — B. (text unchanged)

C. Health insurance statuses which may render an applicant eligible include the following:

(1) — (2) (text unchanged)

(3) The applicant has health insurance other than Medical Assistance or Medicare which:



- (a) (text unchanged)
- (b) Requires that a deductible be paid by the applicant for the covered medical procedure or service; *or*
- (c) Reimburses at a rate lower than the Medical Assistance approved rate in the State; **[or]**
- (4) The applicant is enrolled in one of the following Medical Assistance programs:
  - (a) (text unchanged)
  - (b) **[Pharmacy Assistance]** *Primary Adult Care (PAC)*;
  - (c) (text unchanged)
  - (d) Qualified Medicare Beneficiary (QMB); *or*
  - (5) *The applicant meets all other eligibility criteria under this regulation and is also eligible for MHIP.*
- D. — F. (text unchanged)
- G. An eligible patient is responsible for the following:
  - (1) Keeping the *Program*, local health department, hospital, or medical provider who determines the patient's eligibility for the Program informed of any change in health insurance status;
  - (2) — (3) (text unchanged)
  - (4) If covered by health insurance other than Medicare *or MHIP*, paying the patient contribution amount.
- .04 Physician Services.**
  - A. To be considered a participating physician in the Program, the provider shall:
    - (1) — (6) (text unchanged)
    - (7) Agree not to bill an eligible patient, who is uninsured or is covered by Medicare **[only]** *or MHIP*, for an additional charge for the reimbursed medical procedure performed or service provided;
    - (8) (text unchanged)
    - (9) Agree to the following medical guidelines:
      - (a) — (g) (text unchanged)
      - (h) **[That, if radiation treatment is a medical option,]** *To consult with a radiation oncologist [shall be consulted] if radiation treatment is a medical option;*
    - (10) — (12) (text unchanged)
  - B. — C. (text unchanged)
  - D. Nonreimbursed medical procedures and services include but are not limited to:
    - (1) (text unchanged)
    - (2) A **[PAP smear]** *Pap test*;
    - (3) An experimental treatment other than a Phase-III controlled clinical trial for breast or cervical cancer; **[and]**
    - (4) A procedure or service not related to the diagnosis and treatment of breast and cervical cancer; *and*
    - (5) *Organ transplants.*
  - E. The participating physician is responsible for the following:
    - (1) — (4) (text unchanged)
    - (5) Submitting a bill for the reimbursed medical procedure performed or service provided on the designated Departmental form within **[9]** 12 months of the date of service as follows:
      - (a) (text unchanged)
      - (b) If an eligible patient is covered by Medicare **[only]** *or MHIP*, the participating physician shall bill:
        - (i) Medicare *or MHIP* for the procedure or service *in accordance with Medicare or MHIP specifications*; and
        - (ii) (text unchanged)
      - (c) If an eligible patient has health insurance other than Medicare *or MHIP* and the insurance provides coverage for the medical procedure or service, the participating physician shall bill the:
        - (i) — (iii) (text unchanged)

- (6) — (9) (text unchanged)
- F. (text unchanged)
- G. *The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.*
- .05 Nurse Practitioner Services.**
  - A. — D. (text unchanged)
  - E. The participating nurse practitioner shall accept the responsibilities pursuant to Regulation **[.04E(1) — (5), (7)(c), and]** *.04E, F, and G* of this chapter.
- .06 Nurse Anesthetist Services.**
  - A. — D. (text unchanged)
  - E. The participating nurse anesthetist provider shall accept the responsibilities pursuant to Regulation **[.04E(1) — (5) and F]** *.04E(1) — (5), F, and G* of this chapter.
- .07 Physical Therapy Services.**
  - A. — D. (text unchanged)
  - E. The participating physical therapist is responsible for the following:
    - (1) Submitting to the Department, within **[9]** 12 months of the date of service, a request for payment on the designated form;
    - (2) — (3) (text unchanged)
    - F. Reimbursement Principles.
      - (1) The Department shall reimburse the participating physical therapist:
        - (a) For a covered service performed in the provider's office for an eligible patient who:
          - (i) (text unchanged)
          - (ii) Has insurance other than Medicare *or MHIP* that provides reimbursement for a covered procedure or service, the outstanding deductible required by the insurer;
          - (iii) Is covered by Medicare **[only]**, pursuant to COMAR **[10.09.17.07H — J]** *10.09.17.06F and G*; **[or]**
          - (iv) *Is covered by MHIP, pursuant to Regulation .22 of this chapter; or*
          - [(iv)] (v)** (text unchanged)
        - (b) (text unchanged)
      - (2) (text unchanged)
    - G. The participating physical therapist shall obtain recovery pursuant to COMAR **[10.09.17.08]** *10.09.36.07.*
    - H. *The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.*
- .09 Hospital Services.**
  - A. — D. (text unchanged)
  - E. The participating hospital is responsible for:
    - (1) Submitting a bill for the reimbursed services provided on the designated Departmental form as follows:
      - (a) If an eligible patient is uninsured or is insured, but the insurance does not provide coverage for the reimbursed service, the participating hospital shall send the Department the bill for the service within **[9]** 12 months of the date of discharge or outpatient service;
      - (b) If an eligible patient is covered by Medicare **[only]** *or MHIP*, the participating hospital shall bill:
        - (i) Medicare *or MHIP* for the procedure or service **[within 9 months of the date of discharge or outpatient service]; and**
        - (ii) The Department for the outstanding deductible and patient contribution amount **[within 9 months of the date of discharge or outpatient service, or 60 days from the Medicare remittance date as shown on the explanation of Medicare benefits form, whichever is later]; or**

(c) If an eligible patient has insurance other than Medicare or *MHIP* and the insurance provides coverage for the reimbursed service, the participating hospital shall bill the:

(i) Eligible patient's insurer for the service [within 9 months of the date of discharge or outpatient service];

(ii) Department for the outstanding deductible [within 9 months of the date of discharge or outpatient service or 60 days from the insurer remittance date, whichever is later]; and

(iii) (text unchanged)

(2) — (3) (text unchanged)

#### F. Reimbursement Principles.

(1) — (5) (text unchanged)

[(6) The Department may not reimburse for a claim received by the Program for payment for an eligible patient:

(a) Who is uninsured, more than 9 months after the date of discharge or outpatient service; or

(b) With insurance, more than 9 months after the date of discharge or outpatient service or more than 60 days from the insurer's remittance date as shown on the explanation of benefits form, whichever is later.]

#### G. Reimbursement Rates.

(1) A participating hospital located in Maryland shall be reimbursed by the Department:

(a) (text unchanged)

(b) Pursuant to COMAR [10.09.06.10H and J] 10.09.06.10K and L for an eligible patient who is covered by Medicare [only]; [or]

(c) Pursuant to Regulation .22 of this chapter for an eligible patient who is covered by *MHIP*; or

[(c)] (d) For an eligible patient who has insurance other than Medicare or *MHIP* that provides coverage for the reimbursed service, the outstanding deductible required by the insurer.

(2) A participating hospital located in a state bordering Maryland shall be reimbursed by the Department:

(a) (text unchanged)

(b) Pursuant to COMAR [10.09.06.10H and I] 10.09.06.10K and L for an eligible patient who is covered by Medicare [only]; [or]

(c) Pursuant to Regulation .22 of this chapter for an eligible patient who is covered by *MHIP*; or

[(c)] (d) For an eligible patient who has insurance other than Medicare or *MHIP* that provides coverage for the reimbursed services, the outstanding deductible required by the insurer.

(3) A participating hospital located in the District of Columbia shall be reimbursed by the Department:

(a) (text unchanged)

(b) Pursuant to COMAR [10.09.06.10H and I] 10.09.06.10K and L for an eligible patient who is covered by Medicare [only]; [or]

(c) Pursuant to Regulation .22 of this chapter, for an eligible patient who is covered by *MHIP*; or

[(c)] (d) For an eligible patient who has insurance other than Medicare or *MHIP* that provides coverage for the reimbursed services, the outstanding deductible required by the insurer.

H. The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.

#### .10 Disposable Medical Supplies and Durable Medical Equipment.

A. — D. (text unchanged)

E. Reimbursement Procedures. The participating medical supply company:

(1) Shall submit the request for payment for the reimbursed service on the form designated by the Department within [9] 12 months of the date of service as follows:

(a) (text unchanged)

(b) If an eligible patient is covered by Medicare [only] or *MHIP*, the participating medical supply company shall bill:

(i) Medicare or *MHIP* for the service; and

(ii) (text unchanged)

(c) If an eligible patient has insurance other than Medicare or *MHIP* and the insurance provides coverage for the reimbursed service, the participating medical supply company shall bill the:

(i) — (iii) (text unchanged)

(2) — (3) (text unchanged)

#### F. Reimbursement Procedures.

(1) The Department shall reimburse the participating medical supply company:

(a) Pursuant to COMAR [10.09.12.07F — I, K, and L] 10.09.12.07F — I, K, M, and N for an eligible patient who is uninsured or who has insurance that does not provide coverage for the reimbursed service;

(b) Pursuant to COMAR [10.09.12.07M and N] 10.09.12.07R and S for an eligible patient who is covered by Medicare [only]; [or]

(c) Pursuant to Regulation .22 of this chapter for an eligible patient who is covered by *MHIP*; or

[(c)] (d) The outstanding deductible required by the insurer for an eligible patient who has insurance, other than Medicare or *MHIP*, that provides coverage for the reimbursed service.

(2) The Department may not reimburse for:

(a) — (b) (text unchanged)

(c) A professional service rendered by mail or telephone; or

(d) A service rendered to the general public at no charge; [or].

[(e) A claim received by the Program more than 9 months after the date of service.]

G. The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.

#### .11 Home Health Services.

A. To be considered a participating home health services provider in the Program, the provider of home health services shall:

(1) (text unchanged)

(2) Agree to abide by the provisions set forth in this regulation and apply for participation in the Program by signing and sending to the Department the designated Departmental form;

(3) Comply with COMAR [10.09.04.03B] 10.09.04.03A, B(2) — (3), C(4) — (13), D, and E, if offering skilled nursing care;

(4) — (5) (text unchanged)

B. — C. (text unchanged)

D. The Program does not reimburse for services:

(1) (text unchanged)

(2) Pursuant to COMAR [10.09.04.05A, B, D — G, and I — K] 10.09.04.05A, B, D — G, I, and K.

E. The participating home health services provider is responsible for:

(1) Submitting a bill for the reimbursed service provided on the form designated by the Department within [9] 12 months of the date of service, as follows:

(a) (text unchanged)

(b) If an eligible patient is covered by Medicare [only] or *MHIP*, the participating home health services provider shall bill:

(i) Medicare or *MHIP* for the procedure or service; and

(ii) (text unchanged)

(c) If an eligible patient has insurance other than Medicare or *MHIP* and the insurance provides coverage for a reimbursed service, the participating home health services provider shall bill the:

(i) — (iii) (text unchanged)

(2) (text unchanged)

**F. Reimbursement Rates.**

[(1)] A non-hospital-based participating home health services provider located in Maryland, or a participating home health services provider located in a jurisdiction bordering Maryland shall be reimbursed by the Department:

[(a)] (1) Pursuant to COMAR [10.09.04.07E(1) (a)(iii)] 10.09.04.07E for an eligible patient who is uninsured or who has insurance that does not provide coverage for the reimbursement service;

[(b)] (2) For the outstanding deductible and patient contribution amount, if applicable, for an eligible patient who is covered by Medicare [only] or *MHIP*; and

[(c)] (3) The outstanding deductible required by the insurer for an eligible patient who has insurance other than Medicare or *MHIP* that provides coverage for the reimbursed service.

[(2)] A hospital-based participating home health services provider located in Maryland shall be reimbursed by the Department:

(a) Pursuant to COMAR 10.09.04.07E(2) for an eligible patient who is uninsured or has insurance that does not provide coverage for the reimbursed service;

(b) For the outstanding deductible and patient contribution amount, if applicable, for an eligible patient who is covered by Medicare only; and

(c) The outstanding deductible required by the insurer for an eligible patient who has insurance other than Medicare that provides coverage for the reimbursed service.]

*G. The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.*

**.12 Medical Laboratory Services.**

A. To be considered a participating medical laboratory in the Program, the provider shall:

(1) Be in compliance with the applicable license requirements for a medical laboratory providing services for Maryland residents including, but not limited to:

(a) (text unchanged)

(b) Compliance with the requirements pursuant to COMAR [10.10.01] 10.10.03.01 if operating in Maryland, and

(c) (text unchanged)

(2) — (6) (text unchanged)

B. — C. (text unchanged)

D. Reimbursement Procedures. The participating medical laboratory is responsible for:

(1) Submitting a bill for the reimbursed service provided on the form designated by the Department within [9] 12 months of the date of service as follows:

(a) (text unchanged)

(b) If an eligible patient is covered by Medicare [only] or *MHIP*, the participating medical laboratory shall bill:

(i) Medicare or *MHIP* for the service, and

(ii) (text unchanged)

(c) If an eligible patient has insurance, other than Medicare or *MHIP*, that provides coverage for the reimbursed service, the participating medical laboratory shall bill the:

(i) — (iii) (text unchanged)

(2) (text unchanged)

**E. Payment Procedures.**

(1) The Department shall pay the participating medical laboratory for a reimbursed service:

(a) (text unchanged)

(b) Pursuant to COMAR [10.09.09.07G and H] 10.09.09.07F and G for an eligible patient who is covered by Medicare [only]; [or]

(c) Pursuant to Regulation .22 of this chapter for an eligible patient who is covered by *MHIP*; or

[(c)] (d) For an eligible patient who has insurance, other than Medicare or *MHIP*, that provides coverage for the reimbursed service, the outstanding deductible required by the insurer plus, if the insurer pays less than the current Medical Assistance approved rate for the service, the difference between the insurer's reimbursement rate and the Medical Assistance approved rate in the State.

(2) The Department may not reimburse for:

(a) (text unchanged)

(b) A broken or missed appointment; and

(c) A service which is normally provided at no charge; and].

[(d) A claim received by the Program more than 9 months after the date of service rendered.]

*F. The Program shall reimburse for claims pursuant to this regulation as set forth in Regulation .21 of this chapter.*

**.13 Freestanding Ambulatory Surgical Center Services.**

A. — C. (text unchanged)

D. A participating freestanding ambulatory surgical center shall:

(1) (text unchanged)

(2) Submit a bill for the reimbursed service provided for an eligible patient on the form designated by the Department within [9] 12 months of the date of service as follows:

(a) (text unchanged)

(b) If an eligible patient is covered by Medicare [only] or *MHIP*, the participating freestanding ambulatory surgical center shall bill:

(i) Medicare or *MHIP* the composite rate for the service or procedure performed; and

(ii) (text unchanged)

(c) If an eligible patient has insurance, other than Medicare or *MHIP*, that provides coverage for the reimbursed service, the participating freestanding ambulatory surgical center shall bill the:

(i) — (iii) (text unchanged)

E. The Department shall pay the participating freestanding ambulatory surgical center for a reimbursed service:

(1) (text unchanged)

(2) Pursuant to COMAR 10.09.42.06F — L for an eligible patient who is covered by Medicare [only]; or

(3) Pursuant to Regulation .22 of this chapter for an eligible patient who is covered by *MHIP*; or

[(3)] (4) The outstanding deductible required by the insurer for an eligible patient who has insurance, other than Medicare or MHIP, that provides coverage for the reimbursed service.

F. *The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.*

#### **.14 Occupational Therapy Services.**

A. (text unchanged)

B. The cost of an occupational therapist's services are covered as set forth in COMAR [10.09.04.04A — C] 10.09.04.04B(1) and (4).

C. (text unchanged)

D. The participating occupational therapist is responsible for the following:

(1) Submitting to the Department, within [9] 12 months of the date of service, a request for payment on the designated form;

(2) — (3) (text unchanged)

E. Reimbursement Principles.

(1) The Department shall reimburse the participating occupational therapist:

(a) For a covered service performed in the provider's office for an eligible patient who:

(i) (text unchanged)

(ii) Has insurance other than Medicare or MHIP that provides reimbursement for a covered procedure or service, the outstanding deductible required by the insurer;

(iii) Is covered by Medicare [only] or MHIP, the outstanding deductible and patient contribution amount; or

(iv) (text unchanged)

(b) (text unchanged)

(2) (text unchanged)

F. (text unchanged)

G. *The Program shall reimburse for claims submitted pursuant to this regulation as set forth in Regulation .21 of this chapter.*

#### **.15 Medical Management Fee.**

A. — B. (text unchanged)

C. *The Program shall reimburse for claims pursuant to this regulation as set forth in Regulation .21 of this chapter.*

#### **.16 Department, Local Health Department, Hospital, and Medical Provider Responsibilities.**

A. The Department is responsible for the following:

(1) — (2) (text unchanged)

(3) [Sending] *Providing upon request* a list of participating medical care providers to local health department coordinators and medical providers for referral of eligible patients;

(4) (text unchanged)

[(5)] Developing a list of reimbursed medical procedures and the current reimbursement rate for the procedure;

(6) Updating the list of reimbursed medical procedures and the reimbursement rates at least annually;]

[(7)] (5) — [(10)] (8) (text unchanged)

[(11)] Sending the result of the reimbursed medical procedure to the initial referring agency;]

[(12)] (9) — [(17)] (14) (text unchanged)

[(18)] (15) Developing and issuing to an eligible patient a [card] *letter* identifying the patient as a participant in the Program;

[(19)] (16) — [(21)] (18) (text unchanged)

[(22)] (19) Reviewing and reimbursing a bill submitted by an occupational therapist using the payment guidelines specified in Regulation .14 of this chapter; [and]

(20) *Reviewing and reimbursing in accordance with Regulation .22 of this chapter a bill submitted by:*

(a) MHIP or an insurer under contract with MHIP; or

(b) A participating medical provider;

[(23)] (21) Ensuring compliance with the applicable regulations within this chapter by performing a periodic review of the records of a:

(a) Hospital; and

(b) [Local health department;

(c) Medical provider who determines patient eligibility for the Program; and]

[(d)] Participating medical care provider.

B. — D. (text unchanged)

#### **.21 Billing and Reimbursement Time Limitations.**

A. *The Program may not reimburse claims received for payment more than 12 months after the date of service except as specified in §§B — D of this regulation.*

B. *To obtain reimbursement from the Program, a medical care provider that originally submits a claim to Medicare or another health insurer shall also submit the claim to the Program within a period whereby the Program receives the claim within the latter of:*

(1) 12 months after the date of service; or

(2) 6 months from the Medicare or other health insurer remittance date as shown on the explanation of benefits.

C. *The Program shall pay a claim that is originally rejected for payment due to improper completion or incomplete information only if:*

(1) *The medical care provider properly completes and resubmits the claim to the Program; and*

(2) *The Program receives the resubmitted claim within the latter of:*

(a) *The original 12 month period from the date of service; or*

(b) *6 months after claim rejection.*

D. *When the Program initially rejects a claim for payment in error, the Program shall pay the claim if the participating medical care provider resubmits the claim and the resubmitted claim is received by the Program within the same period specified in §C of this regulation.*

#### **.22 Maryland Health Insurance Plan Coverage.**

A. *In lieu of providing direct reimbursement to participating medical care providers, the Program may pay MHIP to provide health coverage for individuals enrolled in the Program who are also eligible for MHIP.*

B. *The Program may pay MHIP for health coverage for eligible patients, including:*

(1) *MHIP premiums;*

(2) *Pre-existing condition buy-downs; and*

(3) *Any MHIP fees.*

C. *The Program may not pay any amount to MHIP for an eligible patient's spouse, children, or other family members enrolled in MHIP.*

D. *Fees Reimbursable to Participating Providers.*

(1) *The Program may reimburse participating medical care providers for a bill the provider submits to the Department for patient contribution amounts and deductibles for services directly related to the treatment of breast and cervical cancer for individuals enrolled in MHIP through the Program, if funding is available for the payment of patient contribution amounts and deductibles under this section.*

(2) *The Program's decision regarding whether to pay for patient contribution amounts and deductibles shall be based solely on the availability of funding and may not be contingent upon any other factor.*

(3) If MHIP does not provide coverage for a service covered by this chapter, the Program shall reimburse the participating medical care provider as otherwise provided by this chapter.

(4) To obtain reimbursement, the participating medical care provider shall submit to the Program:

(a) The bill for the service on the form designated by the Department; and

(b) A copy of the explanation of benefits or denial from MHIP.

**E. Payment to MHIP.**

(1) The Department shall submit timely payments to MHIP for premiums, pre-existing condition buy-downs, and any MHIP fees for individuals enrolled in MHIP through the Program.

(2) The Department shall work with the designated MHIP staff to assure timely payments of MHIP invoices for individuals enrolled in MHIP through the Program to:

(a) Preserve MHIP coverage; and

(b) Resolve any existing issues related to the payment of MHIP premiums.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 21 MENTAL HYGIENE REGULATIONS**

**10.21.30 Telemental Health Services**

*Authority: Health-General Article, §10-901, Annotated Code of Maryland*

**Notice of Proposed Action**

[10-074-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01 — .09 under a new chapter, **COMAR 10.21.30 Telemental Health Services.**

**Statement of Purpose**

The purpose of this action is to establish the requirements and standards for programs to be eligible to provide telemental health services for the public mental health system.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The actual economic impact of this chapter is indeterminate. However, depending on the actual use of telemedicine for mental health services, this proposal requires new evaluations and other costs totaling approximately \$116,543.

**II. Types of Economic Impact.**

	Revenue (R+/R-)		
	Expenditure (E+/E-)	Magnitude	
A. On issuing agency:	(E+)	\$116,543	
B. On other State agencies:	NONE		
C. On local governments:	(E+)	Indeterminable	
	Benefit (+)		
	Cost (-)	Magnitude	
D. On regulated industries or trade groups:	(+)	\$116,543	

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: (+) Indeterminable

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

A. The actual economic impact of this chapter is estimated to be \$116,543, depending on the actual use of telemedicine for mental health services.

C. There will only be an impact on local governments if they decide to participate in the use of telemedicine for mental health services.

D. The actual economic impact of this chapter is estimated to be \$116,543, depending on the actual use of telemedicine for mental health services.

F. The actual impact is indeterminate. However, there will greater access to specialty mental health services in geographical areas of the State that either do not have the necessary specialty mental health services, or are underserved.

**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 an impact on individuals with disabilities as follows: This proposal will provide greater access in areas that lack specialty mental health services.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dnhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.01 Scope.**

A. This chapter applies to public mental health system (PMHS) outpatient mental health centers (OMHC) or individual psychiatrists to provide psychiatric consultation, evaluation, and ongoing treatment, via interactive video telemental health (TMH) technologies to eligible individuals:

(1) Located in designated rural geographic areas of Maryland; or

(2) For whom personal psychiatric services are not available.

B. The purpose of providing psychiatric care via TMH technology is to:

(1) Improve access to outpatient psychiatric care, thus reducing the individual's admission to emergency rooms, inpatient facilities, or detention centers;

(2) Improve access to outpatient and inpatient psychiatric subspecialty consultation, thus improving diagnostic clarification, treatment recommendations, and planning for the individual; and

(3) Improve capacity and choice for outpatient ongoing psychiatric treatment, thus reducing the need to travel outside the community when local resources are limited.

**.02 Definitions.**

A. In this chapter, terms have the meanings stated in COMAR 10.21.17 and this regulation.

B. Terms Defined.

(1) "Critical access hospital" means a hospital that is certified to receive cost-based reimbursement from Medicare.

(2) "Designated rural geographic areas" means the rural geographical areas in Maryland identified by the Depart-

ment that typically have mental health needs that have limited local mental health resource capacity or specialty psychiatric care.

(3) "Distant site" means the site at which the psychiatrist is located at the time the mental health service is provided via a telecommunications system.

(4) "Emergency department services" means initial hospital services provided to individuals with a broad spectrum of illnesses and injuries, some of which may be life-threatening and requiring immediate attention.

(5) "Federally qualified health center" has the meaning stated in Health-General Article, §24-1301, Annotated Code of Maryland.

(6) "Individual practitioner" means a psychiatrist who is licensed to practice psychiatry in Maryland, and either:

(a) Is certified in psychiatry by the American Board of Psychiatry and Neurology; or

(b) Has completed the minimum educational and training requirements to be qualified to take the Board of Psychiatry and Neurology examination for certification in Neurology.

(7) "Not available" means that the PMHS administrative services organization certifies that the individual cannot access psychiatric services.

(8) "Originating site" means a site that has been approved by the Department to provide TMH services, at which an eligible individual is located at the time the service is delivered via a telecommunications system.

(9) "Originating site fee" means the amount the Department reimburses an approved TMH originating site.

(10) "Professional fee" means the amount the Department reimburses an approved TMH distant facility or licensed individual mental health professional:

(a) For a clinical care opinion, treatment, or both;

(b) To purchase, install, and maintain video conferencing equipment;

(c) To pay for line or per minute usage charges, or both; and

(d) For any additional programmatic, administrative, clinical, or contingency support at the distant site.

(11) Public Mental Health System (PMHS).

(a) "Public mental health system" means the system for the delivery of mental health treatment and supports to individuals who meet medical necessity criteria and financial eligibility as established by the Administration.

(b) "Public mental health system" includes the specialty mental health system described in COMAR 10.09.70.

(12) "Rural health clinic" means a facility that meets the definition of a rural health clinic as contained in 42 CFR §491.2(f), as amended.

(13) "Security" means the protection of information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction.

(14) "Telemental Health (TMH)" means the delivery of mental health care at a distance through the use of technology-assisted communication.

(15) "Telepresenter" means the individual at the originating site who introduces the patient to the distant site provider for examination, and to whom the distant site provider may delegate tasks and activities, and who is:

(a) A licensed independent practitioner; or

(b) Licensed or certified to perform health care services by licensing, training, or experience for the performance of the task or activity as long as the task or activity does not require the exercise of independent medical judgment for its performance.

(16) "Telepresenter fee" means the amount the Department reimburses a licensed, independent provider to present an individual to the TMH provider, due to medical necessity, to successfully complete the examination.

(17) "Virtual private network connection" means a method of connecting to a private network via a public network.

### **.03 Approval.**

The Department shall grant approval to a TMH provider to be eligible to receive State or federal funds for providing interactive TMH services if the TMH provider meets the requirements of this chapter and:

A. For outpatient mental health centers, COMAR 10.21.20; or

B. If the TMH provider is an individual psychiatrist, COMAR 10.09.36.

### **.04 Service Model.**

A. TMH provides the opportunity for community-based medical and mental health providers to access general or subspecialty psychiatric care providers from other areas of the State.

B. TMH providers may be private practice, part of a hospital, academic, health, or mental health care system.

C. PMHS approved community-based providers or individual practitioners may engage in agreements with TMH providers for services.

D. Fee-for-service reimbursement shall be at an enhanced rate, as stipulated by the Department, provided all applicable provisions of this chapter are met and funds are available.

### **.05 Eligibility.**

A. Individual Eligibility. An individual is eligible to receive TMH services if the individual:

(1) Is Medicaid eligible;

(2) Meets the eligibility and medical necessity criteria for participation in the Public Mental Health System;

(3) Resides in one of the designated rural geographic areas or whose situation makes person-to-person psychiatric services unavailable; and

(4) Voluntarily consents to TMH services, which shall be documented in the individual's medical record.

B. Individual Provider Eligibility. A provider of TMH services shall be a psychiatrist who:

(1) Has an active:

(a) License to practice psychiatry in Maryland; and

(b) Medicaid provider number;

(2) Complies with professional practice standards; and

(3) Completes a registration to provide TMH health services.

C. Originating Site Facility Eligibility. The following Maryland sites may be approved as an originating site for THM health service delivery:

(1) County government offices appropriate for private clinical evaluation services;

(2) Critical Access Hospital;

(3) Federally Qualified Health Center;

(4) Hospital;

(5) Outpatient mental health center;

(6) Physician's office;

(7) Rural Health Clinic;

(8) Elementary, middle, high, or technical school with a supported nursing, counseling or medical office; or

(9) College or university student health or counseling office.

*D. Distant Site Location Eligibility. An approved distant TMH location shall be within the State.*

**.06 Technical Requirements.**

*A provider of TMH health services shall have video technology components as follows:*

*A. A minimum bandwidth of 384 KBPS (H.263), 256 KBPS (H.264), or technical equivalent;*

*B. A monitor with a:*

- (1) Minimum net display of 16" diagonally; and*
- (2) Non-anamorphic video picture display;*

*C. A minimum video resolution of 1 Common Intermediate Format (CIF), or 1 Source Input Format (SIF);*

*D. Internet protocol sessions that are encrypted unless they are conducted entirely on a protected network, or using a virtual private network connection; and*

*E. A camera at the originating site, that has pan, tilt, and zoom capabilities that can be remotely controlled from the distant site.*

**.06 Confidentiality.**

*All originating and distant TMH sites shall comply with the rules and regulations concerning the privacy and security of protected health information under:*

*A. Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland; and*

*B. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. §§1320D et seq., as amended, and the implementing regulations at 45 CFR Parts 160 and 164, as amended.*

**.07 Medical Records.**

*A. Originating Site. The originating site shall:*

*(1) Be responsible for maintaining a complete medical record as if the individual were seen face-to-face at the originating site;*

*(2) Meet the facility and community standard for medical record completion and retention, including applicable record reviews; and*

*(3) Be responsible for any proper release of information contained in an individual's medical record.*

*B. Distant Site.*

*(1) The distant site shall maintain copies of all documentation completed by the distant site TMH provider unless the distant site TMH provider enters the information directly into the originating site's electronic medical record system.*

*(2) The distant site, as part of its quality improvement system, shall have a process to review TMH care.*

*(3) As part of quality monitoring, when the originating site's electronic medical records are reviewed at the distant site, the:*

*(a) Review may include the TMH provider's documentation online, if authorized; or*

*(b) Distant site may request sections of the individual's electronic medical record from the originating site for the distant site peer review.*

*C. TMH records shall be retained according to the provisions of Health-General Article, §4-403, Annotated Code of Maryland.*

**.08 Covered Services.**

*A. TMH services shall be authorized by the Administration's administrative service organization.*

*B. The Department shall reimburse an approved TMH provider for rendering the following psychiatric services to an eligible child, adolescent, or adult via a telecommunications system:*

- (1) Diagnostic interview;*
- (2) Individual therapy, with or without medication evaluation and management;*
- (3) Family therapy, with or without the identified patient;*
- (4) Group therapy for each individual, up to a maximum of 8 individuals;*
- (5) Outpatient evaluation and management for a new or established patient;*
- (6) Outpatient office consultation for a new or established patient;*
- (7) Initial inpatient consultation for a new or established patient; and*
- (8) Emergency department services.*

**.09 Reimbursement.**

*A. There are three categories of fees that the Department shall reimburse an approved TMH provider, as applicable:*

- (1) Originating site fee;*
- (2) Professional fee; and*
- (3) Telepresenter fee.*

*B. Originating Site Fee.*

*(1) The originating site facility fee is set forth by the Center for Medicare and Medicaid Services, published annually and included in the Medicare Physician Fee Schedule Final Rule, issued by November 1, prior to the start of the calendar year for which it is effective.*

*(2) Originating sites only may file for reimbursement and shall use the appropriate code modifier.*

*(3) Fees paid to the originating site may be used to:*

- (a) Purchase, install, and maintain video conferencing equipment;*
- (b) Pay for line or per minute usage charges, or both; and*

*(c) Any additional programmatic, administrative, clinical or contingency support at the originating site.*

*C. Professional Fee. Professional Fee for individual providers or OMHC providing TMH is set forth in COMAR 10.21.25.*

*D. Telepresenter Fee. Telepresenter Fees for assisting in TMH are set forth in 10.21.25 and subject to the following requirements prior to billing:*

*(1) A telepresenter fee is applicable only when, due to medical necessity, a licensed independent practitioner is required to present the individual to the distant provider to successfully complete the examination;*

*(2) Fees for telepresenters that are not licensed independent practitioners, and fees for telepresenters that are licensed independent practitioners, but their presence is not medically necessary, are included as part of the originating site facility fee; and*

*(3) The distant provider shall clearly document in the individual's medical record the rational requiring the involvement of the licensed independent practitioner, as medically necessary, at any particular session.*

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Notice of Proposed Action**

[10-031-P]

The Secretary of Health and Mental Hygiene proposes to amend:

- (1) Regulations .11, .12, and .16 under COMAR 10.27.01 Examination and Licensure; and**

(2) Regulations .06 and .07 under COMAR 10.39.01  
**Certification of Nursing Assistants.**

This action was considered by the Maryland Board of Nursing at a public meeting held on November 17, 2009, notice of which was given by publication on the Board's website under Board News on November 1, 2009.

**Statement of Purpose**

The purpose of this action is to:

- (1) Provide for the orderly processing of criminal history records checks for nursing and nursing assistant renewal applicants;
- (2) Comply with HB 923 (2008) that extended a temporary license to practice nursing so as to allow an endorsement applicant, who is otherwise qualified, to obtain the required clinical experience;
- (3) Extend a temporary license, practice letter, or certificate pending receipt of the criminal history record information;
- (4) Require all reinstatement applicants to have a criminal history record check if it has been more than a year since they last held an active license or certificate; and
- (5) Make clarifying and technical changes.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** All renewal applicants will incur the cost of getting a criminal history record check. There will be an increase in revenue to any entity that does the fingerprinting. The cost per individual varies from about \$38 to \$58 depending on who does the fingerprinting.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies: Maryland State Police	(R+)		Indeterminate
C. On local governments:	NONE		
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)		\$456,000 — \$696,000
E. On other industries or trade groups:	(+)		Indeterminate
F. Direct and indirect effects on public:	NONE		

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

B. The Maryland State Police will have an increase in revenue from renewal applicants who get their fingerprints processed by the State police. It is not possible to determine how many individuals will use the State Police for fingerprinting. The cost to an individual if they use the services of the State police is approximately \$38.

D. There is a direct economic impact on individuals who will be renewing their licenses or certificates in 2010. The cost to an individual for a criminal history record check varies from approximately \$38 to \$57 depending on where or by whom the fingerprints are taken.

E. Other industries or trade groups will have an increase in revenue if they offer fingerprinting services. It is not possible to determine how many individuals will use private companies for fingerprinting. The cost for fingerprinting by a private company is approximately \$58.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows. There will be an increase in revenue for small businesses that do fingerprinting. The number of individuals who will utilize these companies is not predictable. The cost per individual is about \$58 for fingerprinting by a private company. The Board estimates that approximately 12,000 renewal applicants will need fingerprinting.

**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 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**Subtitle 27 BOARD OF NURSING**

**10.27.01 Examination and Licensure**

Authority: Health Occupations Article, §§8-205(a)(2), 8-304, 8-312, Annotated Code of Maryland

**.11 Temporary Licensure.**

A. The Board may issue a [one-time] temporary license to any registered or licensed practical nurse from any other state provided that the applicant:

(1) — (4) (text unchanged)

(5) Provides written, verified evidence that the applicant has submitted to a criminal history records check in accordance with [Regulation .05A(4) of this chapter] *Health Occupations Article, §8-303, Annotated Code of Maryland.*

B. *The Board may issue a temporary license to a renewal applicant pending completion of the criminal history record information in accordance with Health Occupations Article, §8-312(g), Annotated Code of Maryland.*

[B. Temporary] C. *Except as provided in §§D and H of this regulation, temporary licenses expire 90 days after date of issuance and are not renewable.*

D. *A temporary license may be extended for an additional 90 days if the applicant is waiting for the completion of criminal history record information.*

[C] E. The Board shall revoke a temporary license if the criminal history records check reveals that the applicant [pleaded] *has been convicted of or pled guilty or nolo contendere to an act that would be cause for discipline under Health Occupations Article, §8-316(a), Annotated Code of Maryland.*

[D. Temporary licensure may be granted to practice as a:

- (1) Nurse anesthetist;
- (2) Nurse midwife;
- (3) Nurse practitioner; or
- (4) Nurse psychotherapist.]

F. *The Board may issue a temporary practice letter to a certified nurse practitioner or certified nurse midwife as permitted by Health Occupations Article, §8-315, Annotated Code of Maryland.*



[E. Temporary licenses] *G. A temporary practice letter referred to in [§C] §F of this regulation may be issued provided that the applicant provides documentation verifying that the applicant meets the requirements for certification in this State.*

*H. If an applicant does not meet the practice requirement in Regulation .09A(5) of this chapter, a temporary license or temporary practice letter may be extended every 90 days:*

- (1) Pending completion of the practice requirement; and*
- (2) Provided that the total length of the temporary license does not exceed 12 months from the original date of issuance.*

**.12 Renewal of License.**

A. — H. (text unchanged)

I. After January 1, [2008] 2010, upon notification by the Board that a criminal history records check is required before renewal of licensure, a renewal applicant shall submit to the Board before renewal of the license, written, verified evidence that the renewal applicant has completed:

- (1) — (2) text unchanged*

*I-1. Criminal history record checks for renewal applicants shall be scheduled according to the licensee’s birth month as follows:*

- (1) In 2010 — all applicants with an April birth month;*
- (2) In 2011 — all applicants with a May birth month;*
- (3) In 2012 — all applicants with a June birth month;*
- (4) In 2013 — all applicants with a July birth month;*
- (5) In 2014 — all applicants with an August birth month;*
- (6) In 2015 — all applicants with a September birth month;*
- (7) In 2016 — all applicants with an October birth month;*
- (8) In 2017 — all applicants with a November birth month;*
- (9) In 2018 — all applicants with a December birth month;*
- (10) In 2019 — all applicants with a January birth month;*
- (11) In 2020 — all applicants with a February birth month; and*
- (12) In 2021 — all applicants with a March birth month.*

*I-2. The Board shall mail out to every renewal applicant who is required to have a criminal history records check in the selected birth month, a packet with the required fingerprint documents and instructions for completing the documents.*

J. (text unchanged)

*J-1. The Board may issue a temporary license in accordance with Regulation .11 of this chapter pending receipt of the criminal history records information.*

K. (text unchanged)

**.16 Reinstatement.**

A. The Board shall reinstate the license of a former licensee who has failed to renew the license for any reason if the former licensee meets the renewal requirements.

*B. After January 1, 2010, an applicant for reinstatement who has failed to renew the applicant’s license for a period of 1 year or more shall submit to a criminal history records check before the license is reinstated.*

**Subtitle 39 BOARD OF NURSING — CERTIFIED NURSING ASSISTANTS**

**10.39.01 Certification of Nursing Assistants**

Authority: Health Occupations Article, 8-205(a)(2), and 8-6A-08(c),(g),(h),and (l), Annotated Code of Maryland

**.06 Renewal.**

A. — G. text unchanged

H. After January 1, [2008] 2010, [on] upon notification by the Board that a criminal history records check is required before renewal of [licensure] certification, a renewal applicant shall submit to the Board, before renewal of the [license] certificate, written, verified evidence that the renewal applicant has completed:

- (1) — (2) text unchanged*

I. — K (text unchanged)

*L. The Board may grant a 30-day extension to a renewal applicant in accordance with Health Occupations Article, §8-6A-08(g)(2), Annotated Code of Maryland.*

*M. The Board may grant up to two 90-day extensions of a temporary certificate pending receipt of criminal history record information in accordance with Health Occupations Article, §8-6A-08(g)(2), Annotated Code of Maryland.*

*N. Criminal history records checks for renewal applicants shall be scheduled according to the licensee’s birth month as follows:*

- (1) In 2010 — all applicants with an April birth month;*
- (2) In 2011 — all applicants with a May birth month;*
- (3) In 2012 — all applicants with a June birth month;*
- (4) In 2013 — all applicants with a July birth month;*
- (5) In 2014 — all applicants with an August birth month;*
- (6) In 2015 — all applicants with a September birth month;*
- (7) In 2016 — all applicants with an October birth month;*
- (8) In 2017 — all applicants with a November birth month;*
- (9) In 2018 — all applicants with a December birth month;*
- (10) In 2019 — all applicants with a January birth month;*
- (11) In 2020 — all applicants with a February birth month; and*
- (12) In 2021 — all applicants with a March birth month.*

*O. The Board shall mail out to every certificate holder whose certificate is due for renewal in the selected birth month a packet with the required fingerprint documents and instructions for completing the documents.*

[L.] P. (text unchanged)

**.07 Reinstatement.**

A. The Board shall reinstate the certificate of a former certificate holder who has failed to renew the certificate for any reason, if the former certificate holder meets the renewal requirements.

*B. After January 1, 2010, an applicant for reinstatement who has failed to renew the applicant's certificate for a period of 1 year or more is required to submit to a criminal history records check before the certificate is reinstated.*

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

## Subtitle 27 BOARD OF NURSING

### 10.27.05 Practice of Nurse Midwifery

Authority: Health Occupations Article, §§8-205(a)(1) — (5) and 8-602,  
Annotated Code of Maryland

#### Notice of Proposed Action

[10-037-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation **.01**, repeal existing Regulation **.02**, adopt new Regulations **.02 — .05** and **.11**, amend and recodify existing Regulations **.05 — .07**, **.09**, and **.10** to be Regulations **.06 — .08**, **.10**, and **.12**, and recodify existing Regulations **.08** and **.11** to be Regulations **.09** and **.13** under **COMAR 10.27.05 Practice of Nurse Midwifery**. This action was considered by the Maryland Board of Nursing at a public meeting held on November 17, 2009, notice of which was given by publication on the board's website under Board news on November 1, 2009 and by the Maryland Board of Physicians on November 18, 2009, notice of which was given by publication in 36:23 Md. R. 1841 (November 6, 2009), pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to eliminate the requirement for a signed collaborative agreement between a Certified Nurse Midwife and a Physician and replace that requirement with a written collaborative plan with a physician; change existing language to comply with this proposal; change any obsolete language; and make technical changes.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dnhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) “[ACC] AMCB” means the [American College of Nurse Midwives Certification Council] *American Midwifery Certification Board*.

[(1-1)] (2) “ACNM” means the American College of Nurse Midwives.

[(1-2)] (3) “Board” means the Board of Nursing.

[(2)] (4) “Certified nurse midwife” means a registered nurse who is [certified by]:

(a) *Certified by one of the following:*

(i) *By the [ACC] AMCB[, any]; or*

(ii) *By any other certifying body approved by the Board; and [certified]*

(b) *Certified by the Board.*

[(5)] “Joint committee” means the Joint Committee on Nurse Midwifery composed of an equal number of members appointed by the Board and the MBP.]

(5) “*Clinical practice guidelines*” means *written standards using guidelines such as those established by the ACNM or any other certifying body approved by the Board or any other guidelines approved by the Board that the nurse midwife has adopted and follows in practicing as a midwife.*

(6) “*Collaborative plan*” means *the development and implementation of a plan:*

(a) *For consultation and collaboration with and referral to a physician and other health care providers to address complications:*

(i) *During a pregnancy; and*

(ii) *Beyond the educational preparation and scope of practice of the certified nurse midwife that require the consultation or attendance of a physician or other health care provider; and*

(b) *That includes an assurance that a client can be transferred, whenever required, to the care of a physician with admitting privileges to a facility with an OB/GYN unit located in the client's geographic area.*

[(3)] (7) “Delegated medical functions” means those functions that come within the definition of “practice medicine” [of] in the Health Occupations Article, §14-101(i), Annotated Code of Maryland, that have been delegated to a certified nurse midwife to perform [and that are specified in the written agreement].

[(4)] (8) “Formulary” means an approved list of the categories of substances commonly used in the practice of nurse midwifery as determined by the Board in consultation with the MBP and the Maryland Board of Pharmacy.

[(6)] (9) — [(10)] (13) (text unchanged)

[(11)] “Protocol” means a written document approved by both the Maryland certified nurse midwife and the physician that details the procedures, management, and delegated medical nursing functions that the a Maryland certified nurse midwife will follow.

(12) “Written agreement” means the development and implementation of a written document between a certified nurse midwife and a physician concerning the performance of delegated medical functions authorized by these regulations.]

(14) “*Review committee*” means *the Review Committee on Nurse Midwifery composed of an equal number of members appointed by the Board and the MBP.*

#### .02 Certification.

*An applicant for certification as a nurse midwife shall:*

A. *Hold a current license to practice registered nursing in Maryland;*

B. Hold current certification as a nurse midwife from the AMCB or any other certifying body approved by the Board;

C. Complete the application for certification as a nurse midwife;

D. Submit an affidavit that the applicant is in compliance at all times with the clinical practice guidelines as defined in Regulation .01B of this chapter; and

E. Pay all fees.

**.03 Collaborative Plan.**

A. A certified nurse midwife may not practice in Maryland unless the Board has approved a collaborative plan submitted by the nurse midwife to the Board which includes:

- (1) The name of the collaborating physician; and
- (2) An attestation by the nurse midwife that the:
  - (a) Patient has agreed to the collaborating physician;

and

(b) Physician has agreed to collaborate in the care of the patient.

B. A certified nurse midwife seeking authorization to practice shall submit a collaborative plan to the Board that has attached to it an affidavit that the certified nurse midwife has developed clinical practice guidelines for the practice of midwifery that:

- (1) Is on the form required by the Board;
- (2) Fully describes:
  - (a) Delegated medical functions, if any, to be performed by the nurse midwife;
  - (b) The parameters of service;
  - (c) A comprehensive plan for transfer of care when needed;
  - (d) Practice guidelines for every specialty area of practice including, but not limited to:
    - (i) Client selection criteria;
    - (ii) Parameters and methods for assessing client health status;
    - (iii) Parameters for risk management; and
    - (iv) Parameters for consultation, collaboration, and referral;
  - (e) Appropriate interventions including treatment, medication, and any devices; and
  - (f) The categories of substances selected from the approved formulary that may be prescribed and dispensed by the certified nurse midwife.

C. The Review Committee shall review the collaborative plan and make recommendations to the Board as to whether the agreement should be revised or approved as submitted.

D. The approved collaborative plan shall be maintained by the Board and shall be made available to the MBP upon request.

E. If a certified nurse midwife will perform deliveries, the nurse midwife shall submit to the Board a collaborative plan with a physician who has:

- (1) An active unencumbered Maryland license; and
- (2) Unrestricted privileges to practice obstetrics and gynecology in a hospital in the geographic area in which the certified nurse midwife will practice.

F. If a certified nurse midwife will not be performing deliveries, and the consulting physician does not have privileges to practice obstetrics in a hospital in the geographic area in which the nurse midwife will practice, the Review Committee shall obtain an opinion from the Maryland Board of Physicians as to whether the physician has sufficient training and expertise in obstetrics and gynecology to perform his responsibilities under the collaborative plan.

G. A certified nurse midwife who is otherwise in full compliance with this chapter and who joins a practice of certi-

fied nurse midwives who have an approved collaborative plan on file with the Board shall submit, on the required form, an affidavit to that effect.

**.04 Duties of the Board.**

The Board shall:

A. Maintain an up-to-date list of all certified nurse midwives in this State; and

B. Include on the nurse midwife's registered nursing license an indication that the licensee is certified as a nurse midwife.

**.05 Required Documentation.**

A. A certified midwife shall complete an individual care plan for each patient that includes plans for:

- (1) Emergency consultation;
- (2) Transfer of care; and
- (3) When needed, admission to a hospital within the client's geographic area.

B. A certified nurse midwife shall have available at all times for examination by the Board, written clinical practice guidelines that cover all aspects of care, practice, and quality assurance.

**[.05].06 Practice Before [State] Certification.**

A. A registered nurse who meets the qualifications to sit for the [ACC] AMCB national certifying examination or any other certifying examination approved by the Board who has taken that examination and is waiting for the results of it may practice as a nurse midwife graduate before certification if the:

- (1) — (2) (text unchanged)
- (3) Nurse midwife graduate files with the Board a copy of the admission slip to the Board-approved certifying examination and a copy of the signed supervision agreement[; there shall also be submitted to the Board on the required form an affidavit signed by the collaborating physician stating that the physician agrees to the nurse midwife graduate's supervised practice according to the certified nurse midwife's agreement and protocols].

B. A nurse midwife graduate who has entered into [such] a supervision agreement under this regulation shall immediately notify the Board[, and the supervising certified nurse midwife [and the physician] of the results of the Board-approved certifying examination.

C. A nurse midwife graduate may not continue to practice under [that] a supervision agreement under this regulation for more than 1 year from the filing of all documents required under §A of this regulation, or after the denial of [ACC] AMCB or other Board-approved certification, whichever occurs first.

**[.06].07 Scope of Practice.**

A. A certified nurse midwife who meets the requirements of Regulation .02 of this chapter may perform the following functions:

- (1) Independent management of clients appropriate to the skill and [knowledge] educational preparation of the certified nurse midwife and the nurse midwife's [agreement and protocols] clinical practice guidelines;
- (2) Management, in collaboration with a physician, of clients with medical complications;
- (3) [Referral of] Refer clients with complications beyond the scope of practice of the certified nurse midwife to a licensed physician; and
- (4) [Consultations] Consult with and [referral] refer to other health care professions in the delivery and evaluation of health care.

B. (text unchanged)

C. A certified nurse midwife shall immediately advise the Board if the [written agreement] *collaborative plan* is ended by either party [and the Board shall immediately notify the MBP].

D. A certified nurse midwife has the right and obligation to refuse to perform any delegated *medical* act, oral or written, if, in the certified nurse midwife's judgment, it is unsafe or an invalidly prescribed medical act or beyond the competence of the certified nurse midwife, in which case the nurse midwife shall notify the physician at once.

**[.07 Joint].08 Review Committee on Nurse Midwifery.**

A. The Board *in consultation with* the MBP shall establish a [Joint] *Review Committee* to:

(1) Develop a written framework [to be used in writing written agreements] *for collaborative plans*;

(2) Make recommendations to the Board regarding approval [or] of [written agreements] — *Collaborative plans* submitted for review[; provided, however, a written agreement may not be approved by the Board unless the MBP reviews and approves the physician's role with regard to delegated medical functions];

(3) Formulate standardized criteria to be used by the *certified nurse midwife* [and physician] in developing [protocols] *clinical practice guidelines, taking into account the variations in size, scope, setting, and population of each individual or group practice*; and

(4) Be available to the Board [or the MBP, or both,] to review [protocols] *clinical practice guidelines* when requested and perform any duties delegated to it by the Board [and the MBP].

B. The [Joint] *Review Committee* shall be composed of any equal number of *certified nurse midwife* members appointed by the Board and *physicians appointed* by MBP.

C. A member of the *Review Committee* shall be appointed for a 3-year term and may be reappointed for one additional 3-year term.

[C] D. Members of the [Joint] *Review Committee* may be members of the Board or the MBP or may be designees of each appointing board.

E. The members appointed by the Board shall be *certified nurse midwives and the members appointed by the MBP shall be obstetricians*.

F. *The Board shall meet monthly if necessary and may conduct business with a majority of the committee present.*

**[.09].10 Renewal of Certification.**

A. (text unchanged)

B. Before a nurse midwife's certification expires, the midwife may renew annually if the nurse midwife:

(1) — (2) (text unchanged)

(3) Submits to the Board:

(a) (text unchanged)

(b) Proof of enrollment in the Continuing Competency Assessment Program of the A.C.N.M. or, if initially certified after January 1, 1996, proof of enrollment in the [ACC] *AMCB Certification Maintenance Program* or other program approved by the Board.

**.11 Compliance.**

*The certified nurse midwife shall develop and comply with clinical practice guidelines as defined in Regulation .02B of this chapter.*

**[.10].12 Unlawful Practices.**

Pursuant to Health Occupations Article, §§8-602 and 8-710, Annotated Code of Maryland, an individual may not:

A. (text unchanged)

B. Use the title nurse midwife, certified nurse midwife, or any other similar designation unless certified by the [American College of Nurse Midwives] *AMCB, or other certifying body approved by the Board; or*

C. (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS**

**10.29.15 Family Security Trust Fund**

*Authority: Health Occupations Article, §§7-4A-03(h) — 7-4A-13, Annotated Code of Maryland*

**Notice of Proposed Action**

[10-038-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01 — .08 under a new chapter **COMAR 10.29.15 Family Security Trust Fund**. This action was considered by the Board of Morticians and Funeral Directors at a public meeting held on September 9, 2009, notice of which was given by publication in 36:18 Md. R. 1411 (August 28, 2009) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to establish the Family Security Trust Fund. The Fund is being set up by the Board in order to compensate victims of preneed fund theft. Licensees will contribute to the Fund annually until \$1,000,000 is accumulated and then the Fund will be replenished as needed. These regulations detail how the Board will set up and administer the Fund, as well as how the public can file claims and seek restitution from the Fund.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** Licensees will pay \$375 every year into the Family Security Trust Fund until such time when the Fund has a \$1,000,000 balance. The revenue raised is designated specifically for the Fund and does not have any fiscal impact on the Board.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	\$110,250
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$110,250
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. and D. The revenue increase for the Family Security Trust Fund and revenue decrease to the licensees is based on 294 licensees x \$375 = \$110,250.

#### **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 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### **.01 Scope.**

A. This chapter governs the collection of fees from licensed funeral establishments for claimants to recover compensation from the Family Security Trust Fund for an actual preneed trust fund loss that occurred in this State due to theft, embezzlement, false pretenses, forgery, fraud, or misrepresentation by a licensed mortician, funeral director, or holder of a surviving spouse license.

B. This chapter applies to all preneed contracts entered into by a licensed mortician, funeral director, or a holder of a surviving spouse license with a buyer, including those preneed contracts arranged on behalf of a holder of a corporate license.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Advisory Committee" means a committee comprised of three Board members and a representative from both of the trade associations which is assisted by Board Counsel provided by the Attorney General's Office and Board Administrative personnel to administer the Fund.

(2) "Board" means the Maryland State Board of Morticians and Funeral Directors.

(3) "Claim" means a request filed in writing, under oath, with supporting documentation by a claimant to obtain compensation from the Family Security Trust Fund for a preneed trust fund loss as a result of malfeasance, default, failure, or insolvency of any licensee under Health Occupations Article, §7-4A-06, Annotated Code of Maryland.

(4) "Claimant" means an individual or legal representative of the individual, or any other individual who on behalf of themselves or any other individual files a claim for loss.

(5) "Final order" means a public record issued by the Board resolving a contested case either by consent or after an adjudication, which includes findings of fact, conclusions of law, and a disposition which:

(a) Denies a license;

(b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;

(c) Summarily suspends a license;

(d) Dismisses charges;

(e) Surrenders a license; or

(f) Takes any other action that the Board may do by law.

(6) "Fund" means the Family Security Trust Fund, a special, nonlapsing, interest bearing account.

(7) "Preneed contract" means an agreement entered into by a licensed mortician, a licensed funeral director, or a holder of a surviving spouse license with a buyer in advance of the death of that individual or beneficiary.

(8) "Seller" means a licensed mortician, licensed funeral director, or a holder of a surviving spouse license who agrees to sell certain mortuary sciences services or merchandise in a contractual arrangement between a buyer and a funeral establishment.

#### **.03 Mandatory Fees.**

A. A licensed funeral establishment may not be exempt from the fees outlined in this regulation.

B. The Board shall send out fee notices to the licensed establishments via first class mail by September 1.

C. Annual payments shall be due on November 30 of every year. All active licensed establishments shall be required to pay a fee of \$375 to the Family Security Trust Fund.

D. A late fee of \$500 will be assessed on December 1 for any licensed establishment that is delinquent in paying the mandatory contribution to the Fund.

E. If the establishment does not pay the mandatory fee by December 30, the Committee shall refer the delinquent establishments to the Board for formal action.

F. The Board shall assess a \$40 fee for returned checks.

G. A licensee is not entitled to a refund of its contribution to the Fund.

#### **.04 The Family Security Trust Fund.**

A. The Board shall:

(1) Collect contributions;

(2) Deposit funds;

(3) Track interest; and

(4) Process claims for loss that occurred on or after January 1, 2010.

B. All fees shall be deposited with the State Treasurer into a separate account known as the Family Security Trust Fund. The Fund may not be transferred to or revert to the General Fund of the State.

C. All moneys deposited in the Fund shall be used only for the purposes expressly authorized by Health Occupations Article, §7-04A-05, Annotated Code of Maryland.

D. The Fund shall accumulate interest income which shall be credited to the Fund.

E. Once the Fund has accumulated a balance of \$1,000,000 the Board may cease to collect the annual fee.

F. Once the Fund balance is below \$1,000,000 the Board shall reinstate the collection of the annual fee.

G. The Fund shall be maintained at \$1,000,000 principal level plus interest.

H. The Board may expend monies in the Fund for the following purposes:

(1) To make reimbursements on approved claims; and

(2) To pay the expenses of the Board for administering the Fund, including appropriate experts, or legal counsel, accountants, consultants, and agents.

#### **.05 Filing a Claim.**

A. Complaints shall be processed pursuant to COMAR 10.29.11.

B. The Board shall issue a final order against a licensee, funeral establishment, or corporation, for violation involving a transaction that relates to preneed funeral planning that occurred in the State and falls within its jurisdiction.

*C. The claimant shall:*

(1) Complete a claim form devised by the Board; and  
 (2) Provide a signed preneed contract and copies of documentation of any and all money transactions regarding the preneed contract;

(3) Present all claims for losses to the Advisory Committee within 1 year:

(a) After the death of the person who is the subject of the preneed contract;

(b) Upon the discovery by the claimant of the defalcation; or

(c) At a later date at the discretion of the Committee.

*D. The Board shall consider each claim on a case by case basis.*

*E. All claims shall be filed with the:*

(1) Fund; and

(2) Advisory committee chair, whose name and address shall appear on the claim form.

*F. Claims shall be filed in accordance with Health Occupations Article, §§7-4A-07 — 7-4A-08, Annotated Code of Maryland.*

**.06 Hearings.**

*Hearings shall be conducted in accordance with Health Occupations Article, §7-319, Annotated Code of Maryland.*

**.07 Restitution.**

*A. A claimant may receive compensation from the Fund for an actual preneed trust fund loss that occurred on or after January 1, 2010. All payments shall be a matter of privilege and not of right.*

*B. The Board of Morticians and Funeral Directors shall determine to its satisfaction that the preneed seller does not possess the financial means to deliver or provide the prearranged merchandise or service.*

*C. Restitution may only be obtained from the Fund if adequate funds are not available from the preneed seller.*

*D. The amount of compensation recoverable by a claimant shall be restricted to the actual monetary loss incurred by the claimant.*

*E. The payment of claims shall be made in the order in which the claim was received by the Board.*

*F. The President of the Board and the President of the Advisory Committee shall sign off on the payment of claims.*

*G. The Board shall order full or partial payment of a claim.*

*H. If at any time, in the opinion of the Advisory Committee, there are not sufficient funds on hand to pay all claims in full, the Advisory Committee may, in its discretion, pay the approved claims pro rata or defer payment until such time as adequate funds are available.*

*I. The Advisory Committee shall determine the maximum cumulative amounts which shall be paid in respect to any one claim or multiple claims by a single claimant arising from the same licensee involved in either a client or fiduciary relationship. The percentage of payment on the dollar remains the same for all victims of the same licensee.*

**.08 Recovery of Funds.**

*A. In the event restitution is made to a claimant under this chapter, the Board shall claim the reimbursed amount and may bring action it deems advisable against any person, including a preneed licensee.*

*B. A licensee found guilty of malfeasance, misfeasance, default, failure, or insolvency may not be considered for reinstatement to an active status until all money paid from the*

*fund is repaid in full, plus interest from the time the payment is made.*

JOHN M. COLMERS  
 Secretary of Health and Mental Hygiene

**Subtitle 30 COMMISSION ON KIDNEY DISEASE**

**Notice of Proposed Action**

[10-072-P]

The Maryland Commission on Kidney Disease proposes to:

(1) Amend Regulations **.02**, **.08**, and **.10** and adopt new Regulation **.02-1** under **COMAR 10.30.01 General Regulations**;

(2) Repeal Regulation **.01** and amend Regulations **.02 — .06** under **COMAR 10.30.02 Physical and Medical Services**;

(3) Amend Regulations **.01 — .04** under **COMAR 10.30.03 Transmissible Diseases**; and

(4) Amend Regulations **.01** and **.03** and repeal existing Regulation **.02** and adopt new Regulation **.02** under **COMAR 10.30.04 Dialyzer Reuse and Water Standards**.

This action was considered at a public meeting on October 22, 2009, notice of which was given by publication in 36:21 Md. R. 1633 (October 9, 2009), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

1) Incorporate changes to the federal kidney dialysis standards;

2) Add new definitions for kidney dialysis center professionals;

3) Detail dialysis center standards and responsibilities for various kidney dialysis center staff;

4) Update transplant centers and transplant waiting list guidelines;

5) Clarify freestanding dialysis facility operations, procedures and staffing;

6) Specify the experience requirements for nurses working in home dialysis programs;

7) Update self-care dialysis facility staffing requirements;

8) Update transmissible disease information, exposure, preventive measures and detection measures; and

9) Update dialysis reuse standards and water standards.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Eva Schwartz, Executive Director, Maryland Commission of Kidney Disease, 4201 Patterson Avenue, Baltimore, Maryland 21215, or call (410) 764-4784, or email to schwarte@dhmh.state.md.us, or fax to (410) 358-3083. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

### 10.30.01 General Regulations

Authority: Health-General Article, §§13-301 — 13-316 and 16-204, Annotated Code of Maryland

#### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) “Administrator” means an individual appointed by the governing body who is responsible for the facility’s daily operations and the duties set forth in COMAR 10.30.02.03F.

[(3)] (4) — [(4)] (5) (text unchanged)

(6) “Chief executive officer” means an individual who meets the requirements set forth in 42 CFR §494.180, which is incorporated by reference;

[(5)] (7) — [(9)] (11) (text unchanged)

(12) “Governing body” means an identifiable individual or individuals who are designated in writing with full legal authority and responsibility for the governance and operation of the facility.

[(10)] (13) — [(11)] (14) (text unchanged)

(15) “Monitoring individual” means an individual who is a direct patient care provider.

(16) “Nurse manager” means an individual who is responsible for nursing services and provides oversight and direction to all direct care staff that provide dialysis and nursing care in the facility including:

(a) Input into hiring; and

(b) Evaluating staff.

#### .02-1 Incorporation by Reference.

A. In this chapter, the following documents are incorporated by reference.

B. Documents Incorporated.

(1) 42 CFR §§494.1 — 494.110, as amended; and

(2) 42 CFR §§494.130 — 494.180, as amended.

#### .08 Affiliation Guidelines.

A. (text unchanged)

B. Affiliation agreements shall include, but not necessarily be limited to, the:

(1) — (3) (text unchanged)

(4) [Specific] Provisions of or referral to a certified home dialysis training program with specific mechanisms for ensuring adequate supervision and assistance for patients on home dialysis; and

(5) (text unchanged)

C. (text unchanged)

#### .10 Certification and Revocation.

A. Certification.

(1) The Commission, through the Department, shall certify a facility or center to perform dialysis upon determination that the facility or center meets the standards adopted by the Commission, including:

(a) 42 CFR §§494.1 — 494.110, as amended; and

(b) 42 CFR §§494.130 — 494.180, as amended.

(2) (text unchanged)

B. — E. (text unchanged)

### 10.30.02 Physical and Medical Standards

Authority: Health-General Article, §§13-301 — 13-316 and 16-204, Annotated Code of Maryland

#### [.01] Repealed.

#### .02 Transplant Centers.

A. — B. (text unchanged)

C. Staffing.

(1) (text unchanged)

(2) The director [is] shall be responsible for[:]

[(a) Participating in the selection of a suitable treatment modality for each patient;

(b) Assuring adequate training of nurses in the care of transplant patients;

(c) Assuring that tissue typing and organ procurement services are available; and

(d) Assuring that the transplantation surgery is performed under the direct supervision of a qualified transplant surgeon.

(3) The center shall have:

(a) An established consultative relationship with professional individuals trained and experienced in treating dialysis and transplant patients; and

(b) Adequate social services and dietetics staffing available to the dialysis patients.]

planning, organizing, conducting and directing the transplant center and devoting sufficient time to carry out these responsibilities, which include but are not limited to:

(a) Coordinating with the hospital in which the transplant center is located to ensure adequate training of nursing staff and clinical transplant coordinators in the care of transplant patients and living donors;

(b) Ensuring that tissue typing and organ procurement services are available; and

(c) Ensuring that transplantation surgery is performed by, or under the direct supervision of, a qualified transplant surgeon.

(3) The transplant center shall have a clinical transplant coordinator to ensure the continuity of care of patients and living donors during the:

(a) Pre-transplant, transplant, and discharge phases of transplant; and

(b) Donor evaluation, donation, and discharge phases of donation.

(4) The clinical transplant coordinator shall:

(a) Be a registered nurse or clinician licensed by the state in which the clinical transplant coordinator practices; and

(b) Have experience and knowledge of transplantation and living donation issues.

(5) The clinical transplant coordinator’s responsibilities include, but are not limited to:

(a) Ensuring the coordination of the clinical aspects of transplant patient and living donor care; and

(b) Acting as a liaison between kidney transplant centers and dialysis facilities.

(6) The transplant center that performs living donor transplantation shall identify either an independent living donor advocate or an independent living donor advocate team to ensure the protection of the rights of living donors and prospective living donors.

(7) The living donor advocate or living donor advocate team may not be involved in transplantation activities on a routine basis.

(8) *The kidney transplant center shall:*

(a) *Directly furnish transplantation and other medical and surgical specialty services required for the care of ESRD patients; and*

(b) *Have written policies and procedures for ongoing communications with the dialysis patients' local dialysis facilities.*

D. — E. (text unchanged)

F. Transplant Activity.

(1) For optimum performance and success of the transplant procedure, transplant centers shall perform a minimum of [15] 10 transplants per year.

(2) — (3) (text unchanged)

G. — H. (text unchanged)

I. Administration.

[(1) The hospital or transplant center administrations, or both, shall provide a copy of the Medicare cost report to the Department, or the Department's duly authorized agents, upon request.]

(1) *The transplant center shall have sufficient social service and dietetic staffing by licensed and trained professionals available to meet the needs of the transplant patients.*

(2) *Before placement on the center's waiting list, a prospective transplant candidate shall:*

(a) *Receive a psychosocial evaluation; and*

(b) *Ensure that the candidate's medical record contains documentation that the candidate's blood type has been determined.*

(3) *When a patient is placed on a center's waiting list or is selected to receive a transplant, the center shall document in the patient's medical record the patient's selection criteria used.*

(4) *The transplant center shall provide a copy of its patient selection criteria to a transplant patient, or a dialysis facility, as requested by a patient or dialysis facility.*

(5) *The transplant center shall have written patient management policies for the transplant and discharge phases of transplantation. If a transplant center performs living donor transplants, the center also shall have written donor management policies for the donor evaluation, donation, and discharge phases of living organ donation.*

(6) *The transplant center's patient and donor management policies shall ensure that:*

(a) *Each transplant patient is under the care of a multidisciplinary patient care team coordinated by a physician throughout the transplant and discharge phases of transplantation; and*

(b) *If a center performs living donor transplants, each living donor is under the care of a multidisciplinary patient care team coordinated by a physician through the donor evaluation, donation, and discharge phases of donation.*

(7) *A transplant center shall keep their waiting lists up to date on an ongoing basis including:*

(a) *Updating of waiting list patients' clinical information;*

(b) *Removing patients from the center's waiting list if a patient receives a transplant or dies, or if there is any other reason the patient should no longer be on a center's waiting list;*

(c) *Notifying the Organ Procurement and Transplant Network not later than 24 hours after a patient's removal from the center's waiting list; and*

(d) *Notifying the patient and dialysis facility if applicable if the patient is removed from the center's waiting list.*

(8) *The transplant center shall develop guidelines to ensure adequate patient and freestanding dialysis facility notification of change in patient transplant status.*

(9) *The transplant center shall maintain up-to-date patient management records for each patient who receives an evaluation for placement on a center's waiting list and who is admitted for organ transplantation.*

(10) *The transplant center shall make social services available, furnished by qualified social workers, to transplant patients, living donors, and their families.*

(11) *The transplant center shall make nutritional assessments and diet counseling services furnished by a qualified dietitian, available to all transplant patients and living donors.*

(12) *The transplant center shall develop, implement, and maintain a written comprehensive data driven Quality Assessment and Performance Improvement (QAPI) program designed to monitor and evaluate performance of all transplantation services. The QAPI program shall include:*

(a) *Patient and donor selection criteria;*

(b) *Accuracy of the waiting list;*

(c) *Assurance of donor and recipient matching;*

(d) *Patient and donor management;*

(e) *Techniques for organ recovery;*

(f) *Consent practices;*

(g) *Patient education;*

(h) *Patient satisfaction; and*

(i) *Patient rights.*

(13) *The transplant center shall take actions that result in performance improvements and track performance to ensure that improvements are sustained.*

(14) *The transplant center shall establish and implement written policies to address and document adverse events that occur during any phase of an organ transplantation case.*

[(2)] (15) (text unchanged)

(16) *The hospital or transplant center administration shall assure that patients are informed of the center's internal and external grievance mechanisms.*

J. (text unchanged)

### **.03 Freestanding Dialysis Facilities — General.**

A. — B. (text unchanged)

C. Administration.

(1) *The freestanding dialysis facility shall be under the supervision of the governing body. The governing body shall:*

(a) *Identify the center administrator who has been given the authority and responsibility for the overall policy and fiscal management of the facility; and*

(b) *Develop a written organizational plan.*

[(1)] (2) *The freestanding dialysis facility administration shall [provide]:*

(a) *Be under the supervision of the governing body; and*

(b) *Provide a copy of the Medicare cost report to the Department, or the Department's duly authorized agents, upon request.*

[(2)] (3) (text unchanged)

(4) *The freestanding dialysis facility administration shall assure that patients are informed of the facility's internal and external grievance mechanisms.*

[D. Affiliation Agreement. The freestanding dialysis facility shall have a written affiliation agreement with another certified freestanding dialysis facility, a transplant center, and a hospital that can provide acute care services to meet the needs of the end-state renal patient.]

[E.] D. (text unchanged)



*E. Governing Body. The governing body shall:*

- (1) *Identify the facility administrator who has been given the authority and responsibility for the overall policy and fiscal management of the facility; and*
- (2) *Develop a written organizational plan.*

*F. Administrator.*

*(1) Qualifications.*

*(a) The kidney dialysis facility administrator, if not the chief executive officer, shall at a minimum:*

- (i) Be 21 years old or older;*
- (ii) Possess a high school diploma or a high school equivalency diploma and have experience to conduct the responsibilities specified in §B(2) of this regulation;*
- (iii) Have at least 1 year of dialysis experience; and*
- (iv) Have no criminal conviction or other criminal history that indicates behavior that is potentially harmful to patients, documented through either a criminal history records check or a criminal background check completed within 1 month before employment.*

*(b) The administrator, if not the chief executive officer, shall have knowledge in:*

- (i) Infection control;*
- (ii) Principles of dialysis;*
- (iii) Water treatment;*
- (iv) Reuse;*
- (v) Data collection and quality assurance;*
- (vi) Emergency procedures;*
- (vii) Fiscal operations, including business management and personnel;*
- (viii) Regulations; and*
- (ix) Policies and procedures.*

*(2) Duties.*

*(a) The administrator shall be on site or available on call.*

*(b) The administrator shall have overall responsibility for:*

- (i) Implementing the facility's policies and coordinating the provision of services that the facility provides;*
- (ii) Organizing and coordinating the administrative functions of the facility;*
- (iii) Establishing procedures for the accountability of those personnel involved in patient care;*
- (iv) Familiarizing the staff with the facility's policies and procedures, and with applicable federal, State, and local laws and regulations;*
- (v) Participating in the development, negotiation, and implementation of agreements or contracts into which the facility enters;*
- (vi) Participating in the development of organizational and fiscal planning for the facility;*
- (vii) Implementing and evaluating, under the direction of the clinical team, the patient care plan and the long-term care program for each patient; and*
- (viii) Informing patients of the availability of emergency services.*

*(3) Waiver of Requirements for Administrator.*

*(a) The Department may grant a kidney dialysis facility a waiver, with or without conditions, for a center that operates an administrator-in-training program.*

*(b) A facility with an administrator-in-training program shall submit to the Department the:*

- (i) Administrator-in-training curriculum, including course outline and supporting materials;*
- (ii) Facility requirements for individuals who are selected to participate in the administrator-in-training program; and*

*(iii) Protocols in place that assure that the approval of the waiver will not adversely affect the quality of care received by patients.*

*(c) In evaluating a waiver request submitted under this regulation, the Department shall review the statements in the application and may:*

- (i) Inspect the kidney dialysis center; or*
- (ii) Confer with the governing body.*

*(d) Grant or Denial of Waiver. The Department may grant a waiver request if it determines that:*

- (i) The administrator-in-training program sufficiently meets the requirements of this regulation; and*
- (ii) A waiver will not adversely affect patients.*

*(e) If the Department determines that the conditions of §F(1) and (2) of this regulation are not met, the Department shall deny the request for a waiver. The denial of a waiver may not be appealed.*

*(f) Written Decision.*

*(i) The Department shall issue and mail to the licensee a final written decision regarding a waiver request submitted under this regulation within 45 days from receipt of the request.*

*(ii) If the Department grants a waiver, the written decision shall include the waiver's duration and any conditions imposed by the Department.*

*(g) If a licensee violates any condition of the waiver, or if it appears to the Secretary that the health or safety of patients will be adversely affected by the continuation of the waiver, the waiver may be revoked. The revocation of a waiver may not be appealed.*

*(h) Any substantive changes to the administrator-in-training program shall be submitted to the Department for prior approval.*

*(4) Policies and Procedures. The administrator shall:*

*(a) In consultation with the governing body, develop and implement policies and procedures governing the operation of the facility, which include at a minimum those items in §F(1) and (2) of this regulation; and*

*(b) Ensure that all policies and procedures are:*

- (i) Reviewed by staff at least annually and are revised as necessary;*
- (ii) Available at all times for staff inspection and use; and*
- (iii) Appropriate personnel implement all policies and procedures adopted.*

**.04 Freestanding Dialysis Facilities — Staffing.**

A. — B. (text unchanged)

**[C. Additional Freestanding Dialysis Facility Requirements.**

(1) The freestanding dialysis facility shall maintain a minimum staffing requirement of one monitoring individual per three patients per shift with sufficient additional staff to cover illness, vacations, and holidays.

(2) Monitoring individuals shall:

- (a) Be trained in dialysis procedures and may be a:
  - (i) Physician;
  - (ii) Physician's assistant;
  - (iii) Registered nurse;
  - (iv) Licensed practical nurse; or
  - (v) Certified nursing assistant — dialysis technician; and
- (b) Provide direct patient care during treatment which shall include at a minimum:
  - (i) Initiation of treatment;
  - (ii) Termination of treatment; and
  - (iii) Monitoring Vital signs.

(3) The Commission shall decide if this minimum standard may be too low for a particular freestanding dialysis facility.

(4) The nurse in charge of nursing services shall be a registered nurse with specific dialysis training and at least 6 months dialysis experience in an established dialysis center.

(5) At least one registered nurse with at least 6 months previous dialysis training shall be on duty at all times when patients are being treated.

(6) Additional staffing may be achieved with the use of licensed practical nurses or certified nursing assistant — dialysis technicians.

(7) Supervisory nursing personnel, which includes the charge nurse, may not be included in the calculation of staff/patient ratio if they do not participate in the monitoring of dialysis as defined in §C(2) of this regulation.]

**C. Nursing Services.**

(1) *Nurse Manager.* The facility shall have a nurse manager responsible for nursing services in the facility that:

- (a) Is a full time employee of the facility;
- (b) Is a registered nurse;
- (c) Has at least:

- (i) 12 months of experience in clinical nursing; and
- (ii) An additional 6 months experience in providing nursing care to patients on maintenance dialysis; and

(d) Participates in the facility's Quality Assessment and Performance Improvement Program.

(2) *Charge Nurse.* The charge nurse responsible for each shift:

- (a) Shall be a registered nurse;
- (b) Shall be on duty in the treatment area, at all times when patients are being treated, except for while on breaks, when the charge nurse shall be readily available;
- (c) Shall have at least 12 months experience in providing nursing care, including 6 months of experience in providing nursing care to patients on maintenance dialysis; and
- (d) May not be included in the staffing ratio except:
  - (i) When there are nine or fewer patients; or
  - (ii) In the event of an emergency.

(3) *Staffing Exception Reporting.*

(a) The freestanding dialysis facility shall have a staffing exception reporting protocol in a format approved by the Department for reporting to the governing body when emergency staffing situations arise that require the charge nurse to be included in the staffing ratio. The report shall include:

- (i) The date and shift of the exception;
- (ii) A description of the emergency staffing situation;
- (iii) Actions taken in response; and
- (iv) Any measures taken to ensure the center's future compliance.

(b) The exception reporting protocol shall be included in the center's quality assurance process.

(c) The staffing exception reports shall be made available to the Office of Health Care Quality and the Commission on Kidney Disease when they are conducting an inspection or survey of the center to assure compliance with §F(1) of this regulation.

**D. Direct Patient Care Providers.**

(1) *Staffing Ratio.*

(a) The monitoring individual-to-patient ratio at each facility shall be:

- (i) A minimum of one staff member to three participants; and

- (ii) Sufficient to meet the needs of patients.

(b) The facility shall establish provisions for back-up staff coverage during unexpected illnesses, vacations, and holidays.

(2) *A monitoring individual shall:*

- (a) Be trained in dialysis procedures and may be a:
  - (i) Physician;
  - (ii) Physician assistant;
  - (iii) Registered nurse;
  - (iv) Licensed practical nurse; or
  - (v) Certified nursing assistant — dialysis technician; and

(b) Provide direct patient care during treatment, which shall include at a minimum:

- (i) Initiation of treatment;
- (ii) Termination of treatment; and
- (iii) Monitoring vital signs.

(3) The Commission shall decide if this minimum standard may be too low for a particular freestanding dialysis facility.

[D.] E. (text unchanged)

[E.] F. The freestanding dialysis facility shall have [adequate] sufficient social service and dietetic staffing by licensed and trained professionals available to meet the needs of the dialysis patients.

[F.] G. — [G.] H. (text unchanged)

**.05 Home Dialysis Programs.**

A. — B. (text unchanged)

C. Staffing.

(1) — (2) (text unchanged)

(3) Additional Home Dialysis Program Requirements.

(a) (text unchanged)

(b) The nurse in charge of training shall have at least [6 months experience in dialysis, including experience in home training] 12 months experience in providing nursing care including 6 months of experience in dialysis and 3 months of experience in the specific modality for which the nurse will provide self-care training.

(c) — (g) (text unchanged)

(4) (text unchanged)

D. — E. (text unchanged)

**.06 Self-Care Dialysis Facilities.**

A. — B. (text unchanged)

C. Staffing.

(1) — (2) (text unchanged)

(3) Additional Self-Care Dialysis Facilities Requirements.

(a) The self-care dialysis facility shall maintain a minimum staffing requirement of one monitoring individual per four patients per shift with sufficient additional staff to cover illness, vacations, and holidays.

(b) Monitoring individuals]

(a) *Direct patient care providers* shall be trained in dialysis procedures and may be a:

- (i) Physician;
- (ii) Physician's assistant;]
- [(iii)] (i) — [(v)] (iii) (text unchanged)

[(c)] (b) A [registered nurse] charge nurse [shall]:

- [(i)] Be in charge of the self-care dialysis facility;

and

(ii) Have had at least 6 months training at an established dialysis center.

(d) At least one registered nurse with previous dialysis training shall be on duty at all times when patients are being treated.]

- (i) *Shall be a registered nurse;*
- (ii) *Shall be on duty in the treatment area, except for while on breaks, when the charge nurse shall be readily available, at all times when patients are being treated;*
- (iii) *Shall have at least 12 months experience in providing nursing care, including 6 months of experience in providing nursing care to patients on maintenance dialysis; and*
- (iv) *May not be included in the staffing ratio except when there are nine or fewer patients or in the event of an emergency.*

(c) *Staffing Exception Reporting. The facility shall have a staffing exception reporting protocol in a format approved by the Department for reporting to the governing body when emergency staffing situations arise that require the charge nurse to be included in the staffing ratio. The report shall include, at a minimum:*

- (i) *The date and shift of the exception;*
- (ii) *A description of the emergency staffing situation;*

[(e)] (d) — [(f)] (e) (text unchanged)

(4) (text unchanged)

(5) In addition, the self-care dialysis facility shall have [an established plan for providing adequate] *sufficient* social service and dietetic staffing by licensed and trained professionals available to *meet the needs of* the dialysis patients.

(6) — (7) (text unchanged)

D. — E. (text unchanged)

### 10.30.03 Transmissible Diseases.

Authority: Health-General Article, §§13-301 — 13-316 and 16-204, Annotated Code of Maryland

#### .01 Incorporation by Reference.

Control of Communicable Diseases Manual [(Seventeenth Edition, 2000),] which can be found in depository libraries under COMAR 10.06.01.01-1 is incorporated by reference.

#### .02 Patient Selection — Unrestricted Access to Care.

A. An end stage renal disease patient with [viral hepatitis or acquired immunodeficiency syndrome (AIDS), or both,] *any transmissible disease*, may not be denied dialysis or transplantation by a certified Maryland dialysis or transplantation facility solely because of the potential for transmission of the transmissible disease [hepatitis B virus or human immunodeficiency virus (HIV), or both], to other patients or treatment personnel.

B. *If tours of the dialysis facility take place, the facility shall inform visitors of the risk of transmissible disease exposure and encourage thorough hand washing at the end of the tour.*

#### .03 Preventive Measures.

A. A facility shall follow the infection control procedures established in the Control of Communicable Diseases Manual designed by the Centers for Disease Control (CDC) to control the spread of [viral hepatitis and transmission of HIV] *transmissible diseases*.

B. General [— Viral Hepatitis].

(1) The cardinal measure for preventing the spread of [viral hepatitis] *transmissible diseases* is an understanding on the part of dialysis and transplantation personnel that each end-stage renal disease patient is potentially a transmitter of [hepatitis B] *transmissible diseases*.

(2) (text unchanged)

(3) Dialysis facilities and transplant centers shall conduct an in-service training session [on] *for transmissible disease including hepatitis* and the control of hepatitis for newly employed dialysis personnel before the dialysis personnel may participate in patient care, and at least annually for all dialysis personnel.

(4) Dialysis facilities and transplant centers shall establish and enforce written procedures to implement the [viral hepatitis] *control of transmissible disease including viral hepatitis [requirements]* as set forth in the Control of Communicable Diseases Manual.

(5) — (7) (text unchanged)

#### C. Infection Control and Hygiene.

(1) (text unchanged)

(2) Dialysis personnel shall:

(a) Wear [protective gloves] *personal protective equipment (PPE)* at all times while providing patient care;

(b) (text unchanged)

(c) Wear [protective gloves] *PPE* in activities and situations where contact with blood or other potentially infectious secretions may occur;

(d) — (f) (text unchanged)

(3) (text unchanged)

[(4) If tours of the dialysis facility take place, the facility shall inform visitors of the risk of viral hepatitis exposure and encourage thorough hand washing at the end of the tour.]

[(5)] (4) (text unchanged)

D. — E. (text unchanged)

#### .04 Detection Measures.

Dialysis facilities and transplant centers shall develop quality [assurance] *assessment and performance improvement (QAPI)* measures for the surveillance of infection control practices.

### 10.30.04 Dialyzer Reuse and Water Standards

Authority: Health-General Article, §§13-301 — 13-316 and 16-204, Annotated Code of Maryland

#### .01 Incorporation by Reference.

A. (text unchanged)

B. Documents Incorporated.

[(1) 42 CFR §405.2138;

(2) 42 CFR §405.2139;

(3) 42 CFR §405.2140; and

(4) 42 CFR §405.2150;]

(1) *42 CFR §494.40, as amended; and*

(2) *42 CFR §494.50, as amended.*

#### .02 Dialyzer Reuse Standards.

A. *Patient Information.*

(1) *The freestanding dialysis facility shall:*

(a) *Provide information to the patient or, if appropriate, the patient's health care decision maker concerning the center's reuse of dialysis supplies, including hemodialyzers and tubing and their suitability for reuse; and*

(b) *Obtain the patient's or, if appropriate, the patient's health care decision maker's informed consent regarding the reuse of dialysis supplies.*

(2) *The signed informed consent form shall be maintained in the patient's medical record.*

B. *Standards. If the freestanding dialysis facility reuses dialysis supplies, the medical director shall:*

(1) *Develop a dialysis reuse policy in accordance with 42 CFR §494.50, which is incorporated by reference; and*

(2) *Ensure compliance with the policy.*

### .03 Water Standards — Water Treatment System — Dialysis Facilities.

#### [A. General Requirements.

(1) The facility shall assure that the quality of water provided by a municipal water supply meets the federal Environmental Protection Agency standards for dissolved solutes.

(2) The Department of the Environment shall monitor the water supplier in accordance with COMAR 26.04.01.

#### B. Water Treatment System Safeguards.

(1) Medical facilities certified to provide maintenance dialysis service shall use a water treatment system, which offers satisfactory safeguards to patients including:

(a) Appropriate prefiltration for particulate matter;

(b) Reverse osmosis monitored by resistivity or conductivity, or an improved equivalent method, or both; or

(c) A mixed resin bed deionizer with a one megohm monitor light, or an improved equivalent method.

(2) Prefiltration shall be followed by charcoal filtration before reverse osmosis, or deionization, or both.

C. Dialysis facilities shall monitor microbial levels described in §G of this regulation, on a monthly basis.

D. Dialysis facilities shall maintain a log of water treatment system function and monitor values on each occasion the machine is operated.]

#### [E.] A. — [F.] B. (text unchanged)

[G. The Commission shall enforce the Association for the Advancement of Medical Instrumentation recommendations as referenced in Regulation .01B of this chapter.]

C. *If the freestanding dialysis facility experiences a water system failure that may threaten patient health or safety, the facility shall cease operations and implement its policies and procedures for handling emergencies, as provided in 42 CFR §494.40, which is incorporated by reference.*

D. *Each freestanding dialysis facility shall communicate water treatment issues with their local health emergency management agency and their local health officer.*

#### E. Boiled Water Advisory.

(1) A facility may dialyze patients under a boiled water advisory *if the water treatment components in use protect the product water from having chemical and microbial contamination.*

(2) *The facility shall have policies and procedures in place to identify the person responsible for monitoring the water quality and how often the treated water will be monitored.*

(3) *The medical director shall assure close monitoring of the product water under the boiled water advisory.*

(4) *If a deionization (DI) unit is being used as the main water treatment system, a submicron or endotoxin/ultrafilter downstream of the DI unit, diverted to the drain, shall be in place.*

(4) *If a deionization (DI) unit is being used as the main water treatment system:*

(a) *The deionization systems shall be monitored continuously:*

(i) *To produce water of one megohm/cm or greater specific resistivity; and*

(ii) *Using resistivity monitors that compensate for temperature and are equipped with audible and visual alarms which are audible in the patient care area;*

(b) *The audible and visible alarm shall be activated when the product water resistivity falls below 1.0 megohm/cm and the product water shall be prevented from reaching any point of use; and*

(c) *A submicron or endotoxin/ultrafilter downstream of the DI unit shall be in place.*

(5) *If an ultraviolet (UV) irradiator is used, the ultrafilter shall be:*

(a) *Located after the UV irradiator; and*

(b) *Monitored to detect any decrease in treated water quality.*

(6) *The facility shall perform weekly microbial assessment of the product water during the boiled water advisory.*

(7) *The facility shall maintain contact with the municipal water supplier in the event the water supplier chooses to “shock” treat (hyperchlorinate) the distribution system to bring it back into compliance with the acceptable standards for drinking water.*

(8) *The facility shall contact the municipal water supplier at least annually in writing to identify their location, contact information and the needs of the dialysis facility during any water service interruption.*

#### (9) Shocking of Water System.

(a) *In the event the municipal water supplier “shocks” the water system, chlorine/chloramine break through may occur. Water system testing procedures shall be reviewed with staff by the medical director to alert them for potential chlorine/chloramines break through so that patients will be protected from exposure to chlorine/chloramine.*

(b) *Every half-hour, the facility shall:*

(i) *Monitor the feed water for any increase in chlorine/chloramine; and*

(ii) *Test for chlorine/chloramine breakthrough after the first carbon filter.*

(c) *The half-hour testing described in §E(9)(b) of this regulation shall continue until 24 hours after feed water results return to normal.*

JEFFREY FINK, M.D.

Chairman

Maryland Commission on Kidney Disease

## Subtitle 34 BOARD OF PHARMACY

### Notice of Proposed Action

[10-069-P]

The Department of Health and Mental Hygiene proposes to:

(1) Amend Regulations .02 and .05 under **COMAR 10.34.05 Pharmacy Security;**

(2) Adopt new Regulation .01, amend and recodify existing Regulation .01 to be Regulations .01-1 and amend Regulation .03 under **COMAR 10.34.07 Pharmacy Equipment;**

(3) Amend Regulation .01 under **COMAR 10.34.12 Removal of Expired Prescription Drugs;**

(4) Amend Regulations .01, .03, and .04 under **COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists;** and

(5) Amend Regulation .01 under **COMAR 10.34.15 License by Reciprocity.**

This action was considered by the Board of Pharmacy at a public meeting held September 16, 2009, notice of which was given by publication on the Board of Pharmacy website at [www.mdbop.org](http://www.mdbop.org) from September 11, 2009 — September 16, 2009, pursuant to the State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to update and revise certain regulatory chapters under COMAR Title 10, Subtitle 34 Board of Pharmacy, pursuant to the Regulatory Review and Evaluation Act, State Government Article, §§10-130 — 10-139, Annotated Code of Maryland. The revisions are as follows:

- (1) Adding increased requirements for pharmacy security in COMAR 10.34.05 Pharmacy Security;
- (2) Including in COMAR 10.34.05 Pharmacy Security, to whom one should report when drugs or devices are stolen;
- (3) Amending COMAR 10.34.07 Pharmacy Equipment, by defining material safety data sheets and adding, where applicable a) freezers; b) material safety data sheets; and c) utilization of websites as supplemental reference materials;
- (4) Amending COMAR 10.34.12 Removal of Expired Prescription Drugs, to reflect that the Board no longer regulates manufacturers or the act of manufacturing, yet regulates manufacturers if they distribute prescription drugs or devices into Maryland;
- (5) Amending the name of the licensing exam in COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists, to refer to the MPJE;
- (6) Deleting the definition of “Practice of Pharmacy Reinstatement Examination” since it is obsolete in COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists;
- (7) Amending reinstatement requirements in COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists, so that it is clear what is expected for pharmacists applying for reinstatement after 2 years and before 5 years, between 5 and 10 years, and for 10 years or more after license expiration;
- (8) Adding that in addition to the general requirements for reinstatement in COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists, for between 2 and 5 years, the licensee has to pass the MPJE;
- (9) Adding that in addition to the general requirements in COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists, for between 5 and 10 years, the licensee has to pass the MPJE, and submit evidence satisfactory to the Board of having performed 1,000 hours of service in a pharmacy with a valid pharmacy permit under the supervision of a licensed pharmacist;
- (10) Adding that in addition to the general requirements in COMAR 10.34.13 Reinstatement of Expired Licenses for Pharmacists, for 10 years or more, the licensee has to pass the Multistate Pharmacy Jurisprudence Examination (MPJE), submit evidence satisfactory to the Board of having performed 1,000 hours of service in a pharmacy with a valid pharmacy permit under the supervision of a licensed pharmacist, and pass NABPLEX examination; and
- (11) Amending COMAR 10.34.15 Licensure by Reciprocity by correcting Regulation .01A(4) to reflect the current practice of taking the MPJE.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhmmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**10.34.05 Pharmacy Security**

Authority: Health Occupations Article, §12-205, Annotated Code of Maryland

**.02 Prescription Area.**

A. — B. (text unchanged)

C. *Security.*

(1) *A pharmacy shall be secure from unauthorized entry as follows:*

(a) *Access from outside the premises shall be:*

(i) *Kept to a minimum; and*

(ii) *Well controlled;*

(b) *The outside perimeter of the premises shall be well lit; and*

(c) *Entry into areas where prescription drugs or devices and patient records are stored shall be limited to authorized personnel.*

(2) *A pharmacy shall be equipped with:*

(a) *An alarm system to detect entry after hours;*

(b) *A security system that provides protection against theft and diversion;*

(c) *Appropriate software to facilitate the identification of evidence of tampering with computers or electronic records;*

(d) *An inventory management and control system that protects against, detects, and documents any instances of theft, diversion, or counterfeiting;*

(e) *A security system to protect the integrity and confidentiality of data and documents limited to authorized personnel; and*

(f) *A means to make the data and documentation required under this section readily available to the Board, an agent of the Board, the Division of Drug Control, or federal and other State law enforcement officials.*

**.05 Security Responsibility.**

The pharmacy permit holder is responsible for assuring that pharmacists, employees, and others who enter the pharmacy:

A. Know and abide by the requirements of this chapter; [and]

B. Maintain those measures necessary to ensure this chapters’ enforcement; and

C. *Report thefts of prescription drugs or devices to the:*

(1) *Board;*

(2) *Local police;*

(3) *Division of Drug Control; and*

(4) *U.S. Drug Enforcement Administration.*

**10.34.07 Pharmacy Equipment**

Authority: Health Occupations Article, §§12-205 and 12-403, Annotated Code of Maryland

**.01 Definitions.**

A. *In this chapter, the following term has the meaning indicated.*

*B. Term Defined. "Material safety data sheets" means a list of hazardous chemicals that provides detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics and recommendations for appropriate protective measures.*

**[.01] .01-1 Equipment.**

A pharmacy shall have the following equipment to carry out the practice of pharmacy in Maryland:

A. [A] *If applicable*, a Class A prescription balance and weights, or a prescription balance with equivalent or superior sensitivity to a Class A prescription balance; [and]

B. A refrigerator, solely for the storage of drugs requiring refrigeration, with a thermometer or a temperature monitoring device[.]; *and*

C. A freezer, *if applicable*.

**.03 Reference Libraries.**

A. — B. (text unchanged)

*B-1. A pharmacy permit holder may utilize websites and electronic references created by established medical publishers which are recognized as standard for a particular type of pharmacy practice as a supplement to its printed library.*

C. — D. (text unchanged)

*E. A pharmacy permit holder shall maintain material safety data sheets, if applicable.*

**10.34.12 Removal of Expired [Prescription Drugs] Medications**

Authority: Health Occupations Article, §12-205,  
Annotated Code of Maryland

**.01 Manufacturer's Expiration Date.**

[Effective October 1, 1984, all prescription drugs not] *A. A wholesale distributor, pharmacist, or pharmacy shall distribute or hold for sale medications bearing a manufacturer's expiration date pursuant to 21 C.F.R. §211.137 [may not be manufactured, distributed, held for sale, or dispensed by any manufacturer, distributor, pharmacist, or pharmacy in Maryland].*

*B. A wholesale distributor, pharmacist, or pharmacy shall have adequate and credible provisions for return of outdated drugs, including but not limited to partials, through its wholesaler distributor or reverse distributor.*

**10.34.13 Reinstatement of Expired Licenses for Pharmacists**

Authority: Health Occupations Article, §12-310,  
Annotated Code of Maryland

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

[(2) "Licensure examination" means the examination administered by the Board to applicants for licensure and consists of the following parts:

(a) Part I: NABPLEX (National Association of Boards of Pharmacy Licensure Examination); and

(b) Part II: Pharmacy Law Test.

(3) "Practice of Pharmacy Reinstatement Examination" means an examination administered by the Board for the purpose of reinstatement of a license under this chapter.]

(2) "MPJE" means the *Multistate Pharmacy Jurisprudence Examination*.

(3) "NABPLEX" means the *National Association of Boards of Pharmacy Licensure Examination*.

(4) — (5) (text unchanged)

**.03 Reinstatement Requirements.**

A. General Requirements. A pharmacist who wishes to reinstate an expired license to practice pharmacy shall:

(1) [Complete the] *Provide evidence of the completed amount of approved continuing education required by the Board in COMAR 10.34.18 in conjunction with the reinstatement application;*

(2) Provide evidence of good standing in any other state in which the pharmacist has been licensed, *if applicable*; and

(3) (text unchanged)

B. Specific Requirements.

(1) The Board:

(a) May reinstate the license of a pharmacist who has actively engaged in the practice of pharmacy in Maryland after the expiration of the pharmacist's license if the pharmacist:

(i) (text unchanged)

(ii) Pays the pharmacist [late] *reinstatement fee established in COMAR 10.34.09.02;*

(b) — (c) (text unchanged)

(2) (text unchanged)

(3) A pharmacist licensed in another state and actively engaged in the practice of pharmacy *in that state*, whose Maryland license expired less than 2 years before applying for license reinstatement, shall meet the requirements of §A of this regulation.

(4) A pharmacist licensed in another state and actively engaged in the practice of pharmacy *in that state*, whose Maryland license expired 2 years [or more] *but less than 5 years* before applying for license reinstatement, shall:

(a) — (b) (text unchanged)

(c) Pass [Part II of the licensure examination] *the MPJE*.

(5) A pharmacist not actively engaged in the practice of pharmacy, whose Maryland license expired more than 2 years but less than 5 years before applying for reinstatement, shall:

(a) Meet the requirements of [§A(2) and (3)] §A of this regulation; and

(b) Pass[:

(i) The Practice of Pharmacy Reinstatement Examination, and

(ii) Part II of the licensure examination.] *the MPJE*.

(6) A pharmacist not actively engaged in the practice of pharmacy in another state, whose Maryland license expired more than 5 years *but less than 10 years* before applying for reinstatement, shall:

(a) Meet the requirements of [§A(2) and (3)] §A of this regulation;

(b) *Pass the MPJE; and*

[(b)] (c) Submit evidence satisfactory to the Board of having performed 1,000 hours of service in a pharmacy with a valid pharmacy permit under the supervision of a licensed pharmacist[; and]

[(c) Pass:

(i) The Practice of Pharmacy Reinstatement Examination, and

(ii) Part II of the licensure examination].

(7) *A pharmacist not actively engaged in the practice of pharmacy, whose Maryland license expired 10 or more years before applying for reinstatement, shall:*

- (a) Meet the requirements of §A(2) and (3) of this regulation;
- (b) Pass the MPJE;
- (c) Submit evidence satisfactory to the Board of having performed 1,000 hours of service in a pharmacy with a valid pharmacy permit under the supervision of a licensed pharmacist; and
- (d) Pass the NABPLEX.

**.04 Waiver.**

[For reasons the] The Board [considers sufficient, the Board, at its discretion,] may waive any of the requirements set forth in Regulation .03 of this chapter in reinstating a pharmacist’s expired license.

**10.34.15 Licensure by Reciprocity**

Authority: Health Occupations Article, §§12-205 and 12-305, Annotated Code of Maryland

**.01 Requirements.**

A. An individual applying for licensure as a pharmacist by reciprocity shall:

- (1) — (3) (text unchanged)
  - (4) [Achieve a passing score of 75 percent on the written reciprocity exam administered by the Board] *Pass the MPJE*; and
  - (5) (text unchanged)
- B. (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 36 BOARD OF EXAMINERS OF  
PSYCHOLOGISTS**

**10.36.01 Procedures**

Authority: Health Occupations Article, §§18-206, 18-301(b)(3) and (d), 18-302 — 18-305, and 18-317, Annotated Code of Maryland

**Notice of Proposed Action**

[10-035-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .01, repeal existing Regulation .04, and adopt new Regulations .04 — .04-4, under **COMAR 10.36.01 Procedures**.

This action was considered Board of Examiners of Psychologists at a public meeting held November 13, 2009, notice of which was given by publication 36:22 Md. R. (October 23, 2009) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

- (1) Specify the supervised professional experience requirements for licensure;
- (2) Clarify the supervised experience activities approved for licensure; and
- (3) Allow the Board to modify the requirements for face-to-face supervised experience and the requirements for on-site supervised experience.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.01 Definitions.**

- A. (text unchanged)
- B. Terms Defined.
  - (1) — (5) (text unchanged)
  - [(6)] (proposed for repeal)
  - (6) “Practice-oriented program” means a clinical, counseling, or school psychology program, or a combination thereof, or a respecialization program.
  - (7) — (8) (text unchanged)

**.04 Professional Supervised Experience Required for Licensure — General.**

- A. An applicant shall present evidence of having completed 2 years of supervised professional experience before taking the examinations required in Regulation .06 of this chapter.
- B. The 2 years of supervised professional experience shall consist of a minimum of 3,250 hours.
- C. Supervision Generally.

(1) A minimum of 75 percent of the applicant’s supervised professional experience shall be supervised by a psychologist qualified to supervise the activities being performed or the services being rendered.

(2) The supervisor shall be:

- (a) Licensed to practice psychology in Maryland;
- (b) Exempt from licensure under Health Occupations Article, §§18-102(3) or 18-301(b), Annotated Code of Maryland;

(c) Licensed, certified, or exempt from licensure or certification in the state or country in which the supervised professional experience is obtained; or

(d) A student, fellow, intern, or resident while pursuing a supervised course of study that the Board approves as qualifying training or experience as provided in Health Occupations Article, §18-301(b)(3), Annotated Code of Maryland, provided that the student, fellow, intern, or resident is supervised by an individual meeting criteria of §C(2)(a), (b) or (c) of this regulation.

(3) The supervisor shall ensure that any additional supervision is by an individual who has the requisite skills and training to provide supervision.

(4) Psychology associates accruing supervised professional experience toward licensure shall receive the required amount of supervision specified in COMAR 10.36.07.05A.

(5) The applicant shall ensure that there is adequate documentation of the supervised professional experience.

(6) *The Board may require additional information to be submitted by the applicant or supervisor to assess the extent and quality of the applicant's supervised professional experience.*

**.04-1 Supervised Professional Experience — Programs That Are Not Practice-Oriented.**

A. *For applicants graduating from programs that are not practice-oriented, supervised professional experience may be accrued in professional work in psychology using the methods, principles, and procedures of psychology, including, but not limited to:*

- (1) *Teaching;*
- (2) *Research; and*
- (3) *Industrial or organizational consultation.*

B. *In order for the experience to qualify as full-time supervised professional experience, the applicant shall receive a minimum of 1 hour of individual supervision per week at a face-to-face meeting with the supervisor.*

C. *In exceptional circumstances, the Board may waive the requirement for face-to-face supervision:*

(1) *For pre-doctoral experience, if the academic program director attests to the nature of the circumstances and assures the Board that the quality of the supervision was not compromised; or*

(2) *For post-doctoral experience, if the applicant:*

(a) *Petitions the Board for a waiver before beginning the supervised experience; and*

(b) *Offers an alternative modality for supervision, including but not limited to televideo conferencing that does not substantially diminish the adequacy of the supervision.*

**.04-2 Supervised Professional Experience — Practice-Oriented Programs.**

A. *For applicants graduating from practice-oriented programs, supervised professional experience may be accrued through:*

- (1) *Pre-internship;*
- (2) *Internship;*
- (3) *Pre-doctoral post-internship; or*
- (4) *Post-doctoral experiences.*

B. *The academic training program director or the post-doctoral training supervisor shall attest to the hours accrued to meet the requirements of this regulation on a form required by the Board.*

C. *An applicant may utilize pre-internship and pre-doctoral post-internship experience:*

- (1) *To accrue up to 1,500 hours toward the supervised professional experience required for licensure; and*
- (2) *That occurs following the completion of the first year of the doctoral program.*

D. *Pre-internship and pre-doctoral post-internship experiences shall:*

(1) *Consist of an organized sequence of training that is of increasing complexity to prepare the student for internship;*

- (2) *Follow appropriate academic preparation;*
- (3) *Be overseen by the graduate training program;*
- (4) *Be an extension of the student's academic coursework and within the scope of education received;*
- (5) *Be in service-related activities such as treatment, assessment, interviews, report writing, case presentations, supervision, and consultation for at least 50 percent of the training experience; and*

(6) *Be devoted to face-to-face client contact for at least 25 percent of the training experience.*

E. *Pre-internship and pre-doctoral post-internship experiences shall contain a written training plan that:*

(1) *Includes the responsibilities of the student, training site, and graduate training program;*

(2) *Describes how the student's time will be allotted;*

(3) *Ensures the quality, breadth, and depth of the training experience by specifying the:*

(a) *Goals and objectives of the training experience;*

(b) *Methods of evaluation of the student's performance; and*

(c) *Rules governing the training experience;*

(4) *Specifies the requirements of supervision to include:*

(a) *The nature of supervision;*

(b) *The identities of supervisors; and*

(c) *The form and frequency of feedback from the agency supervisor to the training faculty;*

(5) *Provides rationale for the training experience based on previous academic preparation and previous training to ensure that the overall experience is organized and sequential; and*

(6) *May be provided to the Board with the application to document the pre-internship or pre-doctoral post-internship experience.*

F. *Pre-internship and Pre-doctoral Post-internship Supervision Requirements.*

(1) *Every 20 hours of pre-internship experience and pre-doctoral post-internship shall include the following:*

(a) *At least 2 hours of regularly scheduled, formal, face-to-face individual supervision that addresses the direct psychological services provided by the student; and*

(b) *At least 2 hours of other learning activities such as:*

(i) *Case conferences;*

(ii) *Seminars on applied issues;*

(iii) *Conducting co-therapy with a staff person including discussion of the case; or*

(iv) *Group supervision.*

(2) *In exceptional circumstances, the Board may waive the requirement for face-to-face supervision if the academic program director attests to the nature of the circumstances and assures the Board that the quality of supervision was not compromised.*

G. *Internship experiences shall:*

(1) *Consist of a minimum of 1,750 hours of supervised experience; and*

(2) *Be completed within 24 months.*

H. *The internship program shall be:*

(1) *Accredited by the American Psychological Association (APA) or the Canadian Psychological Association (CPA);*

(2) *A member program of the Association of Psychology Postdoctoral Internship Centers (APPIC); or*

(3) *Part of an academic program that:*

(a) *Is approved or designated by the:*

(i) *APA;*

(ii) *CPA; or*

(iii) *Association of State and Provincial Psychology Boards (ASPPB)/National Register; and*

(b) *Includes an internship that is approved by the program's academic training director as meeting its criteria for an internship.*

I. *Post-Doctoral Supervised Professional Experience — Practice-Oriented Programs.*

(1) *A maximum of 1,500 hours of the professional supervised experience may be obtained through post-doctoral supervised experience.*



(2) Post-doctoral supervised experience shall be completed if an applicant does not have 3,250 hours of pre-doctoral supervised experience.

**.04-3 Post-Doctoral Supervised Professional Experience — General.**

A. A supervisor is ethically and legally responsible for all supervisee work covered by a written supervision agreement.

B. Supervisees shall use titles indicating their training status, such as “psychology resident”, “psychology intern”, or “psychology supervisee”.

C. Supervised experience shall be appropriate to the area or areas of professional activity in which the supervisee intends to practice.

D. There shall be at least 1 hour of individual supervision for every 20 hours of service related activities.

E. The supervisor and the supervisee shall keep records of experience and supervision hours.

F. At the conclusion of the post-doctoral supervision experience:

(1) The supervisor shall prepare a written evaluation, including:

(a) The hours spent in various service related activities;

(b) The number of successfully completed supervised hours; and

(c) Any hours not successfully completed; and

(2) If any hours were not successfully completed, the Board may require additional hours of supervision.

G. Supervision shall be face-to-face with an on-site supervisor.

H. Under exceptional circumstances, and before beginning a supervised professional experience, an applicant for licensure may petition the Board to waive the requirement for face-to-face supervision or to receive supervision from a psychologist not on site.

I. The Board may waive the requirement for face-to-face supervision only when the alternative modality for supervision, including but not limited to televideo conferencing, does not substantially diminish the adequacy of the supervision.

J. If a supervisee is accruing post-doctoral supervision as a Psychology Associate, the supervisee shall also comply with the requirements of Regulation .08 of this chapter.

**.04-4 Post-Doctoral Supervised Professional Experience as a Psychology Associate.**

A. An applicant accruing post-doctoral supervised experience in an activity that is not exempt under Health Occupations Article, §§18-301 or 18-102(3), Annotated Code of Maryland, shall apply to the Board for approval as a psychology associate in accordance with COMAR 10.36.07.

B. Exempted activities under Health Occupations Article, §§18-301 and 18-102(3), Annotated Code of Maryland, include:

(1) Activities as a student, intern, resident, or fellow while pursuing a supervised course of study in psychology that the Board approves as qualifying training and experience;

(2) Activities under the supervision of, and in connection with, a psychologist employed by:

(a) Any agency of the federal government;

(b) The Maryland Department of Juvenile Services;

(c) A political subdivision of this State; or

(d) A chartered educational institution; or

(3) Non-profit activities of a bona fide religious organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

C. Psychology associates accruing post-doctoral supervised professional experience toward licensure shall obtain supervision in accordance with the psychology associate requirements of COMAR 10.36.07.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 46 BOARD OF OCCUPATIONAL THERAPY PRACTICE**

**Notice of Proposed Action**

[10-036-P]

The Department of Health and Mental Hygiene proposes to amend:

(1) Regulations .01 — .02 under **COMAR 10.46.01 General Regulations**; and

(2) Regulations .01, .03 — .06, and .08 under **COMAR 10.46.06 Competency Requirements for Physical Agent Modalities**.

This action was considered by the Board of Occupational Therapy Practice at a public meeting held October 16, 2009, notice of which was given by publication 36:20 Md. R. 1570 (September 25, 2009) pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to:

- (1) Clarify the definition of “verification”;
- (2) Change the licensing cycle from biennial to annual;
- (3) Reduce the number of continuing competency activity hours from 24 every two years to 12 every year;
- (4) Clarify the definition of “didactic education”;
- (5) Clarify the standards, documentation and records of competence for electrical modalities; and
- (6) Change the audit requirement of physical agent modalities by the Board from “shall” to “may”.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 521, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

### 10.46.01 General Regulations

Authority: Health Occupations Article, §§10-101, 10-205, 10-301, 10-302, 10-304, 10-311 — 10-313, 10-402, and 10-403; State Government Article, §10-617(h)(3); Annotated Code of Maryland

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (27) (text unchanged)

(28) “Verification” means *current* official confirmation of licensure, certification, [or] registration, or *continuing education* obtained directly from [the entity by which the applicant is licensed, certified, or registered.] :

(a) A verification service provider approved by the issuing entity and accepted by the Board at its discretion; or

(b) The entity by which the applicant is licensed, certified, registered, or educated.

#### .02 Licensure.

A. (text unchanged)

B. Term and Renewal of License.

(1) (text unchanged)

(2) All licenses expire *annually* on June 30 [of even-numbered years], regardless of the original date of licensure.

(3) — (7) (text unchanged)

(8) A completed renewal application received with a postmark or on-line licensure confirmation dated after the expiration date of June 30 [of even-numbered years] will not be accepted.

(9) — (10) (text unchanged)

C. Time Frames for Application Materials. The applicant shall submit all materials required by the Board in accordance with this regulation within a specified time frame from the date the application was initiated until the date the application is completed as follows:

(1) — (2) (text unchanged)

(3) Second temporary licensure documentation, with no changes in data originally submitted, not to exceed 6 months [from the date of expiration of the initial temporary license].

D. Application Procedures for Licensure. To apply for a license, an applicant shall submit the following original documentation to the Board within the time frame specified on the application:

(1) — (2) (text unchanged)

(3) Two letters attesting to the applicant’s moral character, [on] *compliant with* forms provided by the Board;

(4) — (6) (text unchanged)

(7) Documentation certifying a minimum of [24] 12 hours of education or continuing competency activities, as specified in COMAR 10.46.04, obtained within the [2] 1-year period immediately preceding the application for licensure.

E. Application Procedures for Temporary Licensure.

(1) (text unchanged)

(2) To apply for a temporary license, an applicant shall submit the following original documentation to the Board within the time frame specified on the application:

(a) — (f) (text unchanged)

(g) Documentation certifying a minimum of [24] 12 hours of education or continuing competency activities, as specified in COMAR 10.46.04, obtained within the [2] 1-year period immediately preceding the application for temporary licensure.

F. Application Procedures for a Second Temporary License.

(1) (text unchanged)

(2) To apply for a second temporary license, an applicant shall submit the following original documentation to the Board within the time frame specified on the application:

(a) An application confirmation letter from the NB-COT certifying the applicant’s eligibility and registration to take the examination within the eligibility activation period; [and]

(b) A money order, check, or electronic payment in the amount of the second temporary license fee established by the Board in COMAR 10.46.05.01; and

(c) Updated versions of any application documents previously submitted which have expired.

G. Application Procedures for Nonrenewal of License.

(1) Elective Nonrenewal.

(a) (text unchanged)

(b) For each specific [2] 1-year term for which inactive status is requested, the licensee shall apply for elective nonrenewal.

(c) (text unchanged)

(d) In order to electively nonrenew a license, the licensee shall return to the Board a completed application, by the expiration date of June 30 [of even-numbered years].

(e) — (f) (text unchanged)

(2) (text unchanged)

H. Application Procedures for Reactivation or Reinstatement of License. To apply for reactivation after elective nonrenewal or reinstatement after expiration, an applicant shall submit the following original documentation to the Board within the timeframe specified on the application:

(1) — (2) (text unchanged)

(3) Two letters attesting to the applicant’s *good* moral character, [on] *compliant with* forms provided by the Board;

(4) — (6) (text unchanged)

(7) Documentation certifying a minimum of [24] 12 contact hours of continuing competency activities as specified in COMAR 10.46.04 obtained within the [2] 1-year period immediately preceding the application for reinstatement or reactivation.

I. — K. (text unchanged)

L. Verification of *Maryland* License.

(1) — (3) (text unchanged)

### 10.46.06 Competency Requirements for Physical Agent Modalities

Authority: Health Occupations Article, §10-101, Annotated Code of Maryland

#### .01 Purpose.

This chapter sets forth the requirements for [the application] *licensed occupational therapists and licensed occupational therapy assistants to apply* and use [of] electrical and superficial physical agent modalities as related to, or in preparation for, purposeful activity, with appropriate education to ensure the safe and competent provision of occupational therapy services.

#### .03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) “Didactic education” means an educational activity:

(a) That includes a method of evaluating and testing the knowledge of the licensee relative to [a specified] electrical physical agent [modality] *modalities*; and

- (b) (text unchanged)
- (2) — (3) (text unchanged)
- (4) Electrical Physical Agent Modalities.
  - (a) (text unchanged)
  - (b) “Electrical physical agent modalities” includes, but is not limited to:
    - (i) (text unchanged)
    - (ii) [Iontophoresis] *Phonophoresis*;
    - (iii) [Phonophoresis] *Iontophoresis*; and
    - (iv) (text unchanged)
- (5) (text unchanged)

**.04 Standards of Competence for Electrical Modalities.**

A. An occupational therapist, or occupational therapy assistant under the periodic supervision of an occupational therapist, who wishes to use occupational therapy procedures involving electrical physical agent modalities shall maintain, for the duration of the licensee’s professional career, verification of didactic education and clinical requirements[, approved by the Board].

- B. (text unchanged)
- C. Clinical Requirements.

Before applying physical agent modalities to a client under this chapter, a licensee shall:

- (1) Complete 15 contact hours of continuing education [for each specific modality] *relative to electrical physical agent modalities which includes a minimum of:*
  - (a) 5 contact hours specific to ultrasound; and
  - (b) 5 contact hours specific to electromuscular stimulation; and
- (2) Apply a minimum of five [patient] *client* treatments [per] *for each specific* modality under the direct clinical education of an educator as defined in this chapter.

**.05 Documentation of Education in Electrical Physical Agent Modalities.**

- A. (text unchanged)
- B. Verification shall include:

- (1) Identification of the specific courses or training where the therapist learned content related to each subject area as specified in Regulation [.04A] .04B of this chapter;
- (2) Proof of 15 contact hours of didactic education [for each specific modality] by virtue of a certificate of completion or proof of education;
- (3) (text unchanged)
- (4) Written verification from an educator [of] *that* five *client* treatments have been [completely performed] *completed* under direct clinical education for each specific modality; and
- (5) (text unchanged)

**.06 Maintaining Records of Education Documentation.**

- A. A licensee shall retain verification documentation [of didactic education] and direct clinical education relative to electrical physical agent modalities for the duration of the licensee’s professional career in occupational therapy.
- B. (text unchanged)

**.08 Audit of Physical Agent Modalities Documentation.**

A. At the Board’s discretion, the Board [shall] *may* audit [the continuing education documentation of] a number of randomly selected licensees.

B. — D. (text unchanged)

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

**Subtitle 49 STATE ANATOMY BOARD**  
**10.49.01 Fees**

Authority: Health General Article, §5-404.1,  
Annotated Code of Maryland

**Notice of Proposed Action**  
[10-068-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 — .03 under **COMAR 10.49.01 Fees**. This action was considered by the State Anatomy Board at a public meeting held November 19, 2009, notice of which was given by publication in 36:22 Md. R. 1802 (October 23, 2009), pursuant to the State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to amend the present method used to schedule and set fees for service and reduce the budgetary impact to the State’s General Tax Fund.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** Additional general fund revenue will be generated from adjusted expense reimbursement fees based on regulatory schedule and method cited.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)		\$28,500
B. On other State agencies:	(E+)		\$8,000
C. On local governments:	(E+)		\$8,000
		Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		NONE	
E. On other industries or trade groups:		(-)	\$12,500
F. Direct and indirect effects on public:		(+)	\$28,500

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

- A. State Anatomy Board will receive an increase in revenues of approximately \$28,500 from the increased service fees (\$8,000 + \$8,000 + \$12,500).
- B., C., and E. The total nominal service fees for the listed entities are based on past experience and estimated future usage.
- F. Additional revenue will lessen cost to public general tax funds.

**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 Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (2) (text unchanged)

(3) *“In-State commercial programs” means uses of cadaveric specimens at in-State institutions for teaching, training or research using a company’s medical products such as an instrument, implant, or other device.*

(4) *“In-State programs” means institutional or government funded, or continuing medical education accredited courses.*

[(3)] (5) *“In-State study programs” means Maryland medical-dental study programs that use cadavers and cadaveric specimens to conduct:*

(a) (text unchanged)

(b) Resident surgical, clinical, or allied health training;

(c) — (f) (text unchanged)

[(4)] (6) (text unchanged)

(7) *“Member schools” means from the Departments of Anatomy of the medical schools in Maryland and the University of Maryland Dental College.*

(8) *“Out-of-State commercial” means uses of cadaveric specimens at out-of-State institutions for teaching, training, or research using a company’s medical products such as an instrument, implant, or other device.*

[(5)] (9) *“Out-of-State study programs” means out-of-State medical-dental study institutions that [use]:*

(a) *Use cadavers and cadaveric specimens to conduct anatomy courses as specified in [§B(3)] §B(5) of this regulation; and*

(b) *Are institutional or government funded, or continuing medical education accredited courses.*

#### .02 Reimbursement Claim Fees.

A. The Board shall:

(1) (text unchanged)

(2) Be reimbursed for expenses incurred for transportation, storage, preparation, cremation, and supplies and materials used.

B. (text unchanged)

#### .03 Cadaver and Cadaveric Specimen Fees.

A. — B. (text unchanged)

C. Fees.

(1) The fee for member school programs shall be set at a rate not less than [33] 25 percent of the total average cost per cadaver.

(2) The fee for in-State study programs shall be set at a rate of not less than one and [one-third (133 percent)] one-quarter or 125 percent of the average cost per cadaver.

(3) *The fee for in-State commercial study programs shall be set at a rate of not less than two and one-half or 250 percent of the average cost per cadaver.*

[(3)] (4) (text unchanged)

(5) *The fee for out-of-State commercial programs shall be set at a rate of not less than 5 times or 500 percent of the average cost per cadaver.*

[(4)] (6) The fees for cadaveric specimens shall be set at a rate proportional to the average cost per cadaver in each category listed in [§C(1) — (3)] §C(1) — (5) of this regulation.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

## Subtitle 58 BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS

### Notice of Proposed Action

[10-034-P]

The Secretary of Health and Mental Hygiene proposes to:

(1) Adopt new Regulation .10 under **COMAR 10.58.01 General Regulations;**

(2) Adopt new Regulations .14 — .17 under **COMAR 10.58.07 Alcohol and Drug Counselors — Requirements for Certification and Licensure;** and

(3) Repeal existing Regulation .07 and adopt new Regulation .07 under **COMAR 10.58.08 Marriage and Family Therapists — Requirements for Certification and Licensure.**

At this time, the Secretary of Health and Mental Hygiene is also withdrawing the proposal to:

(1) Adopt new Regulation .10 under **COMAR 10.58.01 General Regulations;**

(2) Adopt new Regulations .14 — .17 under **COMAR 10.58.07 Alcohol and Drug Counselors — Requirements for Certification and Licensure;** and

(3) Amend Regulation .07 under **COMAR 10.58.08 Marriage and Family Therapists — Requirements for Certification and Licensure** docketed as [09-283-P], which appeared in 36:19 Md. R. 1464 — 1467 (September 11, 2009).

This action was considered by the Board of Professional Counselors and Therapists at a public meeting held on November 20, 2009, notice of which was given by publication in 36:23 Md. R. 1839 (November 6, 2009), pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

### Statement of Purpose

The purpose of this action is to establish reciprocity requirements for clinical professional counselors, clinical marriage and family therapists, clinical alcohol and drug counselors, and certified alcohol and drug counselors who are already fully licensed or certified in another state, territory, or jurisdiction. The proposal complies with the equivalency intent of the enabling legislation by waiving certain licensing and certification requirements for applicants if the applicants are fully licensed or certified in another state, territory, or jurisdiction with educational and supervised experience requirements that are equivalent to or exceed those of the State of Maryland. The proposed regulations waive specific course requirements for licensure and certification with the exception of certain courses deemed necessary for licensees to engage in the diagnosis and treatment of mental and emotional conditions. Additionally, to ensure public protection and to comply with the professional and ethical standards required by the Board, all applicants must have an ethics course. Licensure applicants with degrees consisting of less than 60 graduate credit hours must provide proof of reasonable professional clinical practice experience in the field.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dhmh.state.md.us, or fax to 410-333-7687. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**10.58.01 General Regulations**

Authority: Health Occupations Article, §§17-101, 17-205, 17-301 [— 17-316, and 17-3A-01 — 17-3A-13], 17-304, 17-307, 17-308, and 17-509, Annotated Code of Maryland

**.10 Licensure Eligibility: Out-of-State Applicants.**

A. An applicant licensed as a professional counselor or its equivalent, as established by the Board, in another state, territory, or jurisdiction is eligible for licensure if the applicant:

(1) Provides on a form that the Board supplies:

(a) An application; and

(b) Verification that the applicant:

(i) Has no history of disciplinary action, past or pending, in a state, territory, or jurisdiction in which the applicant holds a license to practice clinical professional counseling; and

(ii) Has not committed any act or omission that would be grounds for discipline or denial of licensure under Health Occupations Article, §17-509, Annotated Code of Maryland;

(2) Provides the following verification directly to the Board from the appropriate authority:

(a) A copy of a current license from each state, territory, or jurisdiction in which the applicant has been licensed, registered, or otherwise authorized to practice clinical professional counseling; and

(b) Documentation, satisfactory to the Board, that the applicant is currently licensed in good standing to practice clinical professional counseling in another state, territory, or jurisdiction;

(3) Pays the application fee set forth in the COMAR 10.58.02;

(4) Achieves a passing score on an examination testing the applicant's knowledge of Maryland law and regulations governing professional counselors;

(5) Achieves a passing score on:

(a) The National Counselors Examination; or

(b) The National Clinical Mental Health Counselors Examination; and

(6) Meets the educational requirements for licensure in this State as a clinical professional counselor:

(a) As established in Regulation .05 of this chapter; or

(b) By providing documentation of the substitute educational and experience requirements outlined in §§B, C and D of this regulation.

B. Equivalent Educational Requirements. The applicant shall provide documentation or transcripts confirming completion of a master's or doctoral degree in a professional counseling field from an accredited educational institution approved by the Board.

C. Waiver of Course Requirements. The Board shall waive the course requirements specified in Regulation .05 of this chapter, except for documentation showing completion of a minimum of 3 graduate semester credit hours or 5 graduate quarter hours covering each of the following primary topics or content areas:

(1) Diagnosis and Psychopathology; and

(2) Psychotherapy and treatment of mental and emotional disorders, as described in Regulation .05B(1) of this chapter; and

(3) Professional, legal, and ethical responsibilities.

D. Equivalent Experience Requirements.

(1) The applicant shall provide:

(a) If the applicant has a master's degree and has a minimum of 60 graduate credit hours, documentation, satisfactory to the Board, of not less than 3 years, with a minimum of 3,000 hours, of supervised clinical experience in professional counseling, 2 years of which shall be completed after the award of the master's degree;

(b) If the applicant has a master's degree consisting of less than 60 graduate credit hours, documentation, satisfactory to the Board, of not less than 3 years experience practicing as a licensed clinical professional counselor, with a minimum of 3,000 hours of clinical professional counseling experience; or

(c) If the applicant has a doctoral degree, documentation, satisfactory to the Board, of not less than 2 years practicing as a clinical professional counselor, or a minimum of 2,000 hours of clinical professional counseling experience.

(2) The applicant shall provide verification, on a form that the Board requires, from employers, supervisors, or colleagues that the applicant has practiced clinical professional counseling for the length of time stated in §D(1) of this regulation.

E. If the applicant is registered with the National Credentials Registry (NCR) of the American Association of State Counseling Boards (AASCBC) or its successor as meeting the out-of-State applicant requirements for Maryland, the Board may issue a license upon the applicant's achieving a passing score on an examination testing the applicant's knowledge of Maryland law and regulations governing professional counselors.

**10.58.07 Alcohol and Drug Counselors — Requirements for Certification and Licensure**

Authority: Health Occupations Article, §§17-101, 17-205, 17-301 [— 17-316, and 17-3A-01 — 17-3A-13], 17-401(b), 17-402 — 17-407, and 17-509, Annotated Code of Maryland

**.14 Certification Eligibility — CSC-AD — Out-of-State Applicants.**

A. An applicant certified as a certified supervised counselor-alcohol and drug in another state is eligible for certification if the applicant:

(1) Files a completed application accompanied by the required fees specified in COMAR 10.58.02.02;

(2) Provides verification that the applicant:

(a) Has no history of disciplinary action, past or pending, in a state, territory, or jurisdiction in which the applicant holds a license to practice clinical professional counseling; and

(b) Has not committed any act or omission that would be grounds for discipline or denial of certification under Health Occupations Article, §17-509, Annotated Code of Maryland;

(3) Provides:

(a) A copy of a current certification from each state, territory, or jurisdiction in which the applicant is authorized to practice alcohol and drug counseling; and

(b) Documentation, satisfactory to the Board, that the applicant is currently certified in good standing to practice alcohol and drug counseling in another state, territory, or jurisdiction;

(4) Provides documentation or transcripts confirming completion of an associate's degree in a health or human services counseling field from an accredited educational institution approved by the Board;

(5) Provides:

(a) Documentation, satisfactory to the Board, of not less than 2 years, with a minimum of 2,000 hours, of supervised experience in alcohol and drug counseling; and

(b) Verification, on a form that the Board requires, from employers, supervisors, or colleagues that the applicant has practiced alcohol and drug counseling for the length of time stated in §A(5)(a) of this regulation; and

(6) Achieves a passing score on:

(a) An examination testing the applicant's knowledge of Maryland law and regulations governing alcohol and drug counselors; and

(b) The examination developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC/AODA).

B. The Board shall waive the course requirements specified in Regulations .03B and .05B of this chapter, except for documentation from an accredited educational institution approved by the Board showing completion of:

(1) 12 educational workshop hours in the ethics of alcohol and drug counseling; or

(2) 1 semester credit hour or 2 quarter hours in the ethics of alcohol and drug counseling.

#### **.15 Certification Eligibility — CAC-AD — Out-of-State Applicants.**

A. An applicant certified as a certified associate counselor-alcohol and drug in another state territory, or jurisdiction, is eligible for certification if the applicant:

(1) Files a completed application accompanied by the required fees specified in COMAR 10.58.02.02;

(2) Provides verification that the applicant:

(a) Has no history of disciplinary action, past or pending, in a state, territory, or jurisdiction in which the applicant holds a license to practice clinical professional counseling; and

(b) Has not committed any act or omission that would be grounds for discipline or denial of certification under Health Occupations Article, §17-509, Annotated Code of Maryland;

(3) Provides:

(a) A copy of a current certification from each state, territory, or jurisdiction, in which the applicant is authorized to practice alcohol and drug counseling; and

(b) Documentation, satisfactory to the Board, that the applicant is currently certified in good standing to practice alcohol and drug counseling in another state, territory, or jurisdiction;

(4) Provides documentation or transcripts confirming completion of a bachelor's degree in a health or human services counseling field from an accredited educational institution approved by the Board;

(5) Provides:

(a) Documentation, satisfactory to the Board, of not less than 3 years of supervised experience in alcohol and drug counseling with a minimum of 2,000 hours experience; and

(b) Verification, on a form that the Board requires, from employers, supervisors, or colleagues that the applicant has practiced alcohol and drug counseling for the length of time stated in §A(5)(a) of this regulation; and

(6) Achieves a passing score on:

(a) An examination testing the applicant's knowledge of Maryland law and regulations governing alcohol and drug counselors; and

(b) The examination developed by the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC/AODA).

B. The Board shall waive the course requirements specified in Regulations .03B and .04B of this chapter, except for documentation from an accredited educational institution approved by the Board showing completion of:

(1) 12 educational workshop hours in the ethics of alcohol and drug counseling; or

(2) 1 semester credit hour or 2 quarter hours in the ethics of alcohol and drug counseling.

#### **.16 Certification Eligibility — CPC-AD — Out-of-State Applicants.**

A. An applicant certified as a certified professional counselor-alcohol and drug in another state, territory, or jurisdiction, is eligible for certification if the applicant:

(1) Files a completed application accompanied by the required fees specified in COMAR 10.58.02.02;

(2) Provides verification that the applicant:

(a) Has no history of disciplinary action, past or pending, in a state, territory, or jurisdiction in which the applicant holds a license to practice clinical professional counseling; and

(b) Has not committed any act or omission that would be grounds for discipline or denial of certification under Health Occupations Article, §17-509, Annotated Code of Maryland;

(3) Provides:

(a) A copy of a current certification from each state, territory, or jurisdiction, in which the applicant is authorized to practice alcohol and drug counseling; and

(b) Documentation, satisfactory to the Board, that the applicant is currently certified in good standing to practice alcohol and drug counseling in another state;

(4) Provides documentation or transcripts confirming completion of a master's degree in a health or human services counseling field from an accredited educational institution approved by the Board;

(5) Provides:

(a) Documentation satisfactory to the Board, of not less than 3 years of supervised experience in alcohol and drug counseling with a minimum of 2,000 hours experience; and

(b) Verification, on a form that the Board requires, from employers, supervisors, or colleagues that the applicant

has practiced alcohol and drug counseling for the length of time stated in §A(5)(a) of this regulation; and

(6) Achieves a passing score on:

(a) An examination testing the applicant's knowledge of Maryland law and regulations governing alcohol and drug counselors; and

(b) The Examination for Master Addictions Counselors of the National Board for Certified Counselors (NBCC).

B. The Board shall waive the course requirements specified in Regulation .03B of this chapter, except for documentation from an accredited educational institution approved by the Board showing completion of:

(1) 3 undergraduate semester credit hours covering the primary topic or content area of the ethics of alcohol and drug counseling; or

(2) 5 undergraduate quarter hours covering the primary topic or content area of the ethics of alcohol and drug counseling.

**.17 Licensure Eligibility: Out-of-State Applicants.**

A. An applicant licensed or certified as a clinical alcohol and drug counselor in another state, territory, or jurisdiction, is eligible for licensure if the applicant:

(1) Files a completed application accompanied by the required fees specified in COMAR 10.58.02.02;

(2) Provides verification that the applicant:

(a) Has no history of disciplinary action past or pending; and

(b) Has not committed any act or omission that would be grounds for discipline or denial of licensure under Health Occupations Article, §17-509, Annotated Code of Maryland;

(3) Provides:

(a) A copy of a current license or certification from each state, territory, or jurisdiction in which the applicant is authorized to practice alcohol and drug counseling; and

(b) Documentation, satisfactory to the Board, that the applicant is currently licensed or certified in good standing to practice alcohol and drug counseling in another state, territory, or jurisdiction;

(4) Provides documentation or transcripts confirming completion of a master's or doctoral degree in a health or human services counseling field from an accredited educational institution approved by the Board;

(5) Provides verification, on a form that the Board requires, from employers, supervisors, or colleagues that the applicant has practiced alcohol and drug counseling for the length of time specified as follows:

(a) If the applicant has a master's degree and has a minimum of 60 graduate credit hours, documentation, satisfactory to the Board, of not less than 3 years, with a minimum of 2,000 hours, of supervised clinical experience in alcohol and drug counseling, 2 years of which shall have been completed after the award of the master's degree;

(b) If the applicant has a master's degree consisting of less than 60 graduate credit hours, documentation, satisfactory to the Board, of not less than 3 years experience practicing as a clinical alcohol and drug counselor, with a minimum of 2,000 hours of clinical alcohol and drug counseling experience; or

(c) If the applicant has a doctoral degree, documentation, satisfactory to the Board, of not less than 2 years practicing as a clinical alcohol and drug counselor, with a minimum of 2,000 hours of clinical alcohol and drug counseling experience; and

(6) Achieves a passing score on:

(a) An examination testing the applicant's knowledge of Maryland law and regulations governing alcohol and drug counselors; and

(b) The Examination for Master Addictions Counselors of the National Board for Certified Counselors (NBCC).

B. The Board shall waive the course requirements specified in Regulations .03B and .10A of this chapter, except for documentation or transcripts showing completion of:

(1) 3 graduate semester credit hours or 5 graduate quarter hours covering the following primary topics or content areas:

(a) Personality development;

(b) Diagnosis and treatment of mental and emotional disorders; and

(c) Psychopathology; and

(2) 3 undergraduate semester credit hours or 5 undergraduate quarter hours in:

(a) The ethics of alcohol and drug counseling; and

(b) Medical aspects of chemical dependency.

**10.58.08 Marriage and Family Therapists — Requirements for Certification and Licensure**

Authority: Health Occupations Article, §§17-101, 17-205, 17-301 [— 17-316, and 17-3A-01 — 17-3A-13], 17-303, 17-306, 17-308, and 17-509, Annotated Code of Maryland

**.07 Licensure Eligibility: Out-of-State Applicants.**

A. An applicant licensed as a marriage and family therapist or its equivalent as established by the Board in another state, territory, or jurisdiction is eligible for licensure if the applicant:

(1) Provides on a form which the Board supplies:

(a) An application;

(b) Verification that the applicant:

(i) Has no history of disciplinary action, past or pending, in a state, territory, or jurisdiction in which the applicant holds a license to practice marriage and family therapy; and

(ii) Has not committed any act or omission that would be grounds or discipline or denial of licensure under Health Occupations Article, §17-509, Annotated Code of Maryland.

(2) Provides the following verifications directly to the Board from the appropriate authority:

(a) A copy of a current license from each state, territory, or jurisdiction in which the applicant has been licensed, registered, or otherwise authorized to practice marriage and family therapy; and

(b) Documentation, satisfactory to the Board, that the applicant is currently licensed in good standing to practice marriage and family therapy in another state, territory, or jurisdiction.

(3) Pays the application fee set forth in COMAR 10.58.02;

(4) Achieves a passing score on:

(a) An examination testing the applicant's knowledge of Maryland law and regulations governing marriage and family therapy; and

(b) The Examination in Marital and Family Therapy developed by the Association of Marital and Family Therapy Regulatory Boards;

(5) Provides documentation or transcripts confirming completion of a:

(a) Master's or doctoral degree in a marriage and family therapy field from an accredited educational institution, as specified in Regulation .04 of this chapter; or

(b) Program of studies judged by the Board to be substantially equivalent in subject matter and extent of training; and

(6) Provides verification, on a form that the Board requires, from employers, supervisors, or colleagues that the applicant has practiced clinical marriage and family therapy for the length of time specified as follows:

(a) If the applicant has a master's degree and has a minimum of 60 graduate credit hours, documentation, satisfactory to the Board, of not less than 2 years, with a minimum of 2,000 hours, of supervised clinical experience in marriage and family therapy, completed after the award of the master's degree;

(b) If the applicant has a master's degree consisting of less than 60 graduate credit hours, documentation, satisfactory to the Board, of not less than 2 years experience practicing clinical marriage and family therapy, with a minimum of 2,000 hours of clinical marriage and family therapy experience; or

(c) If the applicant has a doctoral degree, documentation, satisfactory to the Board, of not less than 2 years practicing as a clinical marriage and family therapist, with a minimum of 2,000 hours of clinical marriage and family therapy experience.

B. The Board shall waive the course requirements specified in Regulation .04 of this chapter, except for documentation showing completion of a minimum of 3 graduate semester credit hours or 5 graduate quarter hours covering each of the following primary topics or content areas:

(1) Diagnosis and treatment of mental and emotional disorders;

(2) Sexual issues in marriage and family therapy;

(3) Couples therapy, theory, and techniques; and

(4) Professional, legal, and ethical responsibilities in marriage and family therapy.

JOHN M. COLMERS  
Secretary of Health and Mental Hygiene

# Title 11 DEPARTMENT OF TRANSPORTATION

## Subtitle 02 TRANSPORTATION SERVICE HUMAN RESOURCES SYSTEM

### 11.02.03 Leave Benefits

Authority: Transportation Article, §§2-102 and 2-103.4,  
Annotated Code of Maryland

#### Notice of Proposed Action

[10-041-P]

The Secretary of Transportation proposes to amend Regulations .03, .15, and .16 under **COMAR 11.02.03 Leave Benefits**.

#### Statement of Purpose

The purpose of this action is to update the regulations to comply with current law that certain Transportation em-

ployees may be entitled to carryover 75 days or 600 hours of annual leave. This resulted from the passage of Senate Bill 177, Ch. 20, Acts of 2008 that changed the maximum carryover of unused annual leave from 50 days or 400 hours to 75 days or 600 hours. This action also corrects the name of the Maryland Transit Administration in the name of Regulation .16, which is referenced in the regulation as Mass Transit.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** There will be an economic impact, but it is indeterminable because there is no way to know how many employees will carryover the maximum 75 days of annual leave.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
	A. On issuing agency:	(E+)	
B. On other State agencies:	(E+)		Indeterminate
C. On local governments:	NONE		
	Benefit (+)		
	Cost (-)		Magnitude
D. On regulated industries or trade groups:	NONE		
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. and B. Since there is no way of knowing the number of employees who will carryover the maximum annual leave of 75 days there is no way to determine what the economic impact will be.

#### 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 Tonya J. Morant, Manager, Policy, Training and Employee Development, Office of Human Resources, Maryland Department of Transportation, P. O. Box 548, Hanover, Maryland 21076, or call 410-865-1202, or email to jmorant@mdot.state.md.us, or fax to 410-865-1393. Comments will be accepted through February 3, 2010. A public hearing has not been scheduled.

#### **.03 Annual Leave.**

A. — B. (text unchanged)

C. Rates of Earning. Employees shall earn annual leave at the following rates:

(1) — (6) (text unchanged)

(7) Periods of paid leave, except for extended sick leave[,] and advanced sick leave[, donated leave, and leave bank leave,] shall be included in hours worked for the purpose of calculating annual leave earnings.

D. Limitations Applying to the Calculation of Annual Leave Earnings.

(1) (text unchanged)



(2) Hours worked beyond the [funded percentage of] maximum allowed by the percentage of employment for a part-time employee's position may not be used to compute annual leave earnings.

E. Accumulation of Forwarding of Annual Leave Earnings. A maximum of [50] 75 days or 600 hours of annual leave may be carried into a new calendar year.

F. (text unchanged)

G. Payment Upon Separation.

(1) An employee of the Department with at least 6 months of continuous service who separates from State employment shall be paid for [any] unused, accumulated annual leave [at a rate equal to the last hourly rate times the number of hours of annual leave.] based on the remaining number of unused annual leave days that were accrued at the end of the previous calendar year, not exceeding 50 days or 400 hours of the total, plus the remaining number of unused annual leave days that were accrued during the calendar year in which the employee's State employment terminates.

(2) The amount paid shall equal the last permanent hourly rate multiplied by the number of annual leave hours available at the time of separation after calculating the amount under §G(1) of this chapter.

[H. An employee converting into the Transportation Service may transfer all accumulated annual leave.]

[I.] H. (text unchanged)

[J. A previous State employee who is hired into the Transportation Service after 5 years from the date of separation from State service shall be treated as a new employee for purposes of the employee's annual leave earning rate.]

I. Forfeiture. Accumulated and unused annual leave in excess of the amounts specified in §§D(2) and E of this regulation shall be forfeited.

[K.] J. The Secretary may, under extraordinary circumstances, compensate employees who lose annual leave. [The Secretary shall establish written criteria and procedures for the payment of unused annual leave.]

**.15 Leave Donation Program and Leave Bank.**

In accordance with State Personnel and Pensions Article, 9-601 — 9-607, Annotated Code of Maryland, and [COMAR 06.01.11.23 and 24] COMAR 17.04.11.22 and 23, employees may participate in the Employee-to-Employee Leave Donation Program and the State Employees' Leave Bank.

**.16 [Mass] Maryland Transit Administration Employee Leave Protections.**

(text unchanged)

BEVERLEY K. SWAIM-STALEY  
Secretary of Transportation

**Subtitle 11 MOTOR VEHICLE  
ADMINISTRATION — ADMINISTRATIVE  
PROCEDURES**

**11.11.05 Motor Vehicle Fees**

Authority: As cited in Regulation .03 of this chapter

**Notice of Proposed Action**

[10-042-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulation .03 under **COMAR 11.11.05 Motor Vehicle Fees**.

**Statement of Purpose**

The purpose of this action is to correct an error in the fees for commercial driver's license instructional permits. The fees were inadvertently changed in a recent amendment to reorganize driver's license fees.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Carolyn Decker, Regulations Coordinator, Motor Vehicle Administration, 6601 Ritchie Highway N. E., Room 200, Glen Burnie, Maryland 21062, or call 410-424-3105, or email to cdecker@mdot.state.md.us, or fax to 410-768-7506. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.03 Driver's License and Identification Card Fees.**

Service	Section	Fee
A. — D. (text unchanged)		
E. Commercial Driver's License:		
(1) Instructional Permit. Includes issuance of license if issued before permit expiration.	16-818	[45] 30
(2) New Issuance. If a learner's instructional permit is not required.	16-818	[45] 30
(3) — (7) (text unchanged)		
F. — H. (text unchanged)		

JOHN T. KUO  
Administrator  
Motor Vehicle administration

**Subtitle 11 MOTOR VEHICLE  
ADMINISTRATION — ADMINISTRATIVE  
PROCEDURES**

**11.11.12 Commercial Driver's License Disqualification**

Authority: Transportation Article, §§12-104(b) and 16-820, Annotated Code Maryland and 49 CFR §384.210

**Notice of Proposed Action**

[10-043-P]

The Administrator of the Motor Vehicle Administration proposes to amend Regulation .07 under **COMAR 11.11.12 Commercial Driver's License Disqualification**.

**Statement of Purpose**

The purpose of this action is to clarify current regulations regarding the issuance of a commercial driver license to an individual with certain restrictions on their driving privilege.

### Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

### Estimate of Economic Impact

The proposed action has no economic impact.

### 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 Carolyn Decker, Regulations Coordinator, Motor Vehicle Administration, Room 200, 6601 Ritchie Highway N.E., or call 410-424-3105, or email to cdecker@mdot.state.md.us, or fax to 410-768-7506. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

### .07 Licensing Limitations.

A. (text unchanged)

B. *An applicant for a commercial driver's license with a restriction imposed under Transportation Article, §16-113(a)(1), Annotated Code of Maryland shall be issued a commercial driver's license with the restriction if it is determined by the Medical Advisory Board that the individual is physically qualified to operate a commercial motor vehicle.*

JOHN T. KUO  
Administrator  
Motor Vehicle Administration

## Title 13A STATE BOARD OF EDUCATION

### Subtitle 03 GENERAL INSTRUCTIONAL PROGRAMS

#### 13A.03.02 Graduation Requirements for Public High Schools in Maryland

Authority: Education Article, §§2-205, 7-205, and 8-404, Annotated Code of Maryland

### Notice of Proposed Action

[10-051-P]

The Maryland State Board of Education proposes to adopt new Regulation .09-1 under **COMAR 13A.03.02 Graduation Requirements for Public High Schools in Maryland**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

### Statement of Purpose

The purpose of this action is to continue the appeal process for students who may be denied the Maryland High School Diploma for failure to meet the High School Assessment (HSA) graduation requirement.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

#### I. Summary of Economic Impact.

The impact on the Maryland State Department of Education would be minimal because of the slight increase in the number of AYP school appeals that might need to be handled by the State Superintendent of Schools.

II. Types of Economic Impact.	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:	(E+)		Minimal
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE		
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 impact on the Maryland State Department of Education would be minimal with the possibility of a slight increase in the number of AYP school appeals that might need to be handled by the State Superintendent of Schools.

C. Local school systems could see a slight increase in the time required to process Waiver requests for local students.

### 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 an impact on individuals with disabilities as follows:

The proposed change would have a positive impact on individuals with disabilities. Some students with disabilities are not passing the High School Assessments and are in danger of not graduating. The waiver will allow students to graduate on time when their failure to satisfy the requirement is due to no fault of their own but rather to issues such as the scheduling of course sequences in a particular school may have prevented the student from enrolling in the HAS course in time to receive the instruction, take the assessment, participate in remediation, and meet the requirement before the anticipated graduation date for the Class of 2010.

### Opportunity for Public Comment

Comments may be sent to Ronald Peiffer, Deputy State Superintendent of Office for Academic Policy, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0473, or email to rpeiffer@msde.state.md.us, or fax to 410-333-2275. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

### Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23-24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.09-1 Appeal of Denial of Diploma for Failure to Meet HSA Requirement.**

A. A school system shall notify each senior and the senior's parents or guardians on or before the end of February of the senior year if a student may not graduate. The notice shall explain:

- (1) The reasons the student may not graduate;
- (2) The options available to meet all graduation requirements;
- (3) That a waiver of the High School Assessment (HSA) graduation requirement may be one of the options, if the student meets the criteria set forth in §§C and E of this regulation;
- (4) The waiver process and timeline; and
- (5) That parents or guardians may submit information in writing to the principal concerning eligibility of their child for the waiver.

B. On or before the end of February, the principal shall report to the local superintendent the name and student identification number of each student identified in the February notice.

C. On or before April 1, the school system shall identify each student who may fail to graduate because:

- (1) The student has taken none of the required HSAs; or
- (2) The student has taken some or all of the HSAs and failed some or all of them.

D. On or before April 1, the principal shall report to the local superintendent the name and student identification number of each student identified as meeting the criteria in §C of this regulation.

E. By April 1, for each senior identified in §C of this regulation, the school principal shall consider whether to recommend to the local superintendent a waiver of the HSA graduation requirements that the student has not fulfilled to date if:

- (1) The student meets the following criteria:
  - (a) The student has or will meet all other graduation requirements;
  - (b) The student has or will take all required HSAs before the graduation date; and
  - (c) If the student had an opportunity to participate in one or more interventions, or remediation opportunities, including the Bridge Plan, the student participated in them; and
- (2) The student is prevented from meeting the HSA graduation requirements because:
  - (a) Of a decision made by the local school system about scheduling, course sequencing, or test taking;
  - (b) Of a decision made by the local school system concerning the provision of adequate interventions as required by Regulation .07D of this chapter;
  - (c) The student experienced a special, extraordinary, or extenuating circumstance or combination of circumstances preceding the administration of the most recent HSA, such as a recent death in the immediate family, a serious or prolonged illness or pregnancy with medical complications, an accident causing serious injury, or a destructive house fire;
  - (d) The student moved to the United States in the junior or senior year and the student is literate in the student's native language but not literate in English; or
  - (e) The student moved to Maryland in the senior year, has passed all the HSA courses, but has failed the related HSA, and has had no adequate opportunity for intervention.

F. On or about April 1, the principal shall notify the student and the student's parents or guardians that the student

is being considered for a waiver of the HSA graduation requirements that the student has not fulfilled to date. The notice shall explain the waiver decision-making process.

G. On or before May 1, the principal of the high school shall make an HSA waiver recommendation to the local superintendent for each student who meets the criteria set forth in §E of this regulation with the participation of:

- (1) The student's IEP team, if the student is a student with disabilities;
- (2) The English Language Learner staff, if the student is an English Language Learner;
- (3) Other school personnel; or
- (4) One or more of them.

H. The principal shall explain the reason for each recommendation under §G of this regulation, whether the recommendation is to grant or deny the waiver.

I. The local superintendent shall review each recommendation and shall:

- (1) Grant or deny the waiver;
- (2) Promptly notify the student and the student's parent or guardian of the decision; and
- (3) If the waiver is granted, include in the notification the local procedures and requirements that must be met for a diploma to be awarded.

J. The superintendent's decision in this matter is not appealable to the local board of education, but may be appealed to the State Superintendent of Schools.

K. A student or the student's parents or guardians may appeal the waiver denial to the State Superintendent by sending a written appeal letter explaining why the waiver denial was an arbitrary or unreasonable decision. The State Superintendent may affirm or reverse the local superintendent's decision and shall inform the student, the student's parents or guardians, the local superintendent, and the State Board in writing of the decision.

L. The decision of the State Superintendent may be appealed to the circuit court pursuant to Maryland Rules 7-201, et seq. On appeal:

- (1) If the State Superintendent has reversed the local superintendent's decision to deny the HSA waiver and the local school system appeals that decision, the State Superintendent shall defend the decision on appeal; or
- (2) If the State Superintendent has affirmed the local superintendent's decision and the aggrieved student appeals, the local superintendent shall defend the State Superintendent's decision on appeal.

M. By August 1, the local superintendent shall send a report to the State Superintendent or the State Superintendent's designee on waiver decisions rendered under this regulation.

N. Nothing in this regulation is intended to establish any right to participate in the graduation ceremony while an appeal is pending. Participation in the graduation ceremony remains at the discretion of the local superintendent.

O. Section E(2)(a) of this regulation shall sunset on June 30, 2010 with no further action of the State Board of Education.

P. Section E(2)(b) of this regulation, upon review, approval, and promulgation of an amendment of these Regulations by the State Board of Education, shall sunset on June 30, 2015.

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 06 SUPPORTING PROGRAMS**

**13A.06.03 Interscholastic Athletics in the State**

Authority: Education Article, §§2-205 and 2-303(k),  
Annotated Code of Maryland

**Notice of Proposed Action**

[10-065-P]

The Maryland State Board of Education proposes to amend Regulation .04 under **COMAR 13A.06.03 Interscholastic Athletics in the State**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is to ensure that students with disabilities have an opportunity to try out for and if selected participate in athletic programs, provide reasonable accommodations to allow athletic opportunities, and provide corollary athletic programs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 an impact on individuals with disabilities as follows:

The proposed action provides greater opportunity for students with disabilities to tryout and if selected participate on an interscholastic athletic team.

**Opportunity for Public Comment**

Comments may be sent to Edward Sparks, Executive Director, Athletics Programs, Division of Instruction, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0555, or email to nsparks@msde.state.md.us, or fax to 410-333-3111. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23 and 24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.04 Operational Guidelines.**

The regulations given below are established for all MPSSAA interscholastic sports:

A. (text unchanged)

A-1. *Athletics Equity for Students with Disabilities.*

(1) *Students who meet the eligibility requirements of Regulation .02 of this chapter may not be excluded on the basis of disability from the opportunity to try out for and if selected, participate in mainstream interscholastic athletic programs.*

(2) *Member Maryland Public Secondary Schools Athletic Association (MPSSAA). MPSSAA schools shall provide reasonable accommodations necessary to provide students*

*with disabilities with equal opportunities to participate to the fullest extent possible in mainstream athletic programs.*

(3) *Students with disabilities who meet the eligibility requirements of Regulation .02 of this chapter may be excluded from mainstream athletic programs if inclusion:*

(a) *Presents an objective safety risk to the student or others based on an individualized assessment of the student; or*

(b) *Fundamentally alters the nature of the school's mainstream athletic program.*

B. — J. (text unchanged)

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 06 SUPPORTING PROGRAMS**

**13A.06.04 Corollary Athletic Programs**

Authority: Education Article, 7-4B-01 — 7-4B-06,  
Annotated Code of Maryland

**Notice of Proposed Action**

[10-064-P]

The Maryland State Board of Education proposes to adopt new Regulations .01 — .08 under **COMAR 13A.06.04 Corollary Athletic Programs**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is to ensure that students with disabilities have an opportunity to try out for and, if selected, participate in athletic programs, provide reasonable accommodations to allow athletic opportunities, and provide corollary athletic programs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The Fitness and Athletic Equity Act of 2008 requires local school systems to "Provide the opportunity for students with disabilities to participate in extracurricular or intramural competition." The proposed regulation provides the opportunity for local school systems to be in compliance of the Act.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E+)	\$15,000 to \$33,000 per school
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
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.)

C. The Fitness and Athletic Equity Act of 2008 requires local school systems to “Provide the opportunity for students with disabilities to participate in extracurricular or intramural competition.” The proposed regulation provides the opportunity for local school systems to be in compliance of the Act.

Either with an Allied Interscholastic Program or Corollary Athletic Program school systems may accommodate students with disabilities. These programs would encompass three sports seasons per school year and be designated to be populated with a roster comprised of students with and without disabilities.

Cost estimates for establishing new programs range from \$15,000 per school to \$33,000 per school with an estimated range around \$25,000 per school. These estimates include one sport offering per school in each of the three seasons. Thus, the total cost for local school systems to come into compliance with the law is \$4,725,000 the first year. Estimates in the following year would remain the same. Cost savings experienced with the reuse of equipment and uniforms would be mitigated with increases in travel fees.

**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 an impact on individuals with disabilities as follows:

The proposed action provides for athletic opportunities for students with disabilities in Maryland Public Schools.

**Opportunity for Public Comment**

Comments may be sent to Edward Sparks, Executive Director, Athletics Programs, Division of Instruction, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0555, or email to nsparks@msde.state.md.us, or fax to 410-333-3111. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23-24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.01 Purpose.**

*The purpose of this chapter is to define the requirements for a Corollary Athletic Program in the local school systems to provide athletic opportunities so that every student in public schools may have an equal opportunity to access the benefits of education-based athletic programs.*

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Corollary Athletic Program” means a program that is not governed by the requirements of COMAR 13A.06.03 and COMAR 13A.04.13 and that is specifically designed to combine groups of students with and without disabilities together in physical activity.

(2) “Department” means the Maryland State Department of Education.

(3) Interscholastic Athletic Programs means programs governed by the requirements of COMAR 13A.06.03.

(4) “Student with a disability” means:

(a) A student who meets the definition of a “handicapped person” at 45 C.F.R. §84.3(j);

(b) A student who meets the definition of student with a disability as defined in COMAR 13A.05.01.03B; or

(c) A student who meets the definition of a “handicapped person” as defined in 34 C.F.R. §104.3(j).

**.03 Access to School Athletic Programs.**

Each local school system shall:

A. Develop a plan, policies and procedures to promote and protect the inclusion of students with disabilities in school athletic programs;

B. Provide students with disabilities equivalent opportunities for participation in either the Interscholastic Athletic Program or the Corollary Athletic Program; and

C. Maintain evidence indicating that the interests and abilities of students with disabilities have been fully and effectively accommodated by the local school systems Interscholastic Athletic or Corollary Athletic Program.

**.04 Corollary Athletic Programs.**

A. Corollary Athletic Programs shall provide for the diversity of abilities and interests of students with disabilities.

B. The local school system shall offer a Corollary Athletic Program in each of the fall, winter and spring seasons. The dates of the fall, winter and spring seasons do not need to match the dates prescribed in COMAR 13A.06.03. The sport season for the Corollary Athletic Program shall be limited to a maximum of 12 consecutive weeks.

**.05 Eligibility for Corollary Athletic Programs.**

A. Students in grades K-8 who participate in the Corollary Athletic Program shall:

(1) Be officially registered and attending a Maryland Public School; and

(2) Present to their school principal, or the principal’s designee, a form from a parent or guardian giving permission for participation.

B. Secondary school students in grades 9-12 who participate in the Corollary Athletic Program:

(1) Shall be officially registered and attending a Maryland Public School;

(2) Shall present to their high school principal, or the principal’s designee, a form from a parent or guardian giving permission for participation;

(3) Shall be making satisfactory progress toward:

(a) Graduation with a Maryland High School Diploma specified in COMAR 13A.03.02.09B; or

(b) School completion with a Maryland High School Certificate of Program Completion specified in COMAR 13A.03.02.09D; and

(4) May not have participated on an interscholastic athletic team in the same sport.

C. If a student acquires a disability during their years of participation in interscholastic sports, the local school system may permit an exception to §B(4) of this regulation.

**.06 Complaints and Appeal Process.**

A. Parents, guardians and legal representatives of students with disabilities may file a written complaint with the local superintendent regarding an alleged violation of this chapter.

B. The written complaint shall:

(1) State the alleged violation;

(2) Contain a brief statement of facts necessary to understand the complaint;

(3) Contain a brief statement of relief sought; and

(4) Be filed within 30 days of the discovery date of the alleged violation.

C. The appeals process set forth in Education Article, §4-205(c), Annotated Code of Maryland, including an appeal to

the State Board from a local board's decision on the complaint shall govern the processing of the complaint.

**.07 Corrective Actions.**

In response to systemic complaints filed alleging on-going violations of this chapter or at its discretion, the Department may initiate a fact-finding process and may impose corrective action on a school system.

**.08 Annual Reports.**

A. First Annual Report. Local school systems shall submit the first Annual Report on May 15, 2010. It shall:

(1) State the total number of students who participated in the Interscholastic Athletic Program and the Corollary Athletic Program along with the total number of students with disabilities as defined in Regulation .02B of this chapter who participated in the Interscholastic Athletic Program and the Corollary Athletic Program; and

(2) Provide a copy of the plans, policies and procedures developed by the local school systems under Regulation .03 of this chapter.

B. Subsequent Reports. Local school systems shall:

(1) Submit Annual Reports on May 15;

(2) Describe modifications of policies and procedures by the local school system to engage students with disabilities in the Interscholastic Athletic Program and the Corollary Athletic Program; and

(3) State the total number of students who participated in the Interscholastic Athletic Program and the Corollary Athletic Program along with the total number of students with disabilities as defined in Regulation .02B of this chapter who participated in the Interscholastic Athletic Program and the Corollary Athletic Program.

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 08 STUDENTS**

**13A.08.06 Positive Behavioral Interventions and Support Program**

Authority: Education Article, §§2-205 and 7-304.1, Annotated Code of Maryland

**Notice of Proposed Action**

[10-050-P]

The Maryland State Board of Education proposes to amend Regulations .01 and .02 and adopt new Regulation .03 under **COMAR 13A.08.06 Positive Behavioral Interventions and Support Programs**. This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

**Statement of Purpose**

The purpose of this action is to bring the regulations into alignment with Education Article, §7-304.1, Annotated Code of Maryland, as amended by the General Assembly in 2008. Legislation was passed expanding the criteria which requires that a school implement a Positive Behavioral Intervention Support or alternative behavioral modification program in collaboration with the Maryland State Department of Education.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** Since Positive Behavioral Support and Interventions is a comprehensive prevention strategy, it is assumed that the cost to implement will be offset by the corresponding cost savings which will accrue due to the reduced discipline problems within our schools. Though not measurable at this time, there is a cost benefit that can be measured in two areas: student time in classroom and administrator time freed up.

Since PBIS is a framework through which research based practices can be implemented, it is possible to integrate secondary practices to target this population of students making up the Habitual Truancy rate. Most PBIS implementation across the nation has been provided to schools on a voluntary basis. There is no data to demonstrate how effective implementation is when a school is mandated to be trained in the PBIS model therefore, it is assumed that such training will be valuable.

Non quantifiable benefits: There is no way to estimate a dollar figure that will ultimately accrue to communities as an indirect result of creating safe and drug free learning environments. As children become more successful in our schools, thus producing more competent adolescents the ultimate effect will be better educated secondary schools graduates who will ultimately become productive citizens contributing to the overall good of the community, paying taxes and generating income instead of becoming the recipient of direct service agencies.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)		Unknown
B. On other State agencies:	NONE		
C. On local governments:	(E+)		\$8,000 per school
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE		
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. As the number of implementing schools increases (currently at approximately 750, the cost of supporting those schools also increases). Issuing agency currently absorbs costs for PBIS school-wide (universal) implementation, training and support into its existing budget. No line item budget for this initiative has been allocated in the 10 years the initiative has been operating, to date. This regulation identifies schools which are required to implement PBIS, which will increase annually the number of schools to be trained. There are ongoing state level costs associated with providing training for new teams identified through this regulation in addition to the current PBIS efforts to provide ongoing technical assistance, training and support to PBIS schools.

Based specifically on the habitual truant data that the local school systems provide to the Department, 62 schools would require training in PBIS. Thirty-eight schools would require new team training and 24 would require expansion according to the statute. Some of these schools have already been trained in PBIS but have not remained active in implementation or did not maintain fidelity in their implementation. In order to train these schools, it is estimated that it would cost \$800 per school. This entails providing the training and materials for school teams and coaches, but does not account for the annual operating budget necessary to provide follow-up meetings to ensure implementation is on track with fidelity, and ongoing technical assistance from the Department, Sheppard Pratt, and Johns Hopkins. Moreover, the targeted audience of truants would benefit most from secondary interventions of tier two which have never been funded.

C. The cost for each school to send an administrator and three additional team members (minimum requirement) to a two day training and to maintain the program throughout the year is approximately \$8,000 per school. In addition, local school systems allocate staff time for behavioral support coaches and for a local PBIS coordinator or “facilitator” to bring local teams together throughout the year. These costs have, to date, been absorbed locally.

**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 Andrea Alexander, Behavioral Specialist, Division of Student, Family, and School Support, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD, or call 410-767-0318, or email to aalexander@msde.state.md.us, or fax to 410-333-8148. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**Open Meeting**

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23 — 24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

**.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Alternative [behavioral] behavior modification program” means a *research-based, positive and effective school-wide program* that includes the following:

(a) — (b) (text unchanged)

(2) “Elementary school” means any *comprehensive public school, [including] excluding alternative settings or special schools, in which the school population includes any combination of students in prekindergarten through grade 5.*

(3) “*Habitually truant*” means a student that meets all of the following criteria:

(a) *The student was age 5 through 20 during the school year;*

(b) *The student was in membership in a school for 91 or more days; and*

(c) *The student was unlawfully absent from school for more than 20 percent of the days in membership.*

[(3)] (4) (text unchanged)

[(4)] (5) “Positive behavioral interventions and support program (PBIS)” means [the application of a behaviorally-based systems approach to enhance the capacity of schools to design effective environments that improve the link between research-validated practices and the environments in which teaching and learning occur.] *the research-based, systems approach method adopted by the State Board to:*

(a) *Build capacity among school staff to adopt and sustain the use of positive, effective practices to create learning environments where teachers can teach and students can learn; and*

(b) *Improve the link between research-validated practices and the environments in which teaching and learning occur.*

(6) “*School*” means any *comprehensive public school in which the school population includes any combination of students in prekindergarten through grade 12, excluding alternative settings or special schools, in which the school population includes any combination of students in prekindergarten through grade 12.*

[(5)] (7) (text unchanged)

(8) “*Truancy rate*” means the *unduplicated count of students who are “habitually truant” from school during a school year divided by the September 30 enrollment count.*

**.02 Administrative Procedures — Suspension Rates.**

A. — B. (text unchanged)

C. The school principal or the principal’s designee and appropriate staff members shall:

(1) [develop] *Develop a plan for implementing a program as set forth in §A of this regulation[.];*

(2) *Attend PBIS or alternative behavior modification training program approved by the Department; and*

(3) *Follow implementation guidelines and practices for PBIS or the alternative behavior modification training program.*

D. — E. (text unchanged)

*F. An elementary school shall expand its existing PBIS or alternative behavior modification program by providing more intensive interventions to targeted students in need of such interventions if:*

(1) *The elementary school has already implemented a PBIS or an alternative behavior modification program; and*

(2) *The elementary school has a suspension rate that exceeds the standard specified in §B of this regulation.*

**.03 Administrative Procedures — Truancy Rates.**

A. Upon receipt of notification from the Department that a school’s habitual truancy rate exceeds the standard specified in §B of this regulation, the local school superintendent or the superintendent’s designee shall direct the principal of the school to implement:

(1) A PBIS; or

(2) An alternative behavior modification program developed in collaboration with the Department.

B. A school is subject to this regulation if it has a truancy rate that exceeds:

(1) 8 percent of its enrollment for the 2008 — 2009 school year;

(2) 6 percent of its enrollment for the 2009 — 2010 school year;

(3) 4 percent of its enrollment for the 2010 — 2011 school year;

(4) 2 percent of its enrollment for the 2011 — 2012 school year; and

(5) 1 percent of its enrollment for the 2012 — 2013 school year and each school year thereafter.

C. The school principal or the principal’s designee and appropriate staff members shall:

(1) *Develop a plan for implementing a program as set forth in §A of this regulation;*

(2) *Attend PBIS or alternative behavior modification training program approved by the Department; and*

(3) *Follow implementation guidelines and practices for PBIS or the alternative behavior modification training program.*

D. A school shall expand its existing PBIS or alternative behavior modification program by providing more intensive interventions to targeted students in need of such interventions if:

(1) *The school has already implemented a PBIS or an alternative behavior modification program; and*

(2) *The school has a truancy rate that exceeds the standard specified in §B of this regulation.*

E. *Nothing in this regulation precludes a school system from implementing PBIS or an alternative behavioral modification program either in specific schools or system-wide.*

NANCY S. GRASMICK  
State Superintendent of Schools

## Subtitle 12 CERTIFICATION

### 13A.12.01 General Provisions

Authority: Education Article, §§2-205, 2-303(g), and 6-701 — 6-705,  
Annotated Code of Maryland

#### Notice of Proposed Action

[10-049-P]

The Maryland State Board of Education proposes to amend Regulations .01 — .04, .06, .08, .09, and .11 under **COMAR 13A.12.01 General Provisions**.

This action was considered at the Maryland State Board of Education meeting on December 10, 2009.

#### Statement of Purpose

The purpose of this action is to correct inaccurate citations, update grade bands, eliminate text which is no longer appropriate, align definitions with other sections of the regulation, and update terminology.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 Jean E. Satterfield, Assistant State Superintendent, Certification and Accreditation, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0385, or email to jsatterfield@msde.state.md.us, or fax to 410-333-8963. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

#### Open Meeting

Final action on the proposal will be considered by the Maryland State Board of Education during a public meeting to be held on March 23 — 24, 2010, at 200 West Baltimore Street, Baltimore, MD 21201.

#### .01 Purpose of Licensure in Maryland.

[Licensure] *Certification* of professional education personnel by the State is established to offer assurance to the citizens of this State that:

A. — C. (text unchanged)

D. [Licensed] *Certificated* education personnel maintain competent practice through career long-engagement with their content area, research, best practice, and expert opinion. Top of Form

#### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) “Acceptable credit” means content or professional education course work earned *or taught* after the conferral of the bachelor’s or higher degree as provided in Regulation .05C of this chapter.

(2) — (4) (text unchanged)

(5) “Appropriate certificate” for:

(a) — (b) (text unchanged)

(c) An administrator or supervisor means a professional certificate, [an alternative] *a resident* principal certificate, *a resident assistant principal certificate*, or a conditional certificate if the applicant is within 6 semester hours of the professional certificate.

(6) — (21) (text unchanged)

(22) “National Council for the Accreditation of Teacher Education (NCATE)” means a council providing accreditation of professional education units in United States colleges that prepare professional educators to staff [K] *PreK* — 12 schools for children.

(23) — (33) (text unchanged)

(34) “Specific certification area” means a:

(a) (text unchanged)

(b) Grade level such as early childhood, elementary, middle, secondary, or [N] *PreK* — 12; or

(c) (text unchanged)

(35) — (38) (text unchanged)

#### .03 Personnel.

A. The regulations in this subtitle are established as [licensure] *certification* standards for personnel educating students. A local school system may establish additional requirements as a condition of employment.

B. Personnel Subject to Certification.

(1) Public Schools.

(a) A teacher employed in an early childhood, elementary, *PreK-12* or secondary school program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.02.

(b) A specialist employed in an early childhood, elementary, *PreK-12*, or secondary school program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.03 or a license in certain areas as otherwise provided in State law.

(c) An administrator, supervisor, and assistant in administration and supervision employed in an early childhood, elementary, *PreK-12*, or secondary school program in the public school systems of Maryland shall hold an appropriate certificate under COMAR 13A.12.04.

(2) — (3) (text unchanged)

C. — D. (text unchanged)

#### .04 Options for Obtaining Initial Maryland Certification.

A. — D. (text unchanged)

E. Approved Professional Experience.

(1) The applicant shall:

(a) — (b) (text unchanged)

(2) The applicant shall:

(a) — (c) (text unchanged)



F. Regulation .05 of this chapter is not applicable to applicants under [§E] §E(2) of this regulation.  
 G. — H. (text unchanged)

**.06 Professional Certificates.**

A. — D. (text unchanged)  
 E. Advanced Professional Certificate.  
 (1) (text unchanged)

(2) An applicant for the Advanced Professional Certificate in a [vocational] *career and technology* education area who does not possess a bachelor's or higher degree shall complete, in addition to the requirements for the Standard Professional Certificate, a planned program of 36 semester hours taken at an IHE. A maximum of 12 CPDs for the trade-related or reading course work may be applied to the total of 36 semester hours.

(3) (text unchanged)

**.08 Conditional Certificate.**

A. Conditional Teacher Certificate.  
 (1) — (2) (text unchanged)

(3) An applicant who does not possess a bachelor's degree who is hired by a local school system in a [vocational] *career and technology* education area which does not require a bachelor's degree, and who does not meet the requirements for a professional certificate, may be issued the Conditional Teacher Nondegree Certificate at the request of the local superintendent of schools, upon presentation of a plan created under COMAR 13A.12.02.

(4) (text unchanged)

B. Conditional Specialist, Administrator, or Supervisor Certificate.

(1) — (3) (text unchanged)

**.09 Certificate Form.**

A. — C. (text unchanged)

D. Specific Certification Areas. A certificate shall name one or more of the following:

(1) Grade levels such as early childhood, elementary, middle, secondary, and [N] *PreK* — 12;

(2) — (3) (text unchanged) Top of Form

**.11 Renewal of Certificates.**

A. General.

(1) — (4) (text unchanged)

(5) If a teacher has not submitted the required semester hours in reading course work, the acceptable credit needed shall include:

(a) — (b) (text unchanged)

(c) 6 semester hours as provided in §A(5)(b) of this regulation for certification at the [N] *PreK* — 12 level.

(6) — (7) (text unchanged)

B. — D. (text unchanged)

NANCY S. GRASMICK  
 State Superintendent of Schools

**Subtitle 15 FAMILY CHILD CARE**

**Notice of Proposed Action**

[10-030-P]

The State Superintendent of Schools proposes to amend:

(1) Regulation .02 under **COMAR 13A.15.01 Scope and Definitions;**

(2) Regulations .02, .03, and .05 under **COMAR 13A.15.02 Registration Application and Maintenance;**

(3) Regulations .03, .04, and .05 under **COMAR 13A.15.03 Management and Administration;**

(4) Regulation .04 under **COMAR 13A.15.04 Operational Requirements;**

(5) Regulations .02, .03, and .04 under **COMAR 13A.15.06 Provider Requirements;**

(6) Regulation .03 under **COMAR 13A.15.07 Child Protection;**

(7) Regulations .01, .02, and .04 under **COMAR 13A.15.08 Child Supervision;**

(8) Regulations .01 and .02 under **COMAR 13A.15.09 Program Requirements;**

(9) Regulations .01 and .05 under **COMAR 13A.15.10 Child Safety;**

(10) Regulation .04 under **COMAR 13A.15.11 Health;** and

(11) Regulation .08 under **COMAR 13A.15.14 Administrative Hearings.**

**Statement of Purpose**

The purpose of this action is to require parental verification of child care program attendance records; require all family child care providers to complete emergency and disaster training and maintain written emergency and disaster plans; require providers in 4-infant homes to complete 45 clock-hours of approved infant/toddler care training; clarify the requirements of certain regulations; and group together certain related requirements.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** These proposals require licensed family child care providers wishing to care for more than two children younger than 2 years old to complete a 45 clock-hour infant/toddler care course. The proposals also implement current Maryland law requiring emergency preparedness training for all licensed child care programs. The total cost to family child care providers of these proposals is projected to be \$225,690.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:		
(1) Infant/toddler care training	(-)	\$117,375
(2) Emergency preparedness training	(-)	\$108,315
(3) Additional revenue for child care trainers	(+)	\$225,690
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.)

D(1). As of 10/30/09, there were 626 licensed family child care providers approved to care for more than two children younger than 2 years old. Of these, it is estimated that 50% (or 313 providers) have already completed the 45 clock-hour infant/toddler care

course. The average cost of the course is estimated at \$375. Total estimated cost of training: (626 – 313) providers × \$375 = \$117,375.

D(2). As of 10/30/09, there were 8,670 licensed family child care providers. Of these, at least 1,449 providers have already completed approved emergency preparedness training. The average cost of the training is estimated at \$15. Total estimated cost of training: (8,670 – 1,449) providers × \$15 = \$108,315.

D(3). Total estimated additional revenue for approved child care trainers providing infant/toddler care and emergency preparedness training: \$117,375 + \$108,315 = \$225,690.

### Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

The proposed regulations will benefit early child care and education businesses (licensed family child care providers) by making their programs safer for children in care there.

The increased training requirements under these proposals may result in higher overhead costs for family child care providers, and these costs may be passed on to families in the form of higher child care fees.

### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

### Opportunity for Public Comment

Comments may be sent to Liz Kelley, Director, Office of Child Care, Division of Early Childhood Development, Maryland State Department of Education, 200 W. Baltimore Street, Baltimore, MD, or call 410-767-7128, or email to liz.kelley@msde.state.md.us, or fax to 410-333-6226. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

## 13A.15.01 Scope and Definitions

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (19) (text unchanged)

(19-1) “*Infant-toddler*” means a child age group comprising children younger than 2 years old.

(20) — (35) (text unchanged)

## 13A.15.02 Registration Application and Maintenance

Authority: Family Law Article, §§5-515-5-517, 5-550-5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

### .02 Initial Registration.

A. (text unchanged)

B. [To file an application, the applicant] *An applicant for an initial registration shall:*

(1) Complete [provider orientation sessions scheduled by the agency’s regional licensing office responsible for the jurisdiction in which the applicant intends to provide care;] *an orientation to family child care regulations that is offered or approved by the office;*

(2) — (5) (text unchanged)

(6) Submit a signed and notarized release form giving the office permission to examine records of abuse and neglect of children and adults for information about:

(a) — (b) (text unchanged)

(c) Each individual designated as a substitute; [and]

(d) If applicable, an additional adult; *and*

(e) *If required by the office, any other individual with regular access to the child care area during the approved hours of operation;*

(7) — (8) (text unchanged)

C. If, within 6 months after the applicant submits a completed application form, the office has not received documentation that all applicable requirements of [§B(2)] §B of this regulation have been met, the office may consider the application void.

### .03 Continuing Registration.

A. Application for Continuing Registration. To obtain a continuing registration, a provider shall submit to the office before expiration of the initial registration:

(1) — (2) (text unchanged)

(3) A medical evaluation that meets the requirements of Regulation .02B(3) of this chapter for:

(a) The provider; [and]

(b) Each resident in the home who has child care responsibilities; and

(c) *If applicable, the additional adult;*

(4) A completed and notarized release of information form that permits the office to examine records of abuse and neglect of children and adults for:

(a) — (b) (text unchanged)

[c] If applicable, an additional adult; and]

[d] (c) (text unchanged)

(d) *If applicable, the:*

(i) *Additional adult; and*

(ii) *Additional adult’s substitute; and*

(e) *If required by the office, any other individual with regular access to the child care area during the approved hours of operation.*

(5) — (6) (text unchanged)

B. (text unchanged)

### .05 Resumption of Service.

A. (text unchanged)

B. The application to resume service shall meet all initial registration application requirements, except that:

(1) (text unchanged)

(2) The office may accept as applicable to the new application the:

(a) — (d) (text unchanged)

(e) Approved *continued* training completed by the individual within 12 months of the application.

## 13A.15.03 Management and Administration

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.03 Program Records.**

The provider shall:

A. (text unchanged)

B. For each child enrolled in care, maintain a written record of each day's attendance in care *that is verified by the child's parent*;

C. — G. (text unchanged)

**.04 Child Records.**

A. The provider shall:

(1) (text unchanged)

(2) Keep the emergency forms for the children who currently are in the provider's care in a readily accessible location, including taking the forms when taking the children away from the home; *and*

(3) Arrange to have the form for each child updated as needed, but at least annually, and signed and dated by the parent[.]; *and*

(4) As applicable, maintain the prior written parental permission statements required by this subtitle, including permission for a child to:

(a) Engage in a swimming or wading activity;

(b) Be transported in a vehicle while in care;

(c) Participate in an off-site activity; *and*

(d) Participate in an activity conducted by an independent contractor].

*A-1. Before the provider or substitute permits a child to:*

(1) *Swim or wade, the provider shall obtain written approval from the child's parent on a form supplied or approved by the office;*

(2) *Travel to or from school or a school transportation site without adult supervision, the child's parent and the provider shall agree in writing that the child can travel safely without adult supervision;*

(3) *Be transported in a vehicle by the provider or substitute, the provider shall obtain written permission from the child's parent to transport the child;*

(4) *Participate in an activity out of the home that is supervised by the provider or substitute, the provider shall obtain written approval from the child's parent on a form supplied or approved by the office;*

(5) *Participate in a supervised activity out of the home without the provider or substitute, the provider shall obtain written permission from the child's parent for the child's participation; or*

(6) *Participate in a service or activity conducted on the premises of the family child care home by an independent contractor, the provider shall obtain from the child's parent written permission for the child's participation.*

B. (text unchanged)

**.05 Notifications.**

The provider or substitute shall:

A. — C. (text unchanged)

D. Within 5 working days after an existing resident becomes 18 years old, or after there is a new resident in the home who is 18 years old or older:

(1) (text unchanged)

(2) Ensure that the resident applies for a federal and State criminal background check; [and]

E. Within 15 working days after notifying the office of a new resident, submit to the office:

(1) (text unchanged)

(2) Evidence that a medical evaluation of the resident has been scheduled[.]; *and*

*F. When the provider plans a temporary absence of more than 2 hours, notify the parents of the children in care in advance that a substitute will be caring for the children during the provider's absence.*

**13A.15.04 Operational Requirements**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617;

Human Services Article, 31-205; Article 88A, §6(b);

Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);

Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.04 Restriction of Operations.**

A. (text unchanged)

B. The office may base a restriction or reduction under §A of this regulation on any of the following factors:

(1) — (4) (text unchanged)

(5) Applicable fire, zoning, health, environmental, or other codes; [or]

(6) *Failure by a provider approved for a capacity of up to four children younger than 2 years old to meet the infant-toddler training requirement specified at COMAR 13A.15.06.02G; or*

[(6)] (7) (text unchanged)

C. (text unchanged)

**13A.15.06 Provider Requirements**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617;

Human Services Article, 31-205; Article 88A, §6(b);

Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);

Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.02 Training Requirements.**

A. Preservice Training. An individual who applies for an initial registration shall:

(1) (text unchanged)

(2) Provide documentation of having successfully completed:

(a) (text unchanged)

(b) The 90 clock hour course, or its approved equivalent, that satisfies the preservice training requirement for a child care teacher or child care center director under COMAR 13A.16.06.05B(4) [or .09B(2)], .09A(1)(b), or .10B(1)(a), as applicable;

(c) — (f) (text unchanged)

(g) Other course work approved by the office[.]; *and*

(3) *Complete approved training on emergency and disaster planning.*

B. (text unchanged)

C. *Emergency and Disaster Planning Training.*

(1) *The office may not approve an initial registration application unless the applicant has completed approved training on emergency and disaster planning.*

(2) *To maintain an initial registration or a continuing registration approved before July 1, 2010, a provider shall complete approved training on emergency and disaster planning as directed by the office, if the provider has not already completed that training.*

**[C.] D. Professional Development Plan.**

(1) The provider shall maintain a professional development plan [as required by the office].

(2) (text unchanged)

**[D.] A provider shall at all times, while registered to provide family child care, hold a current certificate indicating successful completion of]**

*E. Current certification in approved basic first aid and CPR training as specified in §A(1)(a) and (b) of this regulation[.] shall be maintained at all times by:*

(1) *The provider; and*

(2) *If applicable, the additional adult.*

**[E.] F. (text unchanged)****G. Infant-Toddler Training.**

(1) *Effective July 1, 2010, the office may not approve a request by an applicant or a provider for an infant-toddler capacity of more than two children younger than 2 years old unless the individual has completed 3 semester hours or 45 clock hours of approved training, or the equivalent, related exclusively to the care of children younger than 2 years old.*

(2) *A provider approved before July 1, 2010, for an infant-toddler capacity of more than two children younger than 2 years old shall complete, by December 31, 2010, 3 semester hours or 45 clock hours of approved training, or the equivalent, related exclusively to the care of children younger than 2 years old in order to maintain that approval.*

**.03 Provider Substitute.**

A. — B. (text unchanged)

C. Use of Substitutes.

(1) (text unchanged)

**[(2) When the provider plans a temporary absence of more than 2 hours, the provider shall notify the parents of the children in care in advance that a substitute will be caring for the children during the provider's absence.]**

**[(3)] (2) (text unchanged)**

D. A substitute shall:

(1) — (2) (text unchanged)

(3) Complete, sign, and submit to the office the required [form] forms for substitutes, which [includes] include permission to examine records of abuse and neglect of children and adults;

(4) — (5) (text unchanged)

E. — F. (text unchanged)

**.04 Additional Adult.**

A. Except as set forth in §B of this regulation, before an individual may be used as an additional adult, the provider shall ensure that the individual:

(1) — (4) (text unchanged)

(5) Holds a current certificate indicating successful completion of approved basic first aid and CPR training applicable to children younger than 2 years old; and

(6) Presents evidence of having completed approved SIDS training within the previous 5 years[; and].

**[(7) If the provider has not successfully completed at least 3 semester hours or 45 clock hours of approved training that is related exclusively to the care of children younger than 24 months old, submits to the office documentation that the individual has completed the provider training requirements set forth in Regulation .02A(2) of this chapter.**

B. An individual approved by the office before July 1, 2008 to serve as an additional adult shall have until July 1, 2009, to meet the requirements of §A(5) and (6) of this regulation if the individual has not already met those requirements;]

**[C.] B. — [D.] C. (text unchanged)**

**13A.15.07 Child Protection**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617;

Human Services Article, 31-205; Article 88A, §6(b);

Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);

Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.03 Applicability to Residents.**

The [requirements] requirement set forth in [Regulations .01 and .02B] Regulation .01 of this chapter also [apply] applies to a resident of the family child care home.

**13A.15.08 Child Supervision**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617;

Human Services Article, 31-205; Article 88A, §6(b);

Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);

Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.01 General Supervision.**

A. — B. (text unchanged)

C. *The provider or substitute shall:*

(1) *Remain inside the home while a child in care younger than 6 years old is present inside the home; and*

(2) *Accompany a child in care who is younger than 6 years old whenever the child is outside of the home.*

**[C.] D. — [D.] E. (text unchanged)**

**.02 Off-Site Supervision.**

A. — B. (text unchanged)

C. [The provider may permit a child to participate in a supervised activity out of the home without the provider or substitute only if:

(1) The provider has prior written permission from the child's parent for the child's participation; and

(2) Responsibility for the child's whereabouts and supervision is clearly assigned throughout the period of the activity.] *Before a child may participate in a supervised activity out of the home without the provider or substitute, responsibility for the child's whereabouts and supervision shall be clearly assigned throughout the period of the activity.*

D. A child in care may not travel to or from school or a school transportation site without adult supervision [only if the:

(1) Child is in the first or a higher grade; and

(2) Child's parent and the provider agree in writing that the child can travel safely without adult supervision.] *unless the child is in the first or a higher grade.*

**.04 Water Activity Supervision.**

[A. A child may not be permitted to swim or wade without prior written approval from the child's parent on a form supplied or approved by the office.]

**[B.] A. — [F.] E.** A child engaged in swimming or wading shall be under immediate supervision by the provider or substitute at all times.

**13A.15.09 Program Requirements**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.01 Activities.**

[A.] Each child in care shall be provided with indoor and outdoor activities that are appropriate to the age, needs, and capabilities of the child.

[B. A provider may not permit a child in care to participate in a service or activity conducted on the premises of the family child care home by an independent contractor unless the:

- (1) Provider has prior written permission from the child’s parent or guardian for the child’s participation; or
- (2) Child’s parent or guardian has requested the service or activity for the child.]

**.02 Materials and Equipment.**

A. — B. (text unchanged)

[C. Each child shall be provided periods of rest that are appropriate to the age and activities of the child.]

**13A.15.10 Child Safety**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.01 Emergency Safety.**

The provider or substitute shall:

[A. Post next to each telephone in the home, located in or near space approved for use by children, a notice with the:

- (1) 9-1-1 emergency telephone number to summon fire, police, and rescue services;
- (2) Provider’s name, address, location, and telephone number; and
- (3) Telephone number of a poison control center;

B. Keep in a readily accessible location in the home the:

- (1) Emergency substitute’s name and telephone number; and
- (2) Name of each child’s parent and the home and work phone numbers where the parent can be reached during the child’s hours of care;

C. Prepare a written emergency escape plan and post the plan:

- (1) At a location in or near the area where child care activities occur; and
- (2) If overnight care is provided, in each room where a child in care is sleeping;

D. In the event of a declared emergency, be prepared to respond as directed by the local emergency management authority;

E. Regularly orient children, who are old enough to understand, in procedures to be used in the event of a fire or other emergency requiring escape from the home;

F. Conduct fire drills:

- (1) At least once per month; and
- (2) If overnight care is provided, at least four times per year when children in overnight care are present; ]

A. Prepare and maintain a written emergency and disaster plan that:

(1) Establishes procedures for:

- (a) Evacuating the home, including an evacuation route;
- (b) Relocating children to a designated safe site;
- (c) Sheltering in place in the event that evacuation is not feasible;
- (d) Notifying parents of children in care; and
- (e) Addressing the individual needs of children, including children with special needs;

(2) Contains:

- (a) The name of, and contact information for, the local emergency operations center;
- (b) A list of local emergency services numbers; and
- (c) The radio station call sign and frequency for the local Emergency Alert System (EAS);
- (3) Is practiced with children at least:
  - (a) Once per month for fire evacuation purposes;
  - (b) Twice per year for other emergency and disaster situations; and
  - (c) If overnight care is provided, at least four times per year when children in overnight care are present; and
- (4) Is updated at least annually;

B. Post conspicuously a copy of the emergency escape route floor plan:

- (1) In or near the approved child care area; and
- (2) If overnight care is provided, in each room where a child in care is sleeping;

C. Regularly orient children, who are old enough to understand, in procedures to be used in the event of a fire or other emergency requiring escape from the home;

D. Train each substitute and, if applicable, the additional adult on the contents of the written emergency and disaster plan required at §B of this regulation;

E. In the event of a declared emergency, be prepared to respond as directed by the local emergency management agency through sources of public information;

F. During an emergency evacuation or practice, take attendance records out of the home and verify the presence of each child currently in attendance;

G. — H. (text unchanged)

**.05 Transportation Safety.**

If children are transported in a vehicle while in care, the provider or substitute shall[:

A. Have prior written permission from each child’s parent to transport the child; and

B. Ensure] ensure that, as specified by Maryland law: [(1)] A. — [(2)] B. (text unchanged)

**13A.15.11 Health**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.04 Medication Administration and Storage.**

A. Medication may not be administered to a child in care unless:

- (1) (text unchanged)
- (2) If the medication is by prescription, it is labeled by the pharmacy or physician with:

- (a) The child’s name;
  - [(b) The dosage; and]
  - (b) *The date of the prescription;*
  - (c) *The name of the medication;*
  - (d) *The medication dosage;*
  - (e) *The administration schedule;*
  - (f) *The administration route;*
  - (g) *If applicable, special instructions, such as “take with food”; and*
  - (h) *The duration of the prescription; and*
  - [(c)] (i) An expiration date that [indicates that] *states when the medication is [still] no longer useable; and*
  - (3) If the medication is by prescription, at least one dose of the medication has been given to the child at *the child’s home.*
- B. — D. (text unchanged)
- E. Medication Storage.
- (1) Each medication shall be:
    - (a) — (b) (text unchanged)
    - (c) Discarded *according to guidelines of the Office of National Drug Control Policy or the U.S. Environmental Protection Agency*, or returned to the child’s parent upon expiration or discontinuation.
  - (2) (text unchanged)

**13A.15.14 Administrative Hearings**

Authority: Family Law Article, §§5-515 — 5-517, 5-550 — 5-557.1, and 5-560; State Government Article, §§10-204 and 10-617; Human Services Article, 31-205; Article 88A, §6(b); Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.08 Decision.**

- A. — E. (text unchanged)
- F. A party dissatisfied with the decision of the administrative law judge may appeal that decision directly to the circuit court of the appropriate jurisdiction within 30 days from the date notice of the decision is sent to the party, or as otherwise provided in Maryland [Rule B4] *Rules 7-201 — 7-211.*

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 16 CHILD CARE CENTERS**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §§10-204 and 10-617; Human Services Article, §1-202; Education Article, §§2-206 and 2-303; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**Notice of Proposed Action**

[10-048-P]

- The State Superintendent of Schools proposes to amend:
- (1) Regulation **.02** under **COMAR 13A.16.01 Scope and Definitions;**
  - (2) Regulation **.02** under **COMAR 13A.16.02 License Application and Maintenance;**

- (3) Regulations **.03** and **.06** under **COMAR 13A.16.03 Management and Administration;**
- (4) Regulation **.01** under **COMAR 13A.16.05 Physical Plant and Equipment;**
- (5) Regulation **.09** under **COMAR 13A.16.06 Staff Requirements;**
- (6) Regulation **.06** under **COMAR 13A.16.07 Child Protection;**
- (7) Regulations **.03** and **.06** under **COMAR 13A.16.08 Child Supervision;**
- (8) Regulations **.01** and **.02** under **COMAR 13A.16.10 Safety;**
- (9) Regulation **.04** under **COMAR 13A.16.11 Health;**
- (10) Regulation **.03** under **COMAR 13A.16.12 Nutrition;**
- (11) Regulation **.02** under **COMAR 13A.16.13 Centers for Children with Acute Illness;**
- (12) Regulation **.03** under **COMAR 13A.16.15 Drop-In Centers;**
- (13) Regulations **.02**, **.03**, **.06**, and **.08** under **COMAR 13A.16.16 Educational Programs in Nonpublic Nursery Schools;**
- (14) Regulation **.05** under **COMAR 13A.16.17 Inspections, Complaints, and Enforcement;** and
- (15) Regulations **.03** and **.08** under **COMAR 13A.16.18 Administrative Hearings.**

**Statement of Purpose**

The purpose of this action is to: (1) establish a 90 clock-hour preservice training requirement for new non-public nursery school teachers who do not hold an early childhood-related degree; (2) establish an annual 12 clock-hour continued training requirement for all non-public nursery school teachers; (3) require at least one employee in each licensed child care center that does not have nursing staff to complete medication administration training; (4) require at least one employee from each child care center to complete emergency and disaster training and maintain written emergency and disaster plans; (5) clarify the requirements of certain regulations; and (6) group together certain related requirements.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

These proposals establish a 90 clock-hour preservice training requirement for certain new non-public nursery school teachers and a 12 clock-hour annual continued training requirement for all non-public nursery school teachers. The proposals also require at least one employee in each licensed child care center without nursing staff to complete medication administration training, and implement current Maryland law requiring emergency preparedness training for all licensed child care programs. The total cost to non-public nursery schools and child care centers is projected to be \$397,780.

**II. Types of Economic Impact.**

- A. On issuing agency: NONE
- B. On other State agencies: NONE
- C. On local governments: NONE

Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
(1) Preservice training requirement	(-)	\$120,250
(2) Annual continued training requirement	(-)	\$108,000
(3) Medication administration training	(-)	\$150,900
(4) Emergency preparedness training	(-)	\$18,630
(5) Additional revenue for child care trainers	(+)	\$397,780
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.)

D(1). As of 10/30/09, there were 295 non-public nursery schools operated by licensed child care centers. It is estimated that these nursery schools hire 370 new teachers annually, of whom an estimated 50% (185 teachers) do not have early childhood-related college degrees. The average cost of the proposed 90 clock-hour preservice training course is estimated at \$650.

Total estimated annual cost of preservice training: 185 teachers × \$650 = \$120,250.

D(2). Across all 295 non-public nursery schools currently operated by licensed child care centers, there are an estimated 900 teachers who will need to meet the proposed annual 12 clock-hour continued training requirement. The average cost of the continued training is estimated at \$120.

Total estimated annual cost of continued training: 900 teachers × \$120 = \$108,000.

D(3). As of 10/30/09, there were 2,566 licensed child care centers. Of these, an estimated 2% (approximately 51 centers) have nursing staff. The average cost of the proposed medication administration training course is estimated at \$60.

Total estimated cost of medication administration training: (2,566 - 51) centers × \$60 = \$150,900.

D(4). Of the 2,566 licensed centers, it is estimated that at least 1,324 centers have already completed approved emergency preparedness training. The average cost of the training is estimated at \$15.

Total estimated cost of training: (2,566 - 1,324) centers × \$15 = \$18,630.

D(5). Total estimated additional revenue for approved child care trainers providing emergency preparedness training, medication administration training, the 90 clock-hour preservice course, and the the 12 clock-hour continued training course:

$$\$120,250 + \$108,000 + \$150,900 + \$18,630 = \$397,780.$$

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

**Intended Beneficiaries.** The proposed regulations will benefit early care and education businesses (child care centers and non-public nursery schools) by improving the professional skills of their nursery school teachers and making their facilities safer for children in care there. The proposals will similarly benefit families using child care or non-public nursery school services by offering more highly qualified educational services and a safer environment for their children.

**Intended Beneficiaries: Households.** As noted above, families with children enrolled in child care centers or non-public nursery will benefit because their children will receive higher quality, safer services.

**Intended Beneficiaries: Businesses.** As noted above, early care and education businesses will benefit by being able to market and provide higher quality, safer services.

**Other Direct or Indirect Impacts: Adverse.** As noted below, the increased training requirements under these proposals may result in higher overhead costs for child care centers and nursery schools, and these costs may be passed on to families in the form of higher child care and nursery school fees.

**Other Direct or Indirect Impacts: Positive.** Better trained nursery school teachers and safer child care centers are expected to enhance the overall reputation of Maryland's early care and education industry, and this may help attract businesses to Maryland. Higher-quality, safer services to preschoolers in care may result in those children more effectively developing the skills they will need to succeed in school.

**Long-Term Impacts.**

No long-term effects on Maryland small businesses are anticipated which may differ from, compound, mitigate, or offset the initial effects described above.

**Estimates of Economic Impact.**

(1) Cost of providing goods and services:

The additional costs incurred by non-public nursery school operators to meet the proposed training requirements may result in higher nursery school expenses for families. Because the cost of care is determined independently by each operator, the overall change, if any, in those expenses cannot be determined.

(2) Effect on the work force:

The proposed regulations will help enhance the professional skills of nursery school teachers. This may have some indirect positive effect on nursery school employment and/or staff compensation.

(3) Capital investment, taxation, competition, and economic development:

The proposals are not expected to have any direct effect on capital investment, taxation, competition, or economic development. However, as noted above, they may help provide a more attractive environment for business growth.

(4) Consumer choice:

Consumer choice is expected to be affected positively by making safer child care services and higher quality nursery school educational services available to families seeking those services.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Liz Kelley, Director, Office of Child Care, Division of Early Childhood Development, Maryland State Department of Education, 200 W. Baltimore Street, Baltimore, MD, or call 410-767-7128, or email to [liz.kelley@msde.state.md.us](mailto:liz.kelley@msde.state.md.us), or fax to 410-333-6226. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

**13A.16.01 Scope and Definitions**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202;

Annotated Code of Maryland

Agency Note: Federal Statutory Reference —

Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);

Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.02 Definitions.**

- A. (text unchanged)  
 B. Terms Defined.  
 (1) — (23) (text unchanged)  
 (24) Employee.  
 (a) “Employee” means an individual:  
 (i) Who for compensation is employed by the center operator to work at or for the center; [or] and  
 (ii) (text unchanged)  
 (b) — (c) (text unchanged)  
 (25) — (52) (text unchanged)  
 (53) “Small center” means a child care center which is [licensed for 12 or fewer children.]:  
 (a) *Located in a private residence; and*  
 (b) *Licensed for 12 or fewer children.*  
 (54) — (58) (text unchanged)

**13A.16.02 License Application and Maintenance**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.02 Initial License.**

- A. An individual or organization not currently licensed and wanting to operate a child care center shall:  
 (1) [Attend an orientation offered by the office] *Complete an orientation to child care center licensing regulations that is offered or approved by the office;*  
 (2) (text unchanged)  
 (3) Submit to the office at least 60 days before the proposed opening date a completed and signed application form, supplied by the office, that contains a statement of truthfulness and commitment to comply with this subtitle[; ].  
 B. (text unchanged)

**13A.16.03 Management and Administration**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.03 Program Records.**

- The operator shall:  
 A. Create and maintain, for at least 2 years after their creation, records of program:  
 (1) (text unchanged)  
 (2) Attendance, by groups of children, which indicate [the dates of attendance of each child in the center.]:  
 (a) *The dates of attendance of each child in the center; and*  
 (b) *Verification by each child’s parent of that child’s recorded daily attendance in care; and*  
 B. Maintain:  
 (1) — (3) (text unchanged)  
 (4) A written record of the dates and times at which emergency [safety] and disaster plan drills were conducted pursuant to COMAR [13A.16.10.01B(3)] 13A.16.10.01A (2)(c); and  
 (5) (text unchanged)

- C. (text unchanged)

**.06 Notifications.**

- The operator shall:  
 A. — D. (text unchanged)  
 E. Immediately notify the office if an employee’s criminal background check received on or after October 1, 2005, reports a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime listed at COMAR 12.15.02.07B; [and]  
 F. Immediately notify the office of:  
 (1) (text unchanged)  
 (2) A change at the center which may affect the status of the license, including but not limited to:  
 (a) — (b) (text unchanged)  
 (c) Telephone number[.]; and  
 G. *Within 5 working days after there is a new resident on the premises who is 18 years old or older:*  
 (1) *Submit to the office a signed and notarized release form giving the office permission to examine records of abuse and neglect of children and adults for information about the resident; and*  
 (2) *Ensure that the resident applies for a federal and State criminal background check.*

**13A.16.05 Physical Plant and Equipment**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.01 Building Safety.**

- A. An operator shall provide a building for a center that is:  
 [(1) Soundly constructed;]  
 [(2)] (1) — [(4)] (3) (text unchanged)  
 B. — C. (text unchanged)

**13A.16.06 Staff Requirements**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.09 Child Care Teachers in Preschool Centers.**

- A. To qualify as a child care teacher in a preschool center, an individual shall be 19 years old or older, and meet one of the following criteria:  
 (1) The individual holds or has successfully completed:  
 (a) (text unchanged)  
 (b) 6 semester hours or 90 clock hours or their equivalent of approved [pre-employment] *pre-service* training, or hold the Child Development Associate Credential issued by the Child Development Associate National Credentialing Program;  
 (c) — (d) (text unchanged)  
 (2) — (4) (text unchanged)  
 B. — C. (text unchanged)



**13A.16.07 Child Protection**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.06 Child Security.**

A. — C. (text unchanged)

D. An employee or staff member who has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child and adult abuse and neglect records, shall:

(1) Accompany a child whenever the child is in the presence of another individual, unless the individual is:

(a) — (b) (text unchanged)

[(c) An independent contractor hired to provide a transportation service to the center who has successfully passed federal and State criminal background checks and a review of child abuse and neglect records;]

[(d)] (c) — [(g)] (f) (text unchanged)

(2) (text unchanged)

E. (text unchanged)

**13A.16.08 Child Supervision**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.03 Group Size and Staffing.**

A. — F. (text unchanged)

G. Group Size and Staffing in Approved Educational Programs.

(1) (text unchanged)

(2) A nursery school may not exceed a staff/child ratio or group size requirement set forth at §G(1) of this regulation, except that a Montessori school that has been [accredited pursuant to COMAR 13A.16.16 or] approved by the Department [before July 1, 2007,] may exceed a staff/child ratio or group size requirement by no more than 1/3.

(3) (text unchanged)

**.06 Supervision During Transportation.**

When child transportation is conducted to or from:

A. The center by the center operator, there shall be at least one adult other than the driver present in the vehicle if:

(1) (text unchanged)

(2) At least one child is being transported and the driver of the vehicle is not [a center employee; or]:

(a) A center employee; or

(b) The parent of a child in care who is authorized by the operator to assist in transporting children in care; or

B. (text unchanged)

**13A.16.10 Safety**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
 State Government Article, §10-617; Human Services Article, §1-202;  
 Annotated Code of Maryland  
 Agency Note: Federal Statutory Reference —  
 Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
 Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.01 Emergency Safety Requirements.**

A. *Emergency and Disaster Plan.*

(1) *Whenever children in care are present, there shall be at least one employee present who has completed approved training on emergency and disaster planning.*

(2) *The center operator shall prepare a written emergency and disaster plan that:*

(a) *Establishes procedures for:*

(i) *Evacuating the center, including an evacuation route;*

(ii) *Relocating staff and children to a designated safe site;*

(iii) *Sheltering in place in the event that evacuation is not feasible;*

(iv) *Notifying parents of children in care; and*

(v) *Addressing the individual needs of children, including children with special needs;*

(b) *Contains:*

(i) *The name of, and contact information for the local emergency operations center;*

(ii) *Assignment of staff responsibilities during an emergency or disaster;*

(iii) *A list of local emergency services numbers; and*

(iv) *The radio station call sign and frequency for the local Emergency Alert System;*

(c) *Is practiced by staff and children at least:*

(i) *Once per month for fire evacuation; and*

(ii) *Twice per year for other emergency and disaster situations; and*

(d) *Is updated at least annually.*

(3) *A copy of the emergency escape route floor plan shall be posted in each area and room in the center.*

(4) *Each employee shall be oriented to the contents of the written emergency and disaster plan required at §A(2) of this regulation.*

(5) *In the event of a declared emergency, the operator shall be prepared to respond as directed by the local emergency management agency through sources of public information.*

(6) *During an emergency evacuation or practice, a staff member shall take attendance records out of the center and determine the presence of each child currently in attendance.*

B. *If the child care center is included within a comprehensive emergency and disaster plan, the center operator shall ensure that:*

(1) *The comprehensive plan contents meet all emergency and disaster plan requirements set forth at §A(2)(a) and (b) of this regulation; and*

(2) *A copy of the comprehensive plan is available to all staff.*

[A.] C. An operator shall post, immediately accessible to each telephone in the center, a notice stating the:

(1) — (7) (text unchanged)

[B. An operator shall:

(1) Prepare an emergency evacuation plan which is approved by the local fire authority having jurisdiction, including a:

(a) Diagram of safe routes by which the staff and children may exit each area of the center used by a child in care in the event of a fire or other emergency requiring evacuation of the center; and

(b) Location with a telephone, such as another center, a school, or a public building, that can be used by the staff and children in the event of a fire or other emergency until the operator or director can contact the parents of the children in care;

(2) Post a copy of the plan in each area and room in the center;

(3) Require that, at least once a month, the staff and the children practice the procedures to be used in the event of a fire or other emergency requiring escape from the center;

(4) In the event of a declared emergency, be prepared to respond as directed by the local emergency management authority.

C. An operator shall ensure that, during an emergency evacuation or practice, a staff member takes attendance records out of the center and determines the presence of each child currently in attendance.]

#### **.02 First Aid and CPR.**

A. — C. (text unchanged)

D. *§C of this regulation does not apply if the driver of the vehicle is a parent of a child in care who is designated by the center operator to assist in transporting children in care.*

[D.] E. (text unchanged)

#### **13A.16.11 Health**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
State Government Article, §10-617; Human Services Article, §1-202;  
Annotated Code of Maryland

Agency Note: Federal Statutory Reference —  
Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.04 Medication Administration and Storage.**

A. Medication may not be administered to a child in care unless:

(1) (text unchanged)

(2) If the medication is by prescription, it is labeled by the pharmacy or physician with:

(a) The child's name;

[(b) The dosage; and ]

(b) *The date of the prescription;*

(c) *The name of the medication;*

(d) *The medication dosage;*

(e) *The administration schedule;*

(f) *The administration route;*

(g) *If applicable, special instructions, such as "take with food";*

(h) *The duration of the prescription; and*

[(c)] (i) An expiration date that [indicates that] states when the medication is [still] no longer useable; and

(3) (text unchanged)

B. — D. (text unchanged)

E. Medication Storage.

(1) Each medication shall be:

(a) — (b) (text unchanged)

(c) Discarded according to guidelines of the Office of National Drug Control Policy or the U.S. Environmental Protection Agency, or returned to the child's parent upon expiration or discontinuation.

(2) (text unchanged)

F. *Effective July 1, 2011:*

(1) *Whenever children in care are present, there shall be at least one center employee present who has completed medication administration training approved by the office.*

(2) *Medication may be administered to a child in care only by an employee who has completed approved medication training.*

G. *Section F of this regulation does not apply if:*

(1) *The center employs a registered nurse, licensed practical nurse, or medication technician certified by the Maryland Board of Nursing to administer medication to children in care; or*

(2) *Responsibility for administering medication to children in care is delegated to a center employee by a delegating nurse in accordance with COMAR 10.27.11.*

#### **13A.16.12 Nutrition**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
State Government Article, §10-617; Human Services Article, §1-202;  
Annotated Code of Maryland

Agency Note: Federal Statutory Reference —  
Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.03 Food Sources.**

A. — D. (text unchanged)

[E. An operator shall discard promptly the following:

(1) All spoiled fruits, vegetables, or other food;

(2) Refrozen food;

(3) Potentially hazardous frozen food that has been thawed and not immediately cooked and served;

(4) Swelled, rusty, or leaky canned foods; and

(5) Foods exposed to fire, smoke, or water damage.]

#### **13A.16.13 Centers for Children with Acute Illness**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
State Government Article, §10-617; Human Services Article, §1-202;  
Annotated Code of Maryland

Agency Note: Federal Statutory Reference —  
Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.02 Applicability of Subtitle.**

An applicant for a center offering care under this chapter shall meet the requirements of this subtitle with the exception of:

A. — D. (text unchanged)

E. COMAR [13A.16.10.01B(3)] 13A.16.10.01A(2)(c) concerning emergency evacuation and disaster drills for children; and

F. (text unchanged)

#### **13A.16.15 Drop-In Centers**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
State Government Article, §10-617; Human Services Article, §1-202;  
Annotated Code of Maryland

Agency Note: Federal Statutory Reference —  
Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.03 Applicability of Subtitle.**

An applicant for a drop-in center license shall meet the requirements of this subtitle with the exception of:

A. — D. (text unchanged)

E. COMAR [13A.16.10.01B(3)] 13A.16.10.01A(2)(c) concerning emergency evacuation and disaster drills for children; and

F. (text unchanged)

### 13A.16.16 Educational Programs in Nonpublic Nursery Schools

Authority: Education Article, §§2-206 and 2-303;  
Family Law Article, §§5-570 and 5-573;  
Annotated Code of Maryland

#### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (8) (text unchanged)

(9) “*Montessori program*” means an educational program based on the pedagogical philosophy of Dr. Maria Montessori, as reflected in the program’s teacher qualifications, curriculum, instructional methods, and materials and equipment.

[(9)] (10) — [(13)] (14) (text unchanged)

#### .03 Approval to Operate an Educational Program — General Requirements.

A. (text unchanged)

B. A bona fide church organization may [not] be approved to operate an educational program without holding a child care center license or a letter of compliance.

C. — G. (text unchanged)

#### .06 Personnel Qualifications.

A. (text unchanged)

B. Teachers.

(1) — (2) (text unchanged)

(3) A teacher who provides instruction in language and literacy development, mathematical and scientific thinking, [and] or social studies shall hold[, at a minimum, one of the following credentials] or have completed:

(a) — (c) (text unchanged)

(4) In addition to meeting the requirements of §B(3) of this regulation, a teacher employed in a Montessori program shall also hold a Montessori diploma for the level of the individual’s assignment.

(5) If the degree, college credit, or foreign credential required at §B(3) of this regulation does not include at least 6 semester hours of approved early childhood coursework, the teacher shall, in addition:

(a) Hold or have completed:

(i) The Child Development Associate Credential issued by the Child Development Associate National Credentialing Program; or

(ii) 6 semester hours, 90 clock hours or their equivalent of approved pre-service training; or

(b) Be certified by the Department as a teacher for early childhood in nursery through third grade.

(6) An individual approved as a teacher by the Department before July 1, 2010, shall remain qualified for that position as long as the individual is continuously employed as a teacher.

(7) Effective July 1, 2010, a teacher in an educational program shall complete at least 12 clock hours of approved continued training per full year of employment, measured from date of hire, in that position.

[(4)] C. An individual who provides assistance to a teacher in a class is not required to meet the [requirement] requirements of §B(3) or (7) of this regulation.

[C.] D. (text unchanged)

#### .08 Child Records.

A. — C. (text unchanged)

D. Age of Admission.

(1) Except as provided by §D(2) of this regulation, [by the 2006 — 2007 school year and thereafter,] a child shall be 2 years old, 3 years old, or 4 years old on or before September 1 of a school year to be age-eligible for admission during that school year to a nonpublic nursery school program approved under this chapter.

(2) (text unchanged)

### 13A.16.17 Inspections, Complaints, and Enforcement

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585;  
State Government Article, §10-617; Human Services Article, §1-202;  
Annotated Code of Maryland

Agency Note: Federal Statutory Reference —  
Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.);  
Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### .05 Emergency Suspension.

A. (text unchanged)

B. The office shall hand deliver written notice of the emergency suspension to the operator stating:

(1) The regulatory basis for the suspension; and

(2) That the operator shall *immediately* stop providing child care[;

(a) If the date of the notice of emergency suspension is before October 1, 2008, within 72 hours of delivery of the notice unless the operator requests a hearing in writing within 72 hours of delivery of the notice; or

(b) Immediately upon delivery of the notice of emergency suspension, if the date of the notice is on or after October 1, 2008];

(3) — (4) (text unchanged)

(5) That if the emergency suspension order is upheld, [the operator shall cease or continue to cease operations, as applicable,] *stoppage of child care at the center shall continue* until it is determined that the health, safety, or welfare of a child in the center is no longer threatened;

(6) — (7) (text unchanged)

C. (text unchanged)

### 13A.16.18 Administrative Hearings

Authority: Family Law Article §§5-573 and 5-580;  
State Government Article, §10-204;  
Annotated Code of Maryland

#### .03 Hearing Requests.

A. — B. (text unchanged)

C. Emergency Action Hearing Requests.

(1) — (2) (text unchanged)

(3) [In the case of an emergency suspension, a] A hearing request [filed within 72 hours of the hand delivery of the notice of emergency suspension shall stay the emergency suspension until after a hearing decision is made. In all other emergency actions, the filing of a hearing request may not stay [the] an emergency action.

(4) — (5) (text unchanged)

#### .08 Decision.

A. — E. (text unchanged)

F. A party dissatisfied with the decision of the administrative law judge may appeal that decision directly to the Circuit Court of the appropriate jurisdiction within 30 days

from the date notice of the decision is sent to the party, or as otherwise provided in Maryland Rule [B4] 7-201 — 7-211.

NANCY S. GRASMICK  
State Superintendent of Schools

**Subtitle 17 CHILD CARE—LETTERS OF COMPLIANCE**

**Notice of Proposed Action**

[10-047-P]

The State Superintendent of Schools proposes to amend:

- (1) Regulation .02 under COMAR 13A.17.01 **Scope and Definitions**;
- (2) Regulations .03, .06, and .07 under COMAR 13A.17.03 **Management and Administration**;
- (3) Regulation .01 under COMAR 13A.17.05 **Physical Plant and Equipment**;
- (4) Regulation .06 under COMAR 13A.17.07 **Child Protection**;
- (5) Regulation .06 under COMAR 13A.17.08 **Child Supervision**;
- (6) Regulations .01 and .02 under COMAR 13A.17.10 **Safety**;
- (7) Regulation .04 under COMAR 13A.17.11 **Health**;
- (8) Regulations .02, .03, .06, and .08 under COMAR 13A.17.14 **Educational Programs in Nonpublic Nursery Schools**;
- (9) Regulation .05 under COMAR 13A.17.15 **Inspections, Complaints, and Enforcement**; and
- (10) Regulations .03 and .08 under COMAR 13A.17.16 **Administrative Hearings**.

**Statement of Purpose**

The purpose of this action is to: establish a 90 clock-hour preservice training requirement for new non-public nursery school teachers who do not hold an early childhood-related degree; establish an annual 12 clock-hour continued training requirement for all non-public nursery school teachers; require at least one employee in each letter of compliance facility that does not have nursing staff to complete medication administration training; require at least one employee from each letter of compliance facility to complete emergency and disaster training and maintain written emergency and disaster plans; clarify the requirements of certain regulations; and group together certain related requirements.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action establishes a 90 clock-hour preservice training requirement for certain new non-public nursery school teachers and a 12 clock-hour annual continued training requirement for all non-public nursery school teachers. The proposals also require at least one employee in each letter of compliance (LOC) facility without nursing staff to complete medication administration training, and implement current Maryland law requiring emergency preparedness training for all licensed child care programs. The total annual cost to LOC facilities with nursery schools is projected to be \$25,640.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:	NONE		
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:			
(1) Preservice training requirement	(-)		\$6,500
(2) Annual continued training requirement	(+)		\$6,000
(3) Medication administration training	(-)		\$11,700
(4) Emergency preparedness training	(+)		\$1,440
(5) Revenue for approved child care trainers	(+)		\$25,640
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.)

D(1). As of October 30, 2009, there were 17 non-public nursery schools operated by child care facilities holding a letter of compliance (LOC). It is estimated that these nursery schools hire a total of 20 new teachers annually, of whom an estimated 50 percent (10 teachers) do not hold an early childhood-related college degree. The average cost of the proposed 90 clock-hour preservice training course is estimated at \$650. Total estimated annual cost of preservice training: 10 teachers × \$650 = \$6,500.

D(2). Across all 17 non-public nursery schools currently operated by LOC facilities, there are an estimated 50 teachers who will need to meet the proposed annual 12 clock-hour continued training requirement. The average cost of the continued training is estimated at \$120. Total estimated annual cost of continued training: 50 teachers × \$120 = \$6,000.

D(3). As of October 30, 2009, there were 199 LOC facilities. Of these, an estimated 2 percent (approximately 4 LOC facilities) have nursing staff. The average cost of a medication administration training course is estimated at \$60. Total estimated cost of medication administration training: (199 - 4) LOC facilities × \$60 = \$11,700.

D(4). Of the 199 LOC facilities, it is estimated that at least 103 facilities have already completed approved emergency preparedness training. The average cost of the training is estimated at \$15. Total estimated cost of training: (199 - 103) LOC facilities × \$15 = \$1,440.

D(5). Total estimated additional revenue for approved child care trainers providing training on emergency preparedness, medication administration training, the 90 clock-hour preservice course, and the 12 clock-hour continued training course: \$6,500 + \$6,000 + \$11,700 + \$1,440 = \$25,640.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows. **Intended Beneficiaries.**

The proposed regulations will benefit early care and education businesses (child care facilities operating under a letter of compliance and non-public nursery schools) by improving the professional skills of their nursery school teachers and making their facilities safer for children in care there. The proposals will similarly benefit families using child care or non-public nursery school services by offer-

ing more highly qualified educational services and a safer environment for their children.

Intended Beneficiaries: Households.

As noted above, families with children enrolled in child care facilities or non-public nursery schools will benefit because their children will receive higher quality, safer services.

Intended Beneficiaries: Businesses.

As noted above, early care and education businesses will benefit by being able to market and provide higher quality, safer services.

Other Direct or Indirect Impacts: Adverse.

As noted below, the increased training requirements under these proposals may result in higher overhead costs for child care facilities and nursery schools, and these costs may be passed on to families in the form of higher child care and nursery school fees.

Other Direct or Indirect Impacts: Positive.

Better trained nursery school teachers and safer child care facilities are expected to enhance the overall reputation of Maryland's early care and education industry, and this may help attract businesses to Maryland. Higher-quality, safer services to preschoolers in care may result in those children more effectively developing the skills they will need to succeed in school.

Long-Term Impacts.

No long-term effects on Maryland small businesses are anticipated which may differ from, compound, mitigate, or offset the initial effects described above.

Estimates of Economic Impact.

(1) Cost of providing goods and services: The additional costs incurred by non-public nursery school operators to meet the proposed training requirements may result in higher nursery school expenses for families. Because the cost of care is determined independently by each operator, the overall change, if any, in those expenses cannot be determined.

(2) Effect on the work force: The proposed regulations will help enhance the professional skills of nursery school teachers. This may have some indirect positive effect on nursery school employment and/or staff compensation.

(3) Capital investment, taxation, competition, and economic development: The proposals are not expected to have any direct effect on capital investment, taxation, competition, or economic development. However, as noted above, they may help provide a more attractive environment for business growth.

(4) Consumer choice: Consumer choice is expected to be affected positively by making safer child care services and higher quality nursery school educational services available to families seeking those services.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Liz Kelley, Director, Office of Child Care, Division of Early Childhood Development, Maryland State Department of Education, 200 W. Baltimore Street, Baltimore, MD, or call 410-767-7128, or email to liz.kelley@msde.state.md.us, or fax to 410-333-6226. Comments will be accepted through March 2, 2010. A public hearing has not been scheduled.

### 13A.17.01 Scope and Definitions

Authority: Family Law Article, §§5-560, 5-564, and 5-570-5-585; State Government Article, §10-617; Human Services Article, §1-202; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (16) (text unchanged)

(17) Employee.

(a) "Employee" means an individual:

(i) Who for compensation is employed by the facility operator to work at or for the facility; [or] and

(ii) (text unchanged)

(b) — (c) (text unchanged)

(18) — (41) (text unchanged)

(42) "Small facility" means a child care facility that is [licensed for 12 or fewer children]:

(a) Located in a private residence; and

(b) Licensed for 12 or fewer children.

(43) — (46) (text unchanged)

### 13A.17.03 Management and Administration

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### .03 Program Records.

The operator shall:

A. Create and maintain, for at least 2 years after their creation, records of program:

(1) (text unchanged)

(2) Attendance, by groups of children, which indicate [the dates of attendance of each child in the facility; and]:

(a) The dates of attendance of each child in the facility; and

(b) Verification by each child's parent of that child's recorded daily attendance in care.

B. Maintain:

(1) — (3) (text unchanged)

(4) A written record of the dates and times at which emergency [safety] and disaster plan drills were conducted pursuant to COMAR [13A.17.10.01B(3)] 13A.17.10.01A (2)(c); and

(5) (text unchanged)

#### .06 Notifications.

The operator shall:

A — C. (text unchanged)

D. Immediately notify the office of an employee's criminal background check result received on or after October 1, 2005, that reports a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge for the commission or attempted commission of a crime listed at COMAR 12.15.02.07B; [and]

E. Immediately notify the office of:

(1) (text unchanged)

(2) A change at the child care facility which may affect the status of the letter of compliance, including but not limited to:

- (a) — (b) (text unchanged)
- (c) Telephone number[.]; and

*F. Within 5 working days after there is a new resident on the premises who is 18 years old or older:*

(1) *Submit to the office a signed and notarized release form giving the office permission to examine records of abuse and neglect of children and adults for information about the resident; and*

(2) *Ensure that the resident applies for a federal and State criminal background check.*

#### **.07 Change of Operation.**

A. — B. (text unchanged)

C. If an operator wishes to convert to a summer youth camp, the operator shall:

(1) — (2) (text unchanged)

(3) **[Remove]** *If applicable, remove the letter of compliance from display on the premises used for operating a summer youth camp during the period of summer youth camp operation; and*

(4) (text unchanged)

### **13.17.05 Physical Plant and Equipment**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.01 Building Safety.**

A. An operator shall provide a building for a child care facility that is:

**[(1) Soundly constructed;]**

**[(2)] (1) Maintained in good repair;**

**[(3)] (2) Free from health and safety hazards as identified by the office; and**

**[(4)] (3) Clean and free from infestation of insects and rodents.**

B. — C. (text unchanged)

### **13A.17.07 Child Protection**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.06 Child Security.**

A. — B. (text unchanged)

C. A facility employee or staff member who has successfully passed federal and State criminal background checks and, if hired on or after October 1, 2005, a review of child and adult abuse and neglect records shall:

(1) Accompany a child whenever the child is in the presence of another individual, unless the individual is:

(a) — (b) (text unchanged)

**[(c) An independent contractor hired to provide a transportation service to the facility who has successfully passed federal and State criminal background checks and a review of child abuse and neglect records;]**

**[(d)] (c) — [(e)] (d) (text unchanged)**

**[(f) Another child's parent or guardian who is designated by the facility operator to assist in transporting children to or from the facility;]**

**[(g)] (e) — [(h)] (f) (text unchanged)**

(2) (text unchanged)

### **13A.17.08 Child Supervision**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.06 Supervision During Transportation.**

When child transportation is conducted to or from:

A. The child care facility by the facility operator, there shall be at least one adult other than driver present in the vehicle if:

(1) (text unchanged)

(2) At least one child is being transported and the driver of the vehicle is not **[a facility employee; or]:**

(a) *A facility employee; or*

(b) *The parent of a child in care who is authorized by the operator to assist in transporting children in care; or*

B. (text unchanged)

### **13A.17.10 Safety**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202; Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### **.01 Emergency Safety Requirements.**

A. *Emergency and Disaster Plan.*

(1) *Whenever children in care are present, there shall be at least one employee present who has completed approved training on emergency and disaster planning.*

(2) *The facility operator shall prepare a written emergency and disaster plan that:*

(a) *Establishes procedures for:*

(i) *Evacuating the facility, including an evacuation route;*

(ii) *Relocating staff and children to a designated safe site;*

(iii) *Sheltering in place in the event that evacuation is not feasible;*

(iv) *Notifying parents of children in care; and*

(v) *Addressing the individual needs of children, including children with special needs;*

(b) *Contains:*

(i) *The name of, and contact information for the local emergency operations center;*

(ii) *Assignment of staff responsibilities during an emergency or disaster;*

(iii) *A list of local emergency services numbers; and*

(iv) *The radio station call sign and frequency for the local Emergency Alert System;*

(c) *Is practiced by staff and children at least:*

(i) *Once per month for fire evacuation; and*

(ii) *Twice per year for other emergency and disaster situations; and*

(d) *Is updated at least annually.*

(3) *A copy of the emergency escape route floor plan shall be posted in each area and room in the facility.*

(4) *Each employee shall be oriented to the contents of the written emergency and disaster plan required at §A(2) of this regulation.*

(5) *In the event of a declared emergency, the operator shall be prepared to respond as directed by the local emergency management agency through sources of public information.*

(6) *During an emergency evacuation or practice, a staff member shall take attendance records out of the facility and determine the presence of each child currently in attendance.*

*B. If the child care facility is included within a comprehensive emergency and disaster plan, the facility operator shall ensure that:*

(1) *The comprehensive plan contents meet all emergency and disaster plan requirements set forth at §A(2)(a) and (b) of this regulation; and*

(2) *A copy of the comprehensive plan is available to all staff.*

[A.] *C. (text unchanged)*

[B. An operator shall:

(1) *Prepare an emergency evacuation plan which is approved by the local fire authority having jurisdiction, including a:*

(a) *Diagram of safe routes by which the staff and children may exit each area of the facility used by a child in care in the event of a fire or other emergency requiring evacuation of the facility; and*

(b) *Location with a telephone, such as another child care facility, a school, or a public building, that can be used by the staff and children in the event of a fire or other emergency until the operator or director can contact the parents of the children in care;*

(2) *Post a copy of the plan in each area and room in the facility;*

(3) *Require that, at least once a month, the staff and the children practice the procedures to be used in the event of a fire or other emergency requiring escape from the facility; and*

(4) *In the event of a declared emergency, be prepared to respond as directed by the local emergency management authority.*

*C. An operator shall ensure that, during an emergency evacuation or practice, a staff member takes attendance records out of the facility and determines the presence of each child currently in attendance.]*

**.02 First Aid and CPR.**

*A. [An operator shall arrange the staffing pattern so that the nursery school or child care program has in attendance at all times at least one individual who is responsible for supervision of children, including children engaged in an activity away from the premises of the facility,] At all times, including during an off-site activity, at least one individual who is responsible for supervision of children shall be present who holds a current certificate indicating successful completion of approved:*

(1) — (2) *(text unchanged)*

*B. (text unchanged)*

*C. Whenever a child in care is being transported under child care facility auspices to or from the facility, there shall be at least one adult present in the vehicle who is currently certified in approved CPR and first aid. This requirement may be met by the driver of the vehicle.*

*D. §C of this regulation does not apply if the driver of the vehicle is a parent of a child in care who is designated by the child care facility operator to assist in transporting children in care.*

[C.] *E. (text unchanged)*

**13A.17.11 Health**

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202;

Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

**.04 Medication Administration and Storage.**

*A. Medication may not be administered to a child in care unless:*

(1) *(text unchanged)*

(2) *If the medication is by prescription, it is labeled by the pharmacy or physician with:*

(a) *(text unchanged)*

[(b) *The dosage; and ]*

(b) *The date of the prescription;*

(c) *The name of the medication;*

(d) *The medication dosage;*

(e) *The administration schedule;*

(f) *The administration route;*

(g) *If applicable, special instructions, such as “take with food”;*

(h) *The duration of the prescription; and*

[c] (i) *An expiration date that [indicates that] states when the medication is [still] no longer useable; and*

(3) *(text unchanged)*

*B. — D. (text unchanged)*

*E. Medication Storage.*

(1) *Each medication shall be:*

(a) — (b) *(text unchanged)*

(c) *Discarded according to guidelines of the Office of National Drug Control Policy or the U.S. Environmental Protection Agency, or returned to the child’s parent upon expiration or discontinuation.*

(2) *(text unchanged)*

*F. Effective July 1, 2011:*

(1) *Whenever children in care are present, there shall be at least one center employee present who has completed medication administration training approved by the office.*

(2) *Medication may be administered to a child in care only by an employee who has completed approved medication training.*

*G. §F of this regulation does not apply if:*

(1) *The center employs a registered nurse, licensed practical nurse, or medication technician certified by the Maryland Board of Nursing to administer medication to children in care; or*

(2) *Responsibility for administering medication to children in care is delegated to a center employee by a delegating nurse in accordance with COMAR 10.27.11.*

### 13A.17.14 Educational Programs in Nonpublic Nursery Schools

Authority: Education Article, §§2-206 and 2-303; Family Law Article, §§5-570 and 5-573;  
Annotated Code of Maryland

#### .02 Definitions.

- A. (text unchanged)  
B. Terms Defined.

(1) — (8) (text unchanged)

(9) “*Montessori program*” means an educational program based on the pedagogical philosophy of Dr. Maria Montessori, as reflected in the program’s teacher qualifications, curriculum, instructional methods, and materials and equipment.

[(9)] (10) — [(13)] (14) (text unchanged)

#### .03 Approval to Operate an Educational Program — General Requirements.

- A. (text unchanged)  
B. A bona fide church organization may [not] be approved to operate an educational program without holding a child care center license or a letter of compliance.  
C. — G. (text unchanged)

#### .06 Personnel Qualifications.

- A. (text unchanged)  
B. Teachers.  
(1) — (2) (text unchanged)  
(3) A teacher who provides instruction in language and literacy development, mathematical and scientific thinking, [and] or social studies shall hold[, at a minimum, one of the following credentials] or have completed:  
(a) — (c) (text unchanged)  
(4) *In addition to meeting the requirements of §B(3) of this regulation, a teacher employed in a Montessori program shall also hold a Montessori diploma for the level of the individual’s assignment.*  
(5) *If the degree, college credit, or foreign credential required at §B(3) of this regulation does not include at least 6 semester hours of approved early childhood coursework, the teacher shall, in addition:*  
(a) *Hold or have completed:*  
(i) *The Child Development Associate Credential issued by the Child Development Associate National Credentialing Program; or*  
(ii) *6 semester hours, 90 clock hours or their equivalent of approved pre-service training; or*  
(b) *Be certified by the Department as a teacher for early childhood in nursery through third grade.*  
(6) *An individual approved as a teacher by the Department before July 1, 2010, shall remain qualified for that position as long as the individual is continuously employed as a teacher.*  
(7) *Effective July 1, 2010, a teacher in an educational program shall complete at least 12 clock hours of approved continued training per full year of employment, measured from date of hire, in that position.*

[(4)] C. An individual who provides assistance to a teacher in a class is not required to meet the [requirement] requirements of §B(3) or (7) of this regulation.

[C.] D. (text unchanged)

#### .08 Child Records.

- A. — C (text unchanged)  
D. Age of Admission.

(1) Except as provided by §D(2) of this regulation, [by the 2006 — 2007 school year and thereafter,] a child shall be 2 years old, 3 years old, or 4 years old on or before September 1 of a school year to be age-eligible for admission during that school year to a nonpublic nursery school program approved under this chapter.

(2) (text unchanged)

### 13A.17.15 Inspections, Complaints, and Enforcement

Authority: Family Law Article, §§5-560, 5-564, and 5-570 — 5-585; State Government Article, §10-617; Human Services Article, §1-202;  
Annotated Code of Maryland

Agency Note: Federal Statutory Reference — Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.); Pro-Children Act of 1994 (20 U.S.C. §6081 et seq.)

#### .05 Emergency Suspension.

- A. (text unchanged)  
B. The office shall hand deliver written notice of the emergency suspension to the operator stating:

(1) (text unchanged)

(2) That the operator shall *immediately* stop providing child care[:]; and

[(a) If the date of the notice of emergency suspension is before October 1, 2008, within 72 hours of delivery of the notice unless the operator requests a hearing in writing within 72 hours of delivery of the notice; or

(b) Immediately upon delivery of the notice of emergency suspension, if the date of the notice is on or after October 1, 2008;]

(3) — (4) (text unchanged)

(5) That if the emergency suspension order is upheld, [the operator shall cease or continue to cease operations, as applicable,] *stoppage of child care at the center shall continue* until it is determined that the health, safety, or welfare of a child in the facility is no longer threatened;

(6) — (7) (text unchanged)

C. (text unchanged)

### 13A.17.16 Administrative Hearings

Authority: Family Law Article §§5-573 and 5-580; State Government Article, §10-204;  
Annotated Code of Maryland

#### .03 Hearing Requests.

- A. — B. (text unchanged)  
C. Emergency Action Hearing Requests.

(1) — (2) (text unchanged)

(3) [In the case of an emergency suspension, a] A hearing request [filed within 72 hours of the hand delivery of the notice of emergency suspension shall stay the emergency suspension until after a hearing decision is made. In all other emergency actions, the filing of a hearing request may not stay the] *shall not stay an* emergency action.

(4) — (5) (text unchanged)

#### .08 Decision.

- A. — E. (text unchanged)

F. A party dissatisfied with the decision of the administrative law judge may appeal that decision directly to the Circuit Court of the appropriate jurisdiction within 30 days



from the date notice of the decision is sent to the party, or as otherwise provided in Maryland Rule [B4] 7-201—7-211.

NANCY S. GRASMICK  
State Superintendent of Schools

## Title 14 INDEPENDENT AGENCIES

### Subtitle 09 WORKERS' COMPENSATION COMMISSION

#### Notice of Proposed Action

[10-062-P]

The Workers' Compensation Commission proposes to:

- (1) Repeal Regulation .20 under **COMAR 14.09.01 Procedural Regulations**; and
- (2) Amend Regulations .01 and .04 — .07 and adopt new Regulations .08 — .12 under **COMAR 14.09.05 Vocational Rehabilitation Practitioners**.

This action was considered by the Workers' Compensation Commission at an open meeting held on December 10, 2009, notice of which was given by publication in 36:24 Md. R. 1909, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to clarify the procedures for obtaining vocational rehabilitation services, and the standards of practice for vocational rehabilitation service practitioners.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 Amy S. Lackington, Administrator, Workers' Compensation Commission, 10 East Baltimore Street, Baltimore, MD 21202, or call 410-864-5300, or email to [alackington@wcc.state.md.us](mailto:alackington@wcc.state.md.us), or fax to 410-864-5301. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### Open Meeting

Final action on the proposal will be considered by Workers' Compensation Commission during a public meeting to be held on March 25, 2009 at 9:00 a.m., at 10 E. Baltimore Street, Baltimore, MD 21202.

### 14.09.05 Vocational Rehabilitation Practitioners

Authority: Labor and Employment Article, §§9-309, 9-6A-04, and 9-6A-07, Annotated Code of Maryland

#### .01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (4) (text unchanged)

(5) “DORS” means Maryland State Department of Education Division of Rehabilitation Services.

(6) “Enrolled vocational rehabilitation organization” means an organization or company that:

(a) Employs, or has working on its behalf, at least one registered vocational rehabilitation practitioner; and

(b) Has enrolled with the Commission.

(7) “Functional Capacity Evaluation (FCE)” means the systematic process of assessing an individual’s physical capacities and functional abilities and matching human performance levels to the demands of a specific job or work activity or occupation.

(8) “Job placement” means services provided to support the disabled covered employee’s search for work including, but not limited to, identifying job leads, arranging interviews, teaching techniques for effective job searches, resume writing, interviewing and job application completion,

[(5)] (9) — [(6)] (10) (text unchanged)

[(7)] (11) Provider.

(a) “Provider” means [a person who provides vocational rehabilitation services] *the enrolled vocational rehabilitation organization that provides vocational rehabilitation services to a claimant through a registered vocational rehabilitation practitioner.*

(b) “Provider” includes [a rehabilitation counselor or a vocational evaluator] *the Maryland State Department of Education Division of Rehabilitation Services (“DORS”).*

[(8)] (12) “Rehabilitation counselor” means a qualified individual who is engaged in activities leading to vocational assessment or job placement, or both, of an injured worker.

(13) “Rehabilitation practitioner” means an individual who provides vocational rehabilitation services including:

(a) A nurse certified by the State Board of Nursing as a nurse case manager;

(b) A rehabilitation counselor; and

(c) A vocational evaluator.

(14) “Retraining plan” means a plan for providing the disabled covered employee with educational and vocational training and may include on-the-job training.

(15) “Self-employment plan” means a business plan for self-employment that identifies the skills, experience and expertise necessary to manage the business, and may include a complete business description, an organization plan, owner/operator qualifications, a marketing plan supported by factual information concerning the demand for products or services, income projections, a sound start-up financial plan, financial resources needed to start the business, and a contingency plan in the event the self-employment plan targets are not met.

[(9)] (16) — [(12)] (19) (text unchanged)

(20) “Vocational testing” means standardized interest, aptitude, achievement, and other specific skills tests used to identify areas of interest and aptitudes for various types of work, and compatibilities with different work environments. The types of test may include but are not limited to the Wide Range Achievement Test (WRAT), the General Aptitude Test

*Battery (GATB), Strong Interest Inventory, the Myers-Briggs Type Indicator, and the Test of Nonverbal Intelligence.*

**.04 General Rules for Vocational Rehabilitation Service [Providers] Practitioners.**

A. A [provider] practitioner shall consider the best interests of [an injured worker] a *disabled covered employee* in providing vocational rehabilitation services. Unrepresented [injured workers] *disabled covered employees* shall be treated in the same manner as represented [injured workers] *disabled covered employees*.

B. A [provider] practitioner may not misrepresent the [provider's] practitioner's duties or responsibilities or the workers' compensation process to [injured workers] *disabled covered employees*.

C. *The vocational rehabilitation practitioner shall exercise independent and professional judgment when performing an assessment or developing a vocational rehabilitation plan.*

D. *At the initial comprehensive assessment, a practitioner shall advise the disabled covered employee that:*

(1) *The practitioner's fees are paid by the employer/insurer; and*

(2) *The practitioner is an independent professional and shall render an opinion based solely on the facts and evidence in the case.*

E. *Subject to any applicable privilege, a practitioner shall notify all parties of any contact with or about the disabled covered employee, whether that contact was in person, in writing, or made electronically.*

F. *Unless the disabled covered employee consents in writing, a practitioner may not be present during a medical examination.*

G. *With the written consent of the disabled covered employee, a practitioner may seek a healthcare provider's opinion following examination.*

[C.] H. A [provider] practitioner shall comply with:

(1) The Commissioner's orders and procedures[, including COMAR 14.09.01.20]; and

(2) Standards of practice adopted by the [provider's] practitioner's State licensing board or commission, if applicable.

[D.] I. Penalties. Violation of this regulation may result in the Commission:

(1) Suspending or revoking the [provider's] practitioner's registration;

(2) Placing the [provider] practitioner on probation; or

(3) Reprimanding the [provider] practitioner.

**.05 Standards of Practice for Rehabilitation Counselors and Vocational Evaluators.**

A. (text unchanged)

B. Standards.

(1) Rehabilitation counselors and vocational evaluators shall use their professional skills to promote [an injured worker's] a *disabled covered employee's* active participation in plan development and the rehabilitation process within the [injured worker's] *disabled covered employee's* physical and mental abilities.

(2) (text unchanged)

(3) Rehabilitation counselors and vocational evaluators may not engage in any activity which may compromise the health, safety, or welfare of the [injured worker] *disabled covered employee*, and shall avoid continuing a consulting or counseling relationship if it is reasonably expected that the relationship can be of no benefit to the client.

(4) Rehabilitation counselors and vocational evaluators shall demonstrate honesty and objectivity in:

(a) — (c) (text unchanged)

(5) Rehabilitation counselors and vocational evaluators may not engage in harassment or discrimination of [injured workers] *disabled covered employees* on the basis of age, race, creed, national origin, gender, disability, or religious affiliation.

(6) — (10) (text unchanged)

C. Penalties. Violation of one or more of the standards in §B of this regulation may result in the Commission:

(1) Suspending or revoking the [provider's] practitioner's registration;

(2) Placing the [provider] practitioner on probation; or

(3) Reprimanding the [provider] practitioner.

**.06 Complaints Against [Providers] Practitioners [of Vocational Rehabilitation Services].**

A. Complaints.

(1) A complaint concerning a [provider] practitioner [of vocational rehabilitation services] shall be:

(a) — (c) (text unchanged)

(2) — (3) (text unchanged)

B. Preliminary Procedures.

(1) If the Director determines that the complaint may be meritorious, the Director shall:

(a) Promptly notify the [provider] practitioner in writing that a complaint has been filed against the [provider] practitioner; and

(b) Send the [provider] practitioner a copy of the complaint by registered mail.

(2) Within 21 days after receipt of the complaint, the [provider] practitioner may:

(a) — (b) (text unchanged)

(3) — (4) (text unchanged)

(5) If the Director requests additional information from the [provider] practitioner, the [provider] practitioner shall respond within the time specified by the Director. Failure to respond or to participate in the Director's investigation may result in a finding against the [provider] practitioner and a reprimand or suspension or revocation of the [provider's] practitioner's registration.

C. Referral to Commission.

(1) If the Director determines that there is reasonable cause to believe that the [provider] practitioner has violated one or more of the Commission's regulations or standards of practice, the Director shall refer the complaint to the Commission for a decision. The Director shall promptly inform the [provider] practitioner by registered mail that the complaint has been referred to the Commission.

(2) The [provider] practitioner shall respond in writing within 21 days after receipt of notice of the referral. The response shall indicate whether the [provider] practitioner:

(a) — (b) (text unchanged)

(3) If the [provider] practitioner does not request a hearing within the time limit specified in §C(2) of this regulation, the Commission may rule on the complaint with or without a hearing. Top of Form

**.07 Procedures for Hearings on Complaints.**

A. (text unchanged)

B. Conduct of Hearing.

(1) A hearing on a complaint against a [provider] practitioner shall be held before a panel of three Commissioners.

(2) — (3) (text unchanged)

(4) If a [provider] practitioner who has requested a hearing and been served with notice fails to appear for the hearing, the Commission may:

(a) — (b) (text unchanged)

C. — E. (text unchanged)

F. Appeals. Either the [provider] practitioner or the Director may appeal the final decision of the Commission as provided by Labor and Employment Article, §9-737, Annotated Code of Maryland.

**.08 Application Procedures for Enrollment of Providers.**

A. To enroll with the Commission, the provider shall submit:

(1) An application on the form prescribed by the Commission completed in accordance with the directions provided; and

(2) A complete listing of all registered practitioners employed by the provider.

B. Upon approval of the application, the Commission shall promptly enroll the provider as an enrolled provider of vocational rehabilitation services.

C. Term, Conditions and Renewal of Enrollment.

(1) Enrollment is valid for 2 years from the date of issuance.

(2) The Commission shall provide each enrolled provider with a notice of renewal and a renewal application 30 days prior to the expiration date of the current enrollment.

(3) The enrolled provider shall return the application for renewal to the Rehabilitation Office by the specified deadline for renewal.

(4) The enrolled provider shall update the list of registered practitioners employed by the provider semi-annually.

(5) Unless a provider has enrolled with the Commission, a provider may not be eligible for referral under Regulation .09F of this chapter.

**.09 Selection of Practitioner.**

A. A rehabilitation practitioner shall register with the Commission in accordance with Regulation .02 of this chapter.

B. To be eligible for referral under §F of this regulation, a provider shall enroll with the Commission in accordance with Regulation .08 of this chapter.

C. The Commission website shall provide information regarding enrolled providers including the name, address, website address, and telephone number of the provider.

D. A disabled covered employee may obtain vocational rehabilitation services only in accordance with this regulation.

E. Referral by Agreement or Order.

(1) The parties shall attempt to reach agreement on:

(a) Whether vocational rehabilitation services are appropriate in the case; and

(b) The registered practitioner to provide the vocational rehabilitation services.

(2) If the parties reach agreement on both the propriety of the services and the practitioner, the parties shall complete the prescribed Commission form indicating their agreement and identifying the selected practitioner.

(3) The parties shall file the form with the Commission and send a copy of the form to the selected practitioner.

(4) Unless the practitioner has received a copy of form selecting the practitioner as the individual to provide services, the practitioner may not:

(a) Contact the disabled covered employee directly or through an agent; or

(b) Initiate vocational rehabilitation services.

(5) If the parties are unable to agree that vocational rehabilitation services are appropriate, the dispute shall be resolved in accordance with Regulation .12 of this chapter.

(6) If the Commission determines that vocational rehabilitation services are appropriate, the parties shall attempt to reach agreement on the identity of the registered practitioner to provide the vocational rehabilitation services in accordance with this section.

F. Referral Without Agreement.

(1) If the parties agree that vocational rehabilitation services are appropriate, or the Commission has determined that services are appropriate, but the parties cannot agree on a practitioner, each party has 5 business days from the date the parties were unable to reach agreement to:

(a) Notify the Commission of the dispute; and

(b) Identify three registered practitioners and the enrolled provider for whom the practitioner works, if applicable, for consideration.

(2) Notice of the dispute and identification of the three preferred practitioners and corresponding providers shall be made electronically on a form prescribed by the Commission.

(3) Within 5 days of filing the notice of dispute and identification of three preferred practitioners and corresponding providers, each party shall strike two of the practitioners/providers from the opposing party's list and submit those strikes, by close of business, to the opposing party and to the Director by hand-delivery or facsimile.

(4) The Commission shall select one of the two remaining preferred practitioners and corresponding providers and inform the parties of this selection. All parties are bound by this selection.

(5) If a party fails to submit three registered practitioners and corresponding providers or to submit two strikes, the Commission shall select a practitioner/provider from the opposing party's list.

**.10 Assessment and Reporting.**

A. Comprehensive Vocational Assessment.

(1) As soon as practicable, a practitioner shall meet with the disabled covered employee and conduct a comprehensive vocational assessment in compliance with Labor and Employment Article, §9-670(d), Annotated Code of Maryland.

(2) A nurse case manager providing telephonic medical case management may conduct an initial assessment by telephone.

(3) A comprehensive vocational assessment may include evaluation of the disabled covered employee's:

(a) Age;

(b) Education, including information about education level, courses or transcripts, licenses, and certifications or registrations obtained by the disabled covered employee in the past;

(c) Complete work history, addressing any gaps in employment;

(d) Transferable skills and experience, whether obtained from prior employment, prior courses and training, prior vocational rehabilitation services or plans, or non-work related activities such as hobbies and/or volunteer experience;

(e) Current physical and mental conditions caused by the injury or occupational disease, and the effect of those conditions on the disabled covered employee's ability to work;

(f) Pre-existing physical and mental conditions and the effect of those conditions on the disabled covered employee's ability to work;

(g) Post-injury physical and mental conditions and the effect of those nonrelated conditions on the disabled covered employee's ability to work;

(h) Wage and employment at the time of injury;

(i) Barriers to employment, including whether the barriers can be removed and what is needed to address the barriers;

(j) Current financial status; and

(k) Family supports/psychosocial aspects.

#### B. Reports.

(1) A practitioner shall:

(a) Prepare a written report within 30 days of the comprehensive vocational assessment;

(b) Prepare periodic progress reports every 30 days showing the activity and type of vocational rehabilitation services provided; and

(c) Submit copies of all reports to the Commission, the employer/insurer, and the disabled covered employee's attorney.

(2) A practitioner shall include the following information in a comprehensive assessment report:

(a) If the practitioner is unable to obtain the information set forth in §A(3) of this regulation, documentation of the practitioner's efforts to secure that information;

(b) A determination of whether the disabled covered employee is able to work and if so, in what capacity, including whether the disabled covered employee can return to work in any capacity with the former employer and whether the disabled covered employee can return to work in a new job based on transferrable skills;

(c) Recommendations for additional testing including, but not limited to, a Functional Capacity Evaluation, psychiatric evaluation, and vocational testing;

(d) If no additional testing is recommended, identification of the order of vocational services to be provided; and

(e) A job analysis, approved by the healthcare provider, for the job or jobs for which the disabled covered employee is able to work if applicable.

(3) A practitioner shall prepare periodic progress reports that contain the following information:

(a) A review of the disabled covered employee's compliance with the vocational rehabilitation plan, including any issues involving attendance, grades, and progression;

(b) A list of the dates the vocational rehabilitation counselor contacted the disabled covered employee and any training site, if applicable;

(c) A description of the work-related skills the disabled covered employee has acquired and a comparison with the vocational rehabilitation plan;

(d) A summary of all actions taken in the past 30 days, including progress on previously recommended actions;

(e) Identification of any barriers preventing completion of the plan and actions taken by the practitioner to address those barriers; and

(f) A statement of whether the disabled covered employee is progressing as expected and will complete the plan by the target end date.

(4) The parties shall provide the Rehabilitation Office with such medical information as the Rehabilitation Office may direct.

### **.11 Vocational Rehabilitation Services and Plans.**

#### A. Hierarchy of Vocational Rehabilitation Services.

(1) In determining the appropriate vocational rehabilitation services reasonably necessary to return a disabled covered employee to suitable gainful employment, a practitioner

shall consider each of the factors specified in Labor and Employment Article, §9-673(b), Annotated Code of Maryland.

(2) A practitioner shall document that each factor has been considered either in the vocational rehabilitation plan or in the initial assessment report.

(3) In providing vocational rehabilitation services, a practitioner shall attempt to return a disabled covered employee to suitable gainful employment in accordance with the following order of preference:

(a) Returning the disabled covered employee to the same job with the same employer;

(b) Modifying the same job with the same employer;

(c) Finding a new job with the same employer;

(d) Finding a job with a new employer;

(e) On the job training;

(f) Formally retraining the disabled covered employee for a period of time designed to lead to suitable gainful employment; and

(g) Self-employment.

#### B. Vocational Rehabilitation Plan — Components.

(1) Vocational rehabilitation plans shall follow the hierarchy of services set forth in §A of this regulation.

(2) If a disabled covered employee is unable to return to suitable gainful employment without the provision of vocational rehabilitation services, a practitioner shall prepare a proposed vocational rehabilitation plan.

(3) A practitioner shall prepare a proposed rehabilitation plan on the vocational rehabilitation plan form prescribed by the Commission and shall complete the form in accordance with the instructions provided.

(4) A practitioner shall document in the proposed rehabilitation plan that each level of the hierarchy of services set forth in §A of this regulation has been considered during plan development.

(5) If the vocational rehabilitation plan includes a job placement plan, the practitioner shall include the following items in the vocational rehabilitation plan:

(a) The specific vocational goals;

(b) The specific types of services to be provided;

(c) Any viable job leads;

(d) A specific timeline including starting and completion dates; and

(e) Any estimated costs necessary to meet the specific vocational goals.

#### (6) Retraining Plan.

(a) If the vocational rehabilitation plan includes a formal retraining plan, the practitioner shall include the following items in the vocational rehabilitation plan:

(i) The specific vocational retraining goal;

(ii) The estimated costs necessary to meet the specific goal;

(iii) Information about any formal course of study in the retraining plan including the name of the school, titles of classes, course length in weeks, attendance including beginning and ending dates, an itemized cost of tuition, books, and other necessary school charges; and

(iv) Any other required costs.

(b) The practitioner shall attach to the retraining plan the following items:

(i) A copy of the course syllabus;

(ii) The physical requirements of the work for which the retraining will prepare the disabled covered employee;

(iii) Medical documentation demonstrating that the proposed training and field of work are within the disabled covered employee's physical restrictions;

(iv) Reports of all vocational testing and evaluations; and

(v) A recent labor market survey of the field for which the training is proposed.

(c) In the proposed retraining plan, the practitioner shall explain why retraining is recommended, including a discussion of the other options considered and the likelihood that the proposed retraining plan will result in the employee's return to suitable gainful employment.

**C. Vocational Rehabilitation Plan — Approval.**

(1) The practitioner shall send copies of the proposed vocational rehabilitation plan to all parties.

(2) Within 15 days after receipt of a proposed rehabilitation plan, a party may sign the plan or submit the reason for disagreement, in writing, to all parties.

(3) Lack of response from a party is interpreted to mean that the party consents to the plan.

(4) If the parties agree to the proposed vocational rehabilitation plan, the parties shall submit the plan to the Commission for approval.

(5) The Commission may accept or reject the proposed plan, in whole or in part, and shall pass an order to that effect.

(6) The parties shall attempt to resolve any disagreement concerning the recommendations contained in the proposed vocational rehabilitation plan.

(7) If the parties are unable to reach agreement concerning the recommendations, the dispute shall be resolved in accordance with Regulation .12 of this chapter.

(8) If a hearing is necessary to resolve the dispute, the practitioner shall appear at the hearing to present the practitioner's recommendations.

**(9) Expiration of Vocational Rehabilitation Plan.**

(a) Fifteen (15) days prior to the expiration date of the Vocational Rehabilitation Plan, the practitioner shall contact all parties and make recommendations to:

(i) Discontinue services;

(ii) Extend services; or

(iii) Develop a new plan in accordance with §A of this regulation.

(b) If the parties are unable to reach agreement concerning the practitioner's recommendations, the dispute shall be resolved in accordance with Regulation .12 of this chapter.

**.12 Disputes, Noncompliance and Termination.**

**A. Disputes.**

(1) If a dispute or issue arises regarding vocational rehabilitation services, the parties shall file electronically a vocational rehabilitation dispute form, as prescribed by the Commission.

(2) Upon receipt of the vocational rehabilitation dispute form, the Duty Commissioner shall contact the parties by telephone.

(3) If the Duty Commissioner is unable to resolve the dispute, a hearing will be scheduled within 5 business days.

(4) The Commission may award reasonable attorney fees in disputes arising out of vocational rehabilitation issues when deemed necessary given the particular facts of a claim.

**B. Noncompliance with Vocational Rehabilitation Plan.** If a disabled covered employee is not meeting the employee's responsibilities or is not cooperating with vocational rehabilitation services, a practitioner shall:

(1) Document the factual basis for that determination and the practitioner's efforts to promote the disabled covered employee's participation; and

(2) Promptly notify all parties in writing.

**C. Termination of Vocational Rehabilitation Services.**

(1) Whenever a practitioner closes a case, the practitioner shall document the reasons for terminating vocational rehabilitation services.

(2) Upon termination of vocational rehabilitation services or case closure, a practitioner shall notify all parties within 5 working days of the:

(a) Reason for the termination or closure; and

(b) Current employment status of the disabled covered employee.

(3) A practitioner shall send a closure report to the Commission within 10 business days after notice of termination on the form prescribed by the Commission.

R. KARL AUMANN  
Chairman

**Subtitle 22 COMMISSION ON CRIMINAL SENTENCING POLICY**

**Notice of Proposed Action**

[10-066-P]

The State Commission on Criminal Sentencing Policy proposes to amend:

(1) Regulations .02, .09, and .10 under **COMAR 14.22.01 General Regulations**; and

(2) Regulation .02 under **COMAR 14.22.02 Criminal Offenses and Seriousness Categories**.

This action was considered by the State Commission on Criminal Sentencing Policy at open meetings held on September 14, 2009, and December 8, 2009, notice of which was given by publication in multiple issues of the Maryland Register pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to change the language in Regulations .02 and .09 under COMAR 14.22.01 from weapon usage to weapon presence. The purpose of this action is also to make minor changes to the instructions for calculation of the offender score in Regulation .10 under COMAR 14.22.01, and to indicate modifications to the table of seriousness categories in Regulation .02 under COMAR 14.22.02. These modifications reflect updates and/or corrections to the offense table identified by the Sentencing Commission since the last submission for COMAR revisions.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 David Soule, Executive Director, State Commission on Criminal Sentencing Policy, 4511

Knox Road, Suite 309, College Park, MD 20742, or call 301-403-4165, or email to dsoule@crim.umd.edu, or fax to 301-403-4164. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**14.22.01 General Regulations**

Authority: Criminal Procedure Article, §6-211, Annotated Code of Maryland

**.02 Definitions.**

- A. (text unchanged)
- B. Terms Defined.

- (1) — (20) (text unchanged)
- (21) “Weapon [usage] *presence*” means the [use] *presence* of an article or device which reasonably appears capable of causing injury or the [use] *presence* of an article that could result in conviction under Criminal Law Article, §4-101, Annotated Code of Maryland.
- (22) (text unchanged)

**.09 Offense Score.**

A. Computation of Offense Score. The individual completing the worksheet shall derive the offense score for each convicted offense by totaling the points given for certain factors of that offense. A column of offense scores is provided on the worksheet for each of the three possible offenses within a single criminal event. A judge may include factors known to the judge even if they are not within the scope of the convicted offense, such as weapon [usage] *presence* in a robbery conviction or victim injury in a handgun violation conviction.

- B. Elements of the Offense Score.

- (1) — (3) (text unchanged)
- (4) Weapon [Usage] *Presence*.
  - (a) The individual completing the worksheet shall assign a score of 0 if no weapon was [used] *present*.
  - (b) The individual completing the worksheet shall assign a score of 1 if a weapon other than a firearm was [used] *present*.
  - (c) The individual completing the worksheet shall assign a score of 2 if a firearm or explosive was [used] *present*.

(d) The individual completing the worksheet shall complete the weapon [usage] *presence* component of the offense score for each offense to be sentenced. The individual completing the worksheet shall apply the following rules:

- (i) — (iii) (text unchanged)
- (iv) Except if used as a bludgeon, a toy gun is not a weapon and shall [be scored as zero] *receive a weapon presence score of zero*;
- (v) Except if deliberately used as a weapon, automobiles are not included as weapons *and shall receive a weapon presence score of zero*;
- (vi) (text unchanged)
- (vii) If a weapon was feigned but no weapon was actually present, the score shall be 0 (no weapon [used] *present*); and
- (viii) Any applicable guidelines points for weapon [usage] *presence* shall be given to an accessory before the fact, but not to an accessory after the fact.
- (5) (text unchanged)
- C. (text unchanged)

**.10 Computation of the Offender Score.**

A. Computation of the Offender Score. The individual completing the worksheet shall derive the offender score by totaling the points represented by the offender’s prior criminal history. Any prior criminal adjudications, as defined in COMAR 14.22.01.02B(1), shall be included. With the exception of the juvenile delinquency component of the offender score, the offender score refers only to the defendant’s adult involvement with the criminal justice system. *A prior adjudication of not criminally responsible (NCR) or not guilty by reason of insanity may not be included when calculating the offender score.*

- B. — C. (text unchanged)

**14.22.02 Criminal Offenses and Seriousness Categories**

Authority: Criminal Procedure Article, §6-211(a), Annotated Code of Maryland

**.02 Seriousness Categories.**

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
1 — 11 (text unchanged)									
11-1	<b>Animals, Crimes Against Attending a dogfight or cockfight</b>	[1-0504] [1-0509] 1-0597 1-0598	CR, §10-605	Misd.	1Y		Property	VII	\$2,500
12 — 25-3 (text unchanged)									
25-4	<b>Assault and Other Bodily Woundings — Other</b> Knowingly and willfully causing another to ingest bodily fluid	1-0321	CR, §3-215	Misd.	10Y		Person	V	\$2,500
25-5 — 51 (text unchanged)									

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
52	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc.; counterfeiting, etc., manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, Schedule I or II narcotics and hallucinogenics (e.g., PCP, heroin, cocaine, and LSD)	1-0661 1-0662 1-0696 2-0233 2-0237 2-0300 2-0301 2-0325 2-0330 2-0696 3-0233 3-0234 3-0235 3-0236 3-0237	CR, §5-608(a) CR, §5-609(a)	Felony	20Y		Drug	IIIB	CR, §5-608(a)= \$25,000 CR, §5-609(a)= \$20,000
53	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc.; counterfeiting, etc., manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, Schedule I or II narcotics and hallucinogenics (e.g., PCP, heroin, cocaine, and LSD), <b>subsequent</b>	1-0661 1-0662 1-0696 2-0233 2-0237 2-0300 2-0301 2-0325 2-0330 2-0696 3-0233 3-0234 3-0235 3-0236 3-0237	CR, §5-608(b) CR, §5-609(b) CR, §5-608(c) CR, §5-609(c) CR, §5-608(d) CR, §5-609(d)	Felony	20Y 25Y 40Y	MM* = 10Y MM* = 25Y MM* = 40Y	Drug	IIIB	\$100,000
54 (text unchanged)									
54-1	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc.; counterfeiting, etc., manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, MDMA (methylenedioxymethamphetamine), 750 grams or more	1-0662 1-0696 2-0233 2-0237 2-0300 2-0301	CR, §5-609(a)	Felony	20Y		Drug	IIIA	\$20,000
54-2	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc.; counterfeiting, etc., manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, MDMA (methylenedioxymethamphetamine), 750 grams or more, <b>subsequent</b>	1-0662 1-0696 2-0233 2-0237 2-0300 2-0301	CR, §5-609(b) CR, §5-609(c) CR, §5-609(d)	Felony	20Y 25Y 40Y	MM* = 10Y MM* = 25Y MM* = 40Y	Drug	IIIA	\$100,000
55 — 58 (text unchanged)									

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
59	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc.; counterfeiting, etc.; manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, Schedules I through V non-narcotics (e.g., amphetamines, marijuana, diazepam, MDMA under 750 grams, and Valium)	1-0233 1-0234 1-0235 1-0236 1-0237 1-0238 1-0239 <i>1-0660</i> 2-3550	CR, §5-607(a)	Felony	5Y		Drug	IV	\$15,000
60	<b>CDS and Paraphernalia</b> Unlawful distribution, manufacture, etc.; counterfeiting, etc.; manufacture, possession, etc., of certain equipment for illegal use; keeping common nuisance, Schedules I through V non-narcotics (e.g., amphetamines, marijuana, diazepam, and Valium), <b>subsequent</b>	1-0233 1-0234 1-0235 1-0236 1-0237 1-0238 1-0239 <i>1-0660</i> 2-3550	CR, §5-607(b)	Felony	5Y	MM*= 2Y	Drug	IV	\$15,000
61 — 109 (text unchanged)									
110	<b>Counterfeiting</b> Forge, falsify, or counterfeit the signature of a judge, court officer, or court employee; or use a document with forged signature of a court official	<i>1-1698</i> <i>1-1699</i>	CR, §8-606.1	Misd.	5Y		Property	VI	\$10,000
111 — 131 (text unchanged)									
132	<b>Election Offenses</b> Unauthorized access of the electronic voting systems; or tampering, altering the electronic voting system for the purpose of affecting the vote count	<i>1-0785</i>	EL, §16-804(b)	Felony	10Y		Property	V	\$50,000
133 — 203 (text unchanged)									
204	<b>Hate Crimes</b> Crimes against persons or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness — resulting in death	[1-0435] [1-0436] 1-0437 [1-0438] [2-0250] [2-0251] [2-0252] [2-0253]	CR, §10-304(2)(ii) CR, §10-306(b)(2) (penalty)	Felony	20Y		Person	III	\$20,000
205	<b>Hate Crimes</b> Crimes against persons or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness — involving separate felony	[1-0435] [1-0436] 1-0437 [1-0438] [2-0250] [2-0251] [2-0252] [2-0253]	CR, §10-304(2)(i) CR, §10-306(b)(1) (penalty)	Felony	10Y		Person	IV	\$10,000



	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
206	<b>Hate Crimes</b> Crimes against persons or property because of race, color, religious beliefs, sexual orientation, gender, disability, national origin, or homelessness	1-0435 1-0436 1-0437 [1-0438] [2-0250] 2-0251 2-0252 [2-0253]	CR, §10-306(a) (penalty)	Misd.	3Y		Person	V	\$5,000
207 — 207-3 (text unchanged)									
207-4	<b>Identity Fraud</b> Use a re-encoder or skimming device for purpose of identity theft. Benefit less than \$500	1-0767 1-0769	CR, §8-301(d) CR, §8-301(g)(2) (penalty)	Misd.	18M		Property	VII	\$5,000
207-5	<b>Identity Fraud</b> Use a re-encoder or skimming device for purpose of identity theft. Benefit \$500 or greater	1-0768 1-0779	CR, §8-301(d) CR, §8-301(g)(1) (penalty)	Felony	15Y		Property	V	\$25,000
207-6	<b>Identity Fraud</b> Possess, obtain, or help another obtain a re-encoder or skimming device for purpose of identity theft	1-0778	CR, §8-301(e) CR, §8-301(g)(4) (penalty)	Misd.	18M		Property	VII	\$5,000
208 — 225 (text unchanged)									
226	<b>Kidnapping and Related Crimes</b> Abduction — child younger than 16 years old by relative outside State 30 days or less	[1-0367] [1-0368] [1-0369] [2-1006] 1-0736 1-0737 1-0738 1-0739	FL, §9-305(a) FL, §9-307(b) (penalty)	Felony	1Y		Person	VII	\$1,000
227	<b>Kidnapping and Related Crimes</b> Abduction — child younger than 16 years old by relative outside State more than 30 days	[1-0367] [1-0368] [1-0369] [2-1006] 1-0746 1-0747 1-0748 1-0749	FL, §9-305(a) FL, §9-307(c) (penalty)	Felony	3Y		Person	VI	\$2,500
227-1 — 382-1 (text unchanged)									
383	<b>Theft, Crimes Involving</b> Felony theft or theft-scheme, \$100,000 or greater	1-0624 1-0634	CR, §7-104(g)(1)(iii)	Felony	25Y		Property	II	\$25,000
384	<b>Theft, Crimes Involving</b> Felony theft or theft scheme, at least \$10,000 but less than \$100,000	1-0623 1-0633	CR, §7-104(g)(1)(ii)	Felony	15Y		Property	IV	\$15,000
384-1	<b>Theft, Crimes Involving</b> Felony theft or theft scheme, at least \$1,000 but less than \$10,000	1-0622 1-0632	CR, §7-104(g)(1)(i)	Felony	10Y		Property	V	\$10,000
384-2	<b>Theft, Crimes Involving</b> Misdemeanor theft or theft scheme, less than \$1,000	1-0621 1-0631	CR, §7-104(g)(2)	Misd.	18M		Property	VII	\$500

	Offense Literal	CJIS Code	Source	Felony or Misd.	Max Term	Min Term	Offense Type	Ser. Category	Fine
384-3	<b>Theft, Crimes Involving</b> Misdemeanor theft or theft scheme, less than \$1,000, 3rd and subsequent	1-0621 1-0631	CR, §7-104(g)(4)	Misd.	5Y		Property	VI	\$5,000
385 — 387-4 (text unchanged)									
388	<b>Trespass</b> Trespass on posted property	2-2210 2-2220	[CR, §6-402(a)] CR, §6-402	Misd.	3M		Property	VII	\$500
388-1	<b>Trespass</b> Trespass on railroad [property] <i>vehicle</i>		[CR, §6-503] CR, §6-503(c)	Misd.	6M		Property	VII	\$1,000
388-2 — 397 (text unchanged)									
397-1	<b>Weapons Crimes — In General</b> Illegal possession of electronic control device (e.g., stun gun, taser) while committing a separate crime of violence	1-0596	CR, §4-109(e)(2)	Felony	3Y		Person	VI	\$5,000
398 — 420 (text unchanged)									

Footnotes (text unchanged)

General Rules (text unchanged)

DAVID SOULÉ  
Executive Director  
Commission on Criminal Sentencing Policy

## Title 17

# DEPARTMENT OF BUDGET AND MANAGEMENT

### Subtitle 04 PERSONNEL SERVICES AND BENEFITS

#### 17.04.11 Leave

Authority: State Personnel and Pensions Article, §§4-106 and 9-101,  
Annotated Code of Maryland

#### Notice of Proposed Action

[09-327-P]

The Secretary of Budget and Management proposes to adopt new Regulation .05 under **COMAR 17.04.11 Leave**.

#### Statement of Purpose

The purpose of this action is to establish the Advanced Sick Leave Program as a permanent program to address any future Statewide health emergencies. The purpose of this program is to protect healthy State employees in the workplace and to provide an option for employees who are affected by a Statewide health emergency and have exhausted all earned leave hours.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### 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 Leslie G. Buchman, Director, Personnel Services Division, Department of Budget and Management, 301 W. Preston Street, Baltimore, MD 21201, or call 410-767-4718, or email to lbuchman@dbm.state.md.us, or fax to 410-333-5262. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Emergency Action in 36:21 Md. R. 1588 (October 9, 2009), referenced as [09-327-E].

T. ELOISE FOSTER  
Secretary of Budget and Management

**Title 26**  
**DEPARTMENT OF**  
**THE ENVIRONMENT**

**Subtitle 08 WATER POLLUTION**

**26.08.02 Guidelines for Discharge to Ground Waters**

Authority: Environment Article, §§9-303.1, 9-313 — 9-316, 9-319, 9-320, and 9-325, Annotated Code of Maryland

**Notice of Proposed Action**

[10-054-P-1]

The Secretary of the Environment proposes to amend Regulation **.09** under **COMAR 26.08.02 Water Quality**.

**Statement of Purpose**

The purpose of this action is to update the Department's Land Treatment Guidelines to include irrigation of Class III treated wastewater effluent onto non-restricted public access areas in promoting water reuse and to add statements to clarify content of the existing Guidelines.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Ching-Tzone Tien, Chief, Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230, or call 410-537-3662, or email to ctien@mde.state.md.us, or fax to 410-537-3163. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.09 Ground Water Quality Standards.**

A. — C. (text unchanged)

D. Guidelines for Discharge to Ground Waters.

(1) Land disposal of municipal *wastewater* or [similar wastes] *wastewater with similar characteristics* shall follow the Department of the Environment's "Guidelines for Land [Treatment of] *Application/Reuse of Treated Municipal Wastewaters*" MD[R] *E-WMA-001-[07/03] 04/09*, which is incorporated by reference.

(2) — (5) (text unchanged)

SHARI T. WILSON  
Secretary of the Environment

**Subtitle 11 AIR QUALITY**

**Notice of Proposed Action**

[10-052-P]

The Secretary of the Environment proposes to:

(1) Amend Regulations **.01** and **.05**, repeal existing Regulations **.10** and **.11**, and adopt new Regulations **.10** and **.11** under **COMAR 26.11.01 General Administrative Provisions**; and

(2) Amend Regulations **.01** and **.05** under **COMAR 26.11.09 Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations**.

**Statement of Purpose**

The purpose of this action is to:

1. Amend COMAR 26.11.01.01 to clarify the definition of "Continuous Emission Monitor" (CEM) and add a definition for "Continuous Opacity Monitor" (COM);

2. Amend Regulation 26.11.01.05 to clarify that submission of test results, reports, or other information to the Department must be submitted to the Program Manager of the Air Quality Compliance Program and that all records and documentation must be maintained on-site and made available to the Department upon request;

3. Repeal existing Regulations 26.11.01.10 and .11 and adopt new Regulations .10 and .11 in order to clarify which requirements are for COMs and CEMs;

4. Discontinue the use of Technical Memorandum 90-01 "Continuous Emission Monitoring (CEM) Policies and Procedures" for the fuel burning equipment except for Part II "Quality Assurance Requirements for Continuous Opacity Monitoring Systems". This Technical Memorandum 90-01 is incorporated by reference under 26.11.01.11; and

5. Amend COMAR 26.11.09.05 to:

(a) Add new definitions for "Capacity factor" and "Operating time";

(b) Expand the regulation to include revised procedures for demonstrating compliance with visible emissions (VE) requirements for sources that are required to install COMs;

(c) Add procedures that under certain conditions, allow fuel burning equipment with flue gas desulfurization (FGD) units to replace COMs with CEMs for particulate matter; and

(d) Add enforcement procedures for COMs for fuel burning equipment.

This action will be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan.

**BACKGROUND**

1. Existing Visible Emissions Regulations.

Fuel burning equipment which covers boilers, furnaces, stationary internal combustion engines and stationary combustion turbines of a certain size located in the Baltimore/Washington metropolitan areas are subject to a no visible emissions (VE) requirement. In the rest of the state, affected sources are subject to a 20 percent opacity requirement. VE are determined by a person trained to observe the opacity of stack emissions using the observational procedures in the EPA Test Method 9. Current regulations allow an exception to the applicable VE requirements during various operational periods such as startup and shutdown. During these periods, the regulations allow one exception per hour for six minutes provided the VE do not exceed 40 per-

cent opacity. The exceptions will remain in effect for Method 9 observations for these sources.

The amendments will affect fuel burning equipment that are required to demonstrate compliance with VE requirements using COM data.

#### 2. Existing COM/CEM Requirements In COMAR 26.11.01.10 and .11.

In 1991, the Department required large fuel burning equipment burning coal and residual oil to install COMs and demonstrate compliance using COM data. The regulations also required other sources such as municipal waste combustors and Portland cement plants to install COMs. Fuel burning equipment required to install COMs are generally required to: (a) certify the accuracy of the data, (b) demonstrate compliance using the COM data, (c) submit quarterly reports that include exceedances of the VE limits during a calendar quarter or a calendar day and the COM down time. The required compliance demonstrations were determined in accordance with the procedures in the Department's TM 90-01.

Current Regulations .10 and .11 under COMAR 26.11.01 use the terms COMs and CEMs interchangeably but it is necessary to set forth separate requirements for each. Therefore, the current regulations will be repealed and replaced with new language each addressing COMs and CEMs separately although the substantive requirements remain the same. The current Regulation .10 and the TM 90-01 were submitted to EPA and approved as part of Maryland's SIP. The existing Regulation .11 was not submitted to EPA for inclusion in the approved SIP. Both of the new Regulations .10 and .11 will be submitted to EPA for SIP approval. Regulation .11 that requires several other categories of major sources to install CEMs will be further revised at a later date.

#### 3. TM 90-01 Continuous Emission Monitoring (CEM) Policies and Procedures.

TM 90-01 generally established levels of enforcement actions to be taken by the Department for VE exceedances based on the source's operating time during a calendar quarter. The TM allowed exceedances to occur up to 10 percent of the source's operating time in addition to the existing 6 minute per hour exclusion. It established a greater degree of enforcement action based on the number of exceedances during the quarter and also contained enforcement action for sources with repeated exceedances for consecutive calendar quarters. The intention of these amendments is to eliminate use of these enforcement procedures in the TM for fuel burning equipment and establish improved and more restrictive procedures for demonstrating compliance using COM data. The amendments at this time apply only to fuel burning equipment with COMs while future amendments will address enforcement policies for COM use at other sources.

#### 4. Requirements of Existing COMAR 26.11.09.05.

Regulation .05 under COMAR 26.11.09 requires all fuel burning equipment in the Baltimore/Washington areas to meet a no VE requirement. In the rest of the State, fuel burning equipment must meet a 20 percent opacity requirement. Regulation .05 under COMAR 26.11.09 is being expanded to include revised compliance demonstration procedures for sources that are required to install and operate a COM. Compliance procedures were previously contained in the Department's TM 90-01. The Department may use the COM data or the observational procedures in Method 9 to determine compliance or non-compliance for fuel burning equipment using COMs.

### REVISED REQUIREMENTS

#### 1. Revised Procedures to Demonstrate Compliance — Base Load Units

All fuel burning equipment required to operate a COM must demonstrate compliance using COM data. After December 31, 2009, base load units are to demonstrate compliance with the applicable VE standard 98 percent of its operating time during each calendar quarter. During the remaining time in the calendar quarter, VE may not exceed 40 percent opacity except for 0.5 percent of the operating time or 5 hours, whichever is greater. VE may exceed 70 percent opacity for up to four (4) six-minute periods, except for coal fired units controlled with an ESP which can exceed 70 percent opacity for up to 2.2 hours. On any day, VE may not exceed the applicable standard for more than 4.1 hours, exceeding 40 percent opacity for not more than 1.4 hours and exceeding 70 percent opacity for not more than two (2) six-minute periods.

#### 2. Alternative Monitoring Criteria.

All affected sources have had the opportunity to complete further adjustments and improvements to control systems and improve maintenance and operating procedures that should further reduce VE. Affected sources should be able to achieve compliance 98 percent of the time. In 2010, 9 of the 17 affected units will install SO<sub>2</sub> scrubbers. These scrubbers are expected to significantly further reduce particulate matter and opacity.

The owner of those units that install scrubbers will have the opportunity to demonstrate that the saturated plume from the scrubber interferes with accurate measurement of VE and install a Continuous Emission Monitor (CEM) for particulate matter in place of the COM. If the CEM provides accurate measurement for particulate matter, the source may discontinue use of the COM and provide quarterly data for particulate matter emissions. When the CEM is not generating data, for example during maintenance of the scrubber, the source must have provided to the Department an alternative plan for demonstrating compliance with VE requirements. If the scrubber is by-passed and emissions directed to a different stack, the source may use the existing COM or use the alternative plan approved by the Department.

#### 3. Revised Procedures to Demonstrate Compliance — Low Capacity Units.

Fuel burning equipment with a capacity factor of 25 percent or less usually operate infrequently and usually on high electric demand days. The amendments require these units to meet the applicable VE standard at all times except for 20 hours (12 hours for units operating less than 300 hours) during any calendar quarter. During the 20 or 12 hours, VE cannot exceed 40 percent opacity except for more than 2.2 hours or exceed 70 percent opacity for more than two (2) six-minute periods (four 6-minute periods if operating time is less than 300 hours) per quarter. Daily limitations include 4.1 hours above the standard, during which time visible emissions cannot exceed 40.0 percent opacity for more than 1.4 hours and do not exceed 70.0 percent opacity for more than (2) six-minute periods.

A review of previous data for these units shows that, when VE do occur, it is usually for short periods of time and usually well less than 40 percent opacity. These units startup frequently and are vulnerable to very brief VE episodes above 40 percent opacity. Two of the units are required to burn only gas during each ozone season.

**Affected Sources:**

A number of source categories such as power plants, cement plants and large incinerators are required to install COMs. These amendments affect fuel burning equipment of a certain size which covers boilers, furnaces, stationary internal combustion engines and stationary combustion turbines.

**Emission Reductions:**

The Department is not taking emission reduction credits in the SIP for the reductions that occur from these changes. The action establishes revised compliance procedures relating to sources that are required to operate continuous opacity monitors under Chapter 9 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations.

**TECHNICAL SUPPORT:**

Air quality impact analyses were performed to determine the effect of a variety exceedance times and levels that might occur under realistic operating conditions at a facility in Maryland. The air quality modeling analysis will be used to demonstrate that under the conditions allowed in the regulation revision, there will be no interference in meeting and maintaining the PM10 24-hour National Ambient Air Quality Standard (NAAQS). This analysis was completed to support the Maryland Department of the Environment's (MDE's) proposal to set standards for sources that have installed continuous opacity monitors (COMs). These standards will affect power plants and other facilities that measure opacity through use of a COM.

The mass emission limits will remain in effect for all facilities that have installed a COM. This air quality analysis will demonstrate that there is no interference in meeting all applicable PM10 NAAQS. The air quality analysis was performed by the MDE.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** These proposed regulatory changes are not expected to result in significant new costs to Mirant or Constellation, which own and operate the power plants that are most affected by the regulations. The Department does not anticipate any significant impact on its regulatory programs.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Indeterminable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Indeterminable

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

A. The Department currently receives and reviews quarterly COM reports from affected sources that summarize visible emission exceedances during each calendar quarter. Initially the Department inspectors will work closely with sources affected by this regulation to assure that the proper data is submitted. However, the Department does not anticipate any significant impact on its regulatory programs.

D. These proposed regulatory changes are not expected to result in significant new costs to Mirant or Constellation, which own and operate the power plants that are most affected by the regulations. During the period from August 2006 through March 2008, Mirant and Constellation entered into separate Consent Decrees with the Department to address longstanding opacity violations at their power plants. Under the terms of the Consent Decrees, both Mirant and Constellation are obligated to install new pollution controls and implement numerous measures to reduce opacity levels in the oil and coal-fired units subject to the Decrees. In addition, the installation of FGD technology on 9 coal-fired units for operation commencing in 2010 to comply with Healthy Air Act requirements is expected to significantly reduce particulate emissions and opacity levels on those units.

Other sources operating COMs may incur some additional indeterminate costs to achieve compliance with VE limitations under the amended regulations.

F. This action will help improve Maryland's air quality and will result in fewer negative health effects on the general public from air pollution.

**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 an impact on individuals with disabilities as follows: This action will have a positive impact on individuals with disabilities involving respiratory problems by reducing air pollutants that contribute to disease.

**Opportunity for Public Comment**

The Department of the Environment will hold a public hearing on the proposed action on March 3, 2010 at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Aerie Conference Room, Baltimore, Maryland 21230-1720. Interested persons are invited to attend and express their views. Comments may be sent to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us. Comments must be received not later than March 3, 2010, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Copies of the proposed action and supporting documents are available for review at the following locations: The Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

### 26.11.01 General Administrative Provisions

Authority: Environment Article, §§1-101, 1-404, 2-101 — 2-103,  
2-301 — 2-303, 10-102, and 10-103,  
Annotated Code of Maryland

#### .01 Definitions.

- A. (text unchanged)  
B. Terms Defined.

(1) — (8) (text unchanged)

(9) “Continuous emission monitor (CEM)” means a system of instruments installed, operated, and calibrated in accordance with the procedures in this subtitle to continuously measure and record the [opacity,] emission rate[, ] or concentration of a substance in a gas stream.

(9-1) “Continuous opacity monitor (COM)” means a system of instruments installed, operated, and calibrated in accordance with the procedures in this subtitle to continuously measure and record the opacity of emissions as six-minute averages of not greater than 15 second increments.

(10) — (53) (text unchanged)

- C. — D. (text unchanged)

#### .05 Records and Information.

- A. — B. (text unchanged)

C. Whenever a provision in this subtitle requires submission or reporting of test results, reports, or other information to the Department, unless otherwise specified, the information shall be submitted to:

Program Manager  
Air Quality Compliance Program  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 715  
Baltimore, Maryland 21230  
410-537-4225

D. Unless otherwise specified, all records, documentation or other information required by this subtitle, shall be maintained on-site and made available to the Department upon request.

#### .10 Continuous Opacity Monitoring Requirements.

- A. Applicability and Exceptions.

(1) The provisions of this regulation apply to:

(a) Fuel burning equipment burning coal, fuel oil, tars, or waste combustible fluid at any time and that has a rated heat input capacity of 250 million Btu per hour or greater;

(b) Fuel burning equipment burning coal with a rated heat input capacity of 100 million Btu per hour or greater but less than 250 million Btu per hour and was constructed on or before June 19, 1984;

(c) A cement kiln;

(d) A fluidized bed combustor of any size; and

(e) A municipal waste combustor with a burning capacity greater than 35 tons per day.

(2) The owner or operator of an installation subject to this regulation may also be subject to the requirements of 40 CFR Parts 60 and 75, as amended.

(3) This regulation does not apply to fuel burning equipment that:

(a) Burns only distillate fuel oil or a mixture of gas and distillate fuel oil;

(b) Is able to comply with the applicable particulate matter and opacity emission limitations without using particulate matter control equipment; and

(c) Has never been found in a final order to be in violation of any visible emissions standard.

(4) The owner or operator of fuel burning equipment subject to this regulation may, with approval by the Department, discontinue use of a COM only in accordance with the provisions in COMAR 26.11.09.05C.

- B. General Requirements for COMs.

(1) The owner or operator of an installation subject to this regulation shall:

(a) Install and continuously operate a COM that complies with a plan approved by the Department and EPA in accordance with §B(1)(b) of this regulation; and

(b) Before installing a COM, submit to the Department for approval, a plan containing the COM design specifications, proposed location, and a description of a proposed alternative measurement method consisting of a schedule for utilizing the EPA Reference Method 9 observational procedures.

(2) The Department shall submit the plan to EPA for review and approval.

(3) A COM shall comply with the applicable requirements in 40 CFR Part 51, Appendix P, Sections 3.3 — 3.9, as amended, which is incorporated by reference.

(4) The owner or operator of fuel burning equipment that is required by this regulation to install and operate a COM is subject to the provisions in COMAR 26.11.09.05.

- C. Certification and Quality Assurance Procedures.

(1) All certification testing, including certification performance tests and audits, shall be performed in accordance with 40 CFR Part 60, Appendix B, as amended, which is incorporated by reference.

(2) For fuel burning equipment subject to the federal Acid Rain Program, all certification testing, including certification performance tests and audits, shall be performed in accordance with 40 CFR Part 75, Appendix A, as amended.

(3) Certification testing shall be repeated when the Department determines that the data are invalid because of component replacement or other conditions that affect the accuracy of generated data.

(4) The owner or operator that is required to perform a certification performance test shall:

(a) At least 60 days before the test, submit a test protocol to the Department for review and approval;

(b) Schedule the test at a reasonable time and notify the Department at least 10 days before the test is to be conducted; and

(c) Submit the test results to the Department not later than 45 days after the completion of the test.

(5) Fuel burning equipment subject to the COM requirements in COMAR 26.11.09 shall meet the quality assurance procedures contained in Technical Memorandum 90-01 “Continuous Emission Monitoring (CEM) Policies and Procedures,” Part II Quality Assurance Requirements for Continuous Opacity Monitoring Systems.

- D. Record Keeping and Reporting Requirements.

(1) System Downtime Reporting Requirements.

(a) All COM downtime that lasts or is expected to last more than 24 hours shall be reported to the Department by telephone before 10 a.m. of the first regular business day following the first day on which downtime occurs.

(b) The COM downtime report shall include the reason, if known, for the breakdown and the estimated period of time that the COM will be down. The owner or operator shall notify the Department by telephone when the COM has met performance specifications for accuracy, reliability, and durability of acceptable monitoring systems, as provided in 40 CFR Part 51 Appendix P, and is producing data.

(c) Except as otherwise approved by the Department and the EPA, a COM shall operate in compliance with the requirements of §B(2) of this regulation and collect data for at least 95 percent of the source's operating time during any calendar quarter. The alternative measurement plan required in §B(1)(b) of this regulation shall be used at all times when the COM fails to conform to performance standards required by §B(2) of this regulation during data collection.

(2) **Data Reporting Requirements.**

(a) A COM shall automatically reduce all data to six-minute block averages calculated from 24 or more equally spaced data points.

(b) All COM data shall be reported in a format approved by the Department.

(c) A quarterly summary report shall be submitted to the Department not later than 30 days following each calendar quarter. The report shall be in a format approved by the Department, and shall include the following:

(i) The cause, time periods, and the opacity of all emissions which exceed the applicable quarterly, daily and hourly emission standards as provided in COMAR 26.11.09.05A(4);

(ii) The COM and installation downtimes, including the time and date of the beginning and end of each downtime period, and whether the downtime was scheduled;

(iii) The cause of all COM downtime;

(iv) The total operating time for the quarter, and the total time and percent of the operating time during the quarter that excess emissions occurred, and the percentage of COM downtime, during the calendar quarter;

(v) Quarterly quality assurance activities;

(vi) Daily calibration activities that include reference values, actual values, absolute or percent of span differences, and drift status;

(vii) Other information that the Department determines is necessary to evaluate the data or to ensure that compliance is achieved.

E. All information required by this regulation to be maintained or reported to the Department shall be retained and made available for review by the Department for a minimum of 5 years from the time the report is submitted.

F. **Technical Memorandum.** Fuel burning equipment subject to the COM requirements in COMAR 26.11.09.05 is not subject to the COM requirements contained in Technical Memorandum 90-01 "Continuous Emission Monitoring (CEM) Policies and Procedures," except for Part II Quality Assurance Requirements for Continuous Opacity Monitoring Systems.

**.11 Continuous Emission Monitoring Requirements.**

**A. Applicability and Exemptions.**

(1) The provisions of this regulation apply to:

(a) Fuel-burning equipment burning coal that has a rated heat input capacity of 100 million Btu per hour or greater;

(b) Municipal waste combustors with a burning capacity greater than 35 tons per day;

(c) Fluidized bed combustors; and

(d) Kraft pulp mills.

(2) An owner or operator that is required to install a CEM under any federal requirement is also subject to all of the provisions of this regulation.

**B. General Requirements for CEMs.**

(1) An owner or operator subject to this regulation shall:

(a) Before installing a CEM, submit to the Department, for approval by the Department and EPA, a plan con-

taining the CEM design specifications, proposed location, and a description of a proposed alternative measurement method; and

(b) Install and operate a CEM in accordance with the plan approved by the Department and EPA under the provisions of §B(1)(a) of this regulation.

(2) The owner or operator of fuel-burning equipment burning coal, with a heat input capacity of 100 million Btu per hour or greater, shall install CEMs to measure and record sulfur dioxide, nitrogen oxide, either oxygen or carbon dioxide, and flow.

(3) The owner or operator of:

(a) A municipal waste combustor (MWC) shall install a CEM in accordance with the requirements in COMAR 26.11.08.07 or 26.11.08.08, as applicable;

(b) A Kraft pulp mill shall install a CEM to measure and record process total reduced sulfur in accordance with COMAR 26.11.14.05; and

(c) A fluidized bed combustor of any size shall install CEMs to measure sulfur dioxide, nitrogen oxide and either oxygen or carbon dioxide.

(4) Except as otherwise approved by the Department, if the owner or operator is unable to obtain emissions data from CEMs because of a malfunction of the CEM for more than 2 hours in duration, the owner or operator shall use the alternative measurement method approved by the Department and EPA.

C. **Quality Assurance for CEMs.** A CEM used to monitor a gas concentration shall meet the quality assurance criteria of 40 CFR Part 60, Appendix F, as amended, which is incorporated by reference, or, if applicable, the quality assurance criteria of 40 CFR Part 75, Appendix B, as amended.

**D. Monitoring and Determining Compliance.**

(1) **General.** A CEM required by this regulation is the primary method used by the Department to determine compliance or non-compliance with the applicable emission standards established in any permit or approval, administrative or court order, Certificate of Public Convenience and Necessity, or regulation in this subtitle.

(2) **Data Reduction.** A CEM used to monitor a gas concentration shall record not less than four equally spaced data points per hour and automatically reduce data in terms of averaging times consistent with the applicable emission standard.

(3) **Technical Memorandum.** Except for fuel burning equipment subject to the COM requirements in COMAR 26.11.09.05, use of COMs and CEMs for enforcement purposes shall be as specified in the Department's Air Management Administration Technical Memorandum 90-01 "Continuous Emission Monitoring (CEM) Policies and Procedures," which is incorporated by reference.

**26.11.09 Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations**

Authority: Environment Article, §§1-101, 1-404, 2-101 — 2-103, 2-301 — 2-303, 10-102, and 10-103, Annotated Code of Maryland

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(1-1) "Capacity factor" means:

(a) The ratio between the actual heat input to fuel burning equipment from the fuels burned during a year and

the potential heat input if it had been operating for 8,760 hours during the year at the maximum steady state design heat input capacity; or

(b) The ratio of the unit's actual annual electric output, in megawatt hours, to the unit's name plate capacity multiplied by 8,760 hours.

(c) For the purpose of this chapter, the selected method of determining the capacity factor of a unit shall apply continuously and is determined on a monthly rolling basis for each consecutive 12-month period.

(d) When either the procedure in §B(1-1)(a) or (b) of this regulation is selected to determine the capacity factor of a unit, that same procedure shall apply for that unit.

(2) — (11) (text unchanged)

(11-1) "Operating time" means, for the purpose of determining compliance or non-compliance with this chapter, the actual time in hours that an affected unit operates, beginning when operation of the draft fans is established and ending when feed of the primary fuel to the combustion chamber is discontinued.

(12) — (23) (text unchanged)

### **.05 Visible Emissions.**

#### **A. Fuel Burning Equipment.**

(1) (text unchanged)

(2) Areas III and IV. In Areas III and IV, a person may not cause or permit the discharge of emissions from any fuel burning equipment, other than water in an uncombined form, which is visible to human observers except that, for the purpose of demonstrating compliance using COM data, emissions that are visible to a human observer are those that are equal to or greater than 10 percent opacity.

(3) (text unchanged)

(4) *Fuel Burning Equipment Required to Operate a COM.* The owner or operator of fuel burning equipment that is subject to the requirement to install and operate a COM shall demonstrate compliance with the applicable visible emissions limitation specified in §A(1) and (2) of this regulation as follows:

(a) For units with a capacity factor greater than 25 percent, until December 31, 2009, compliance is achieved if visible emissions do not exceed the applicable visible emissions limitation in §A(1) and (2) of this regulation for more than 4 percent of the unit's operating time in any calendar quarter, during which time visible emissions:

(i) Do not exceed 40.0 percent opacity, except for 5.0 hours or 0.5 percent of the unit's operating time, whichever is greater;

(ii) Do not exceed 70.0 percent opacity for more than four (4) 6-minute periods, except that coal-fired units equipped with electrostatic precipitators may exceed 70.0 percent opacity for no more than 2.2 hours; and

(iii) On any calendar day, do not exceed the applicable visible emissions limitation in §A(1) and (2) of this regulation for more than 4.1 hours, during which time visible emissions do not exceed 40.0 percent opacity for more than 1.4 hours and do not exceed 70.0 percent opacity for more than two (2) six-minute periods;

(b) For units with a capacity factor greater than 25 percent, beginning January 1, 2010, compliance is achieved if visible emissions do not exceed the applicable visible emissions limitation in §A(1) and (2) of this regulation for more than 2 percent of the unit's operating time in any calendar quarter, during which time visible emissions:

(i) Do not exceed 40.0 percent opacity, except for 5.0 hours or 0.5 percent of the unit's operating time, whichever is greater;

(ii) Do not exceed 70.0 percent opacity for more than four (4) six-minute periods, except that coal-fired units equipped with electrostatic precipitators may exceed 70.0 percent opacity for no more than 2.2 hours; and

(iii) On any calendar day, do not exceed the applicable visible emissions limitation in §A(1) and (2) of this regulation for more than 4.1 hours, during which time visible emissions do not exceed 40.0 percent opacity for more than 1.4 hours and do not exceed 70.0 percent opacity for more than two 6-minute periods;

(c) For units with a capacity factor equal to or less than 25 percent that operate more than 300 hours per quarter, beginning July 1, 2009, compliance with the applicable visible emissions limitation in §A(1) and (2) of this regulation is achieved if, during a calendar quarter, visible emissions do not exceed the applicable standard for more than 20.0 hours, during which time visible emissions:

(i) Do not exceed 40.0 percent opacity for more than 2.2 hours;

(ii) Do not exceed 70 percent for more than four 6-minute periods; and

(iii) On any calendar day, do not exceed the applicable visible emissions limitation in §A(1) and (2) of this regulation for more than 4.1 hours, during which time visible emissions do not exceed 40.0 percent opacity for more than 1.4 hours and do not exceed 70.0 percent opacity for more than two 6-minute periods; and

(d) For units with a capacity factor equal to or less than 25 percent that operate less than 300 hours per quarter, beginning July 1, 2009, compliance with the applicable visible emissions limitation in §A(1) and (2) of this regulation is achieved if, during a calendar quarter, visible emissions do not exceed the applicable standard for more than 12.0 hours, during which time visible emissions:

(i) Do not exceed 40.0 percent opacity for more than 2.2 hours;

(ii) Do not exceed 70.0 percent opacity for more than four 6-minute periods; and

(iii) On any calendar day, do not exceed the applicable visible emissions limitation in §A(1) and (2) of this regulation for more than 4.1 hours, during which time visible emissions do not exceed 40.0 percent opacity for more than 1.4 hours and do not exceed 70.0 percent opacity for more than two 6-minute periods.

#### **B. Determining Violations.**

(1) For each unit required to operate a COM pursuant to COMAR 26.11.01.10A(1)(a) and (b), each day during a calendar quarter when the opacity of emissions from that unit during the calendar quarter or calendar day, as applicable, exceeds the emission limitations in §A(4)(a), (b), (c) and (d) of this regulation shall constitute a separate day of violation.

(2) A violation of §A(4)(a)(i), (ii), or (iii), §A(4)(b)(i), (ii) or (iii), §A(4)(c)(i), (ii) or (iii), or §A(4)(d)(i), (ii) or (iii), of this regulation, as applicable, that occur on the same day shall constitute separate violations.

(3) A daily violation that occurs during the same calendar quarter as a quarterly violation is a separate violation.

**C. Fuel Burning Equipment Subject to Federal COM Requirements.** Except for owners or operators of fuel burning equipment subject to any federal requirement that mandates operation of a COM and as provided in §D of this regulation, the owner or operator of fuel burning equipment required to install and operate a COM may discontinue the operation of the COM on fuel burning equipment that is served by a flue gas desulfurization device:



(1) When emissions from the equipment do not bypass the flue gas desulfurization device serving the equipment;

(2) When the flue gas desulfurization device serving the equipment is in operation;

(3) If the owner or operator has demonstrated to the Department's satisfaction, in accordance with 40 CFR §75.14, as amended, and all other applicable State and federal requirements, that water vapor is present in the flue gas from the equipment and would impede the accuracy of opacity measurements; and

(4) If the owner or operator has fully implemented an alternative plan, approved by the Department, for monitoring opacity levels and particulate matter emissions from the stack that includes:

(a) A schedule for monthly observations of visible emissions from the stack by a person trained to perform Method 9 observations; and

(b) Installation and operation of a particulate matter CEM that complies with all applicable State and federal requirements for particulate matter CEMs.

D. If, for units equipped with a flue gas desulfurization device, emissions bypass the device and are discharged through a bypass stack, the bypass stack shall be equipped with a COM approved by the Department.

[B.] E. (text unchanged)

SHARI T. WILSON  
Secretary of the Environment

## Subtitle 11 AIR QUALITY

### Notice of Proposed Action

[10-053-P]

The Secretary of the Environment proposes to:

(1) Repeal Regulations .01 — .15 and adopt new Regulations .01 — .05 under COMAR 26.11.29 **NO<sub>x</sub> Reduction Requirements for Non-Electric Generating Units under the Clean Air Interstate Rule**; and

(2) Repeal Regulations .01 — .09 under COMAR 26.11.30 **Policies and Procedures Relating to Maryland's NO<sub>x</sub> Reduction and Trading Program**.

#### Statement of Purpose

The purpose of this action is to continue the NO<sub>x</sub> emission requirements for internal combustion engines located at natural gas pipeline compression stations and NO<sub>x</sub> emission requirements for cement kilns located at Portland cement manufacturing plants that were included in the NO<sub>x</sub> Reduction and Trading Program (NO<sub>x</sub> SIP Call) under COMAR 26.11.29 and .30, and to make the NO<sub>x</sub> emission requirements for cement kilns located at Portland cement manufacturing plants stricter than the existing requirements beginning in April 2011.

This action will be submitted to the Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan.

#### Background:

The NO<sub>x</sub> Reduction and Trading Program under COMAR 26.11.29 and .30 (NO<sub>x</sub> SIP Call), that is being repealed, established a cap and trade program for power plants and other large coal fired units, and distributed NO<sub>x</sub> allowances to these units. The regulations also contained requirements for other major sources of NO<sub>x</sub> including natural gas pipeline compression stations and Portland cement manufacturing plants (cement plants) that were not included in the

trading program. Requirements for power plants, referred to as electric generating units, are now contained in the Clean Air Interstate Rule (CAIR) under COMAR 26.11.28, whereas requirements for non-trading NO<sub>x</sub> sources are contained in this chapter and referred to as non-electric generating units.

#### Sources Affected:

This proposed action will affect two natural gas pipeline compression stations and two existing Portland cement manufacturing plants. A third Portland cement manufacturing plant moved out of state to be closer to its source of raw materials.

#### Requirements:

This action requires:

1. Stationary internal combustion engines at natural gas pipeline compression stations to continue to meet the applicable NO<sub>x</sub> emission requirements that were included in the federal NO<sub>x</sub> SIP Call;

2. Cement kilns at Portland cement manufacturing plants to continue to meet, until March 31, 2011, either the applicable NO<sub>x</sub> emission standards or the NO<sub>x</sub> control measures that were included in the federal NO<sub>x</sub> SIP Call; and

3. Cement kilns at Portland cement manufacturing plants to meet, beginning April 1, 2011, the applicable NO<sub>x</sub> emission standards that were included in the federal NO<sub>x</sub> SIP Call.

#### Expected Emissions Reductions:

NO<sub>x</sub> emissions at cement plants will be reduced through installation of NO<sub>x</sub> control systems. Compliance will result in an overall reduction of at least 3,800 tons per year of NO<sub>x</sub> from the cement plants. The gas compression stations have already been modified to reduce NO<sub>x</sub> emissions.

#### Comparison to Federal Standards

In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:

(1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:

NO<sub>x</sub> SIP Call: 40 CFR Parts 51, 72, 75, and 96 (FR 63: 57356 (October 27, 1998))

"Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone"

The federal rule provides several compliance options for Portland cement plants to reduce NO<sub>x</sub> emissions whereas this proposed action eliminates all options except the option that produces the greatest NO<sub>x</sub> emissions reduction, beginning April 1, 2011.

(2) Benefit to the public health, safety or welfare, or the environment: Reduces NO<sub>x</sub> emissions which are a primary precursor to the formation of ground level ozone.

(3) Analysis of additional burden or cost on the regulated person:

The largest cement plant will pay \$2,500,000 for a NO<sub>x</sub> control system and will pay \$2,000,000 annually for operating costs. The owner of the smaller cement plant will pay up to \$1,000,000 for a NO<sub>x</sub> control system and will pay \$800,000 for annual operating costs.

(4) Justification for the need for more restrictive standards:

Further NO<sub>x</sub> reductions are necessary in order to meet the federal ambient air quality standards for ozone. This action will reduce air pollutants that contribute to respiratory disease.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The existing gas compression stations rebuilt these engines to meet more stringent standards under the federal NO<sub>x</sub> SIP Call and currently meet those requirements. There will be no additional costs. The largest cement plant will pay \$2,500,000 for a NO<sub>x</sub> control system and will pay \$2,000,000 annually for operating costs. The owner of the smaller cement plant will pay up to \$1,000,000 for a NO<sub>x</sub> control system and will pay \$800,000 for annual operating costs. All the affected sources are major NO<sub>x</sub> sources and are currently inspected by the Department. Therefore, there will be no additional impact on the Department.

**II. Types of Economic Impact.**

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE		
B. On other State agencies:	NONE		
C. On local governments:	NONE		
	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:			
(1) largest cement plant	(-)		\$2,500,000
(2) largest cement plant — operating costs	(-)		\$2,000,000 annually
(3) smallest cement plant	(-)		up to \$1,000,000
(4) smallest cement plant — operating costs	(-)		\$800,000 annually
E. On other industries or trade groups:	NONE		
F. Direct and indirect effects on public:	(+)		Undeterminable

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

- D(1). The \$2,500,000 includes the cost of the NO<sub>x</sub> reduction control technology to be used known as Selective Non-Catalytic Reduction Systems (SNCR) and installation costs.
- D(2). Annual cost of utilities, maintenance and materials needed to operate the NO<sub>x</sub> control system.
- D(3). Cost includes the cost of the NO<sub>x</sub> reduction control technology to be used known as Selective Non-Catalytic Reduction Systems (SNCR) and installation costs.
- D(4). Annual cost of utilities, maintenance and materials needed to operate the NO<sub>x</sub> control system.
- F. This action will help improve Maryland's air quality and will result in fewer negative health effects on the general public from air pollution.

**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 an impact on individuals with disabilities as follows:  
 This action will have a positive impact on individuals with disabilities involving respiratory problems by reducing air pollutants that contribute to disease.

**Opportunity for Public Comment**

The Department of the Environment will hold a public hearing on the proposed action on March 3, 2010 at 10 a.m. at the Department of the Environment, 1800 Washington

Boulevard, 1st Floor Aeris Conference Room, Baltimore, Maryland 21230-1720.

Interested persons are invited to attend and express their views. Comments may be sent to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us. Comments must be received not later than March 3, 2010, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Copies of the proposed action and supporting documents are available for review at the following locations: The Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

**26.11.29 [NO<sub>x</sub> Reduction and Trading Program] NO<sub>x</sub> Reduction Requirements for Non-Electric Generating Units under the Clean Air Interstate Rule**

Authority: Environment Article, §§1-101, 1-404, 2-101 — 2-103, and 2-301 — 2-303, Annotated Code of Maryland

**.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Electric generating unit" means a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system that sells any amount of electricity.

(2) "Non-electric generating unit" means a fossil fuel fired stationary boiler, combustion turbine, or combined cycle system that is not an electric generating unit.

**.02 Applicability.**

This chapter applies to non-electric generating units that are not subject to COMAR 26.11.27 or COMAR 26.11.28, and that are located at:

- A. Portland cement manufacturing plants; and
- B. Natural gas pipeline compression stations.

**.03 Emission Reduction Requirements for Portland Cement Manufacturing Plants.**

A. A person who owns or operates a cement kiln at a Portland cement manufacturing plant subject to this chapter shall, on or before May 1, 2003 until April 1, 2011, either meet the applicable NO<sub>x</sub> emission standards in §B of this regulation or implement one of the following control measures:

- (1) Install low NO<sub>x</sub> burners on each kiln; or
- (2) Modify each kiln to implement mid-kiln firing.

B. Emission Standards for Cement Kilns. The emissions standards for cement kilns are as follows:

- (1) For long wet kilns, maximum emissions of 6.0 pounds of NO<sub>x</sub> per ton of clinker produced;
- (2) For long dry kilns, maximum emissions of 5.1 pounds of NO<sub>x</sub> per ton of clinker produced; and

(3) For pre-heater/pre-calciner or pre-calciner kilns, maximum emissions of 2.8 pounds of NO<sub>x</sub> per ton of clinker produced.

C. Compliance with the emission standards in §B of this regulation shall be demonstrated as a 30-day rolling average.

D. On and after April 1, 2011, the requirements in §A(1) of this regulation no longer apply and cement kilns shall meet the applicable NO<sub>x</sub> emission standards in §B of this regulation.

**.04 Monitoring Requirements.**

A. A person who owns or operates a nonelectric generating unit subject to this chapter shall:

(1) Continuously monitor NO<sub>x</sub> emissions with a continuous emissions monitor ("CEM") certified in accordance with 40 CFR Part 60 or use an alternative method approved by the Department and the EPA;

(2) On or before May 1, 2002, collect NO<sub>x</sub> emissions data that was obtained pursuant to §A(1) of this regulation; and

(3) Submit emissions data collected pursuant to §A(2) of this regulation to the Department for each control period by November 30 of each year, beginning with the 2002 control period.

B. The NO<sub>x</sub> emissions data collected pursuant to §A(2) of this regulation shall be used to demonstrate compliance with the emission reduction requirements in Regulation .03B of this chapter.

**.05. Emission Reduction Requirements for Stationary Internal Combustion Engines at Natural Gas Pipeline Compression Stations.**

A. This regulation applies to a stationary internal combustion engine located at a natural gas pipeline compression station if the engine is one of the types and corresponding sizes identified in §C of this regulation, and had average daily emissions of 1 ton or more per day for the 1995 or 1996 control periods.

B. The owner or operator of a stationary internal combustion engine to which this regulation applies shall:

(1) On or before May 1, 2003, meet the applicable NO<sub>x</sub> emission standard in §C of this regulation; or

(2) On or before May 1, 2001, submit to the Department, for approval, a proposal to reduce NO<sub>x</sub> emissions by not less than 90 percent from the 1995 base year emissions.

C. Emission Standards.

Type Engine	Size (brake HP)	Standard (15 percent oxygen)
Spark ignited rich burn	2400 HP or greater	110 ppmv
Spark ignited lean burn	2400 HP or greater	125 ppmv
Diesel engines	3100 HP or greater	175 ppmv
Dual fuel engines	4400 HP or greater	125 ppmv

SHARI T. WILSON  
Secretary of the Environment

# Title 30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

## Subtitle 08 DESIGNATION OF TRAUMA AND SPECIALTY REFERRAL CENTERS

### 30.08.16 Cardiac Interventional Center Standards

*Authority: Education Article, §13-509,  
Annotated Code of Maryland*

#### Notice of Proposed Action

[10-063-P]

The Emergency Medical Services Board proposes to propose to adopt new Regulations .01 — .04 under a new chapter, **COMAR 30.08.16 Cardiac Interventional Center Standards**. This action was considered and approved by the State Emergency Medical Services Board at its regular meeting on December 8, 2009.

#### Statement of Purpose

The purpose of this action is to provide standards under which MIEMSS may designate a hospital as a Cardiac Interventional Center. The Maryland Medical Protocols for Emergency Medical Services Providers will identify designated Cardiac Interventional Centers as the most appropriate hospitals to receive patients with acute ST-segment elevated myocardial infarction (STEMI). This will enable emergency medical services providers to transport STEMI patients directly from the field to facilities prepared, staffed, and equipped to provide time-critical cardiac interventions. Medical research has indicated that STEMI patients who are timely treated at such facilities have fewer complications and reduced mortality. Designation of Cardiac Interventional Centers will ensure that STEMI patients receive timely and effective treatment

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** Designation as a Cardiac Interventional Center by MIEMSS will be voluntary for a hospital and will be available to any hospital which applies and complies with the proposed chapter. As with other designated specialty centers, The Maryland Medical Protocols for Emergency Medical Services Providers will provide for transport of patients with acute ST-segment elevation myocardial infarction (STEMI) to hospitals which are designated as Cardiac Interventional centers. Under these regulations, the 23 hospitals which currently have a certificate of need or waiver from the Maryland Health Care Commission to provide primary percutaneous coronary intervention (PCI), as well as similar facilities which are located in bordering states, may be designated as Cardiac Interventional Centers. These hospitals will continue to receive STEMI patients as designated Cardiac Interventional Centers.

It is not possible to quantify the net revenue or expense associated with the Cardiac Interventional Center designation. Expenses for compliance with the proposed regulations are expected to be minimal as the requirements for designation are consistent with the requirements the hospitals will have already met to receive a

certificate of need or waiver. Revenues will depend on the volume of patients and the care provided.

The economic impact on the issuing agency will include approximately .25 FTE of staff time.

II. Types of Economic Impact	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$25,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(+)	Not quantifiable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Not quantifiable

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

A. There will be some additional administrative costs to administer the cardiac interventional designation program. It is anticipated a 0.25 full time equivalent (FTE) registered nurse would be required to assist the program at an estimated cost of \$25,000. Additional annual work by agency personnel will be minimal as the regulations do not contemplate regular designation site visits.

D. Designation as a cardiac interventional center is voluntary for a hospital. Revenues will depend on the volume of patients and the level of care provided. The impact on patient flow is expected to be minimal in many areas of the state because patterns of patient transport are already in place based on the existing certificate of need and waivers. Health Services Cost Review Commission data suggests that Statewide only about seven (7) potential primary PCI cases / day would likely be transported by Emergency Medical Services. Thus, the volume of STEMI patients requiring primary PCI who would be transported by emergency medical services is believed to be relatively small and an increase in volume at any facility is not anticipated. The majority of STEMI patients arrive at a hospital by personal vehicle and those patients will not be affected by the emergency medical services triage protocols for ambulance-transported patients.

The cost of the application for designation is not material. The cost of meeting the criteria is minimal because the criteria are consistent with the requirements for the certificate of need or waiver which the hospital will have already met.

F. The proposed regulations are expected to directly benefit citizens as under these regulations patients will be transported to a hospital appropriate to the patient's needs.

**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 Lisa Myers, Director, Special Programs, Maryland Institute for Emergency Medical Services Systems, 653 West Pratt Street, Baltimore, MD 21201, or call (410) 706-4740, or email to lmyers@miemss.org, or fax to (410) 706-0853. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

**B. Terms Defined.**

(1) "Cardiac Interventional Center" means:

(a) An in-State hospital that meets the requirements in Regulation .02 of this chapter and is designated by MI-EMSS and approved by the EMS Board to receive patients transported by ambulance with acute ST-segment elevation myocardial infarction (STEMI) who need Primary Percutaneous Coronary Intervention; or

(b) An out-of-State hospital that has entered into an agreement with MIEMSS and has been approved by the EMS Board to receive patients with acute ST-segment elevation myocardial infarction who need Primary Percutaneous Coronary Intervention.

(2) "Jurisdiction" means a state, commonwealth, or the District of Columbia.

(3) "Percutaneous coronary intervention (PCI)" means a variety of catheter-based techniques, including balloon angioplasty, capable of relieving coronary vessel narrowing.

(4) "Primary PCI" means PCI capable of relieving coronary vessel narrowing associated with acute ST-segment elevation myocardial infarction (STEMI).

(5) "STEMI" means coronary vessel narrowing associated with ST-segment elevation myocardial infarction.

**.02 Cardiac Interventional Center.**

A. A Cardiac Interventional Center shall be licensed as an acute care hospital by the hospital licensing authority in the jurisdiction in which it is located.

B. If located in Maryland, a Cardiac Interventional Center shall:

(1) Have one of the following:

(a) A Certificate of Need (CON) issued by the Maryland Health Care Commission for a cardiac surgery and percutaneous coronary intervention (PCI) program; or

(b) A current waiver issued by the Maryland Health Care Commission to provide primary percutaneous coronary intervention (PCI) services to STEMI patients meeting certain criteria without on-site cardiac surgery; and

(2) Be a base station approved under COMAR 30.03.06.

C. If not located in Maryland, a Cardiac Interventional Center shall:

(1) Possess all government approvals required to provide Primary PCI under the laws of the jurisdiction in which it is located including, if required, a CON; and

(2) Satisfy one of the following:

(a) Be a base station approved under COMAR 30.03.06; or

(b) Have the equipment necessary to conduct a dual consult between EMS and a Maryland base station for each Maryland patient transported to the Cardiac Interventional Center.

D. A Cardiac Interventional Center shall:

(1) Provide primary PCI as soon as possible and not to exceed 90 minutes from patient arrival, that is, door to balloon time of less than 90 minutes, for 75% of appropriate STEMI patients;

(2) Provide primary PCI for appropriate STEMI patients 24 hours per day, 7 day per week;

(3) Have adequate physician, nursing, and technical staff to provide cardiac catheterization and coronary care unit services 24 hours per day, 7 days per week;

(4) Have a single call access system for receiving patients with STEMI;

(5) Participate in the County Hospital Alert Tracking System (CHATS) program;

(6) Abide by the Maryland Emergency Medical Services Inter-Hospital Transfer Guidelines published by MIEMSS in addition to any applicable transfer requirements in COMAR 10.24.17;

(7) Communicate as soon as possible with the STEMI patient's primary physician and cardiologist regarding patient outcome;

(8) Establish a Cardiac Interventional Center medical review committee which shall be a medical review committee under Health Occupations Article, §1-401, Annotated Code of Maryland, as a committee established in the Maryland Institute for Emergency Medical Services Systems which:

- (a) Meets at least three times a year;
- (b) Reviews practice patterns; and
- (c) Modifies practice patterns as appropriate; and

(9) Comply with the requirements of COMAR 30.08.04, including participating in:

(a) A Cardiovascular Data registry jointly approved by MHCC and MIEMSS, including any registry data reporting requirements established by either MIEMSS or MHCC; and

(b) State specialty care quality management activities of MIEMSS or of MHCC that are approved by MIEMSS.

**.03 Catheterization Lab.**

A Cardiac Interventional Center may receive STEMI patients transported by ambulance directly to the catheterization lab when approved by the base station physician if the catheterization lab has a physician, appropriately credentialed to evaluate and stabilize an acute cardiac patient, a registered nurse, and a technician, capable of activating the catheterization lab, immediately available in house when:

A. The 12 lead EKG in the field is interpreted by an advanced life support EMS provider as a high probability of a STEMI; or

B. The 12 lead EKG in the field has been reviewed by an ED physician, a cardiologist, or both, and determined to be a STEMI.

**.04 Site Reviews**

A. Notwithstanding COMAR 30.08.02.06, MIEMSS may designate any Cardiac Interventional Center without a site review.

B. Notwithstanding §A of this regulation, MIEMSS staff may conduct an onsite review to verify compliance with this chapter, including:

- (1) Inspecting the hospital's physical plant;
- (2) Interviewing team members and management personnel;

(3) Examining the hospital's Cardiac Interventional Center related documents, including patient care records; and

(4) Reviewing other materials considered appropriate by MIEMSS.

C. The Maryland Health Care Commission staff may participate in any review conducted by MIEMSS to verify compliance with COMAR 30.08.15, including reviewing application materials, and participating in any on-site review.

D. MIEMSS staff may participate in any review conducted by the Maryland Health Care Commission to verify compliance with COMAR 10.24.17, including reviewing application materials, and participating in any on-site visits.

ROBERT R. BASS  
Executive Director

# Title 33 STATE BOARD OF ELECTIONS

## Subtitle 06 PETITIONS

### Notice of Proposed Action

[10-055-P]

The State Board of Elections proposes to amend:

- (1) Regulations .02 and .03 under **COMAR 33.06.02 Information Page**;
- (2) Regulations .02, .06, and .07 under **COMAR 33.06.03 Signature Pages**; and
- (3) Regulation .01 under **COMAR 33.06.04 Filing Procedures**.

### Statement of Purpose

The purpose of this action is to update the regulations to reflect a recent court opinion, to clarify the type of residential information that must appear on a petition and that certain filings must be submitted in person, and to make other clarifying changes.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

The proposed action has no economic impact.

### 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 Nikki Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis MD 21401, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

### 33.06.02 Information Page

Authority: Election Law Article, §§ 2-102(b)(4), 6-103, and 6-201,  
Annotated Code of Maryland

#### .02 Subject and Purpose.

- A. (text unchanged)
- B. Presidential Primary Candidate. For a petition under Election Law Article, §8-502, Annotated Code of Maryland, to place a presidential candidate on a primary election ballot, the description shall include the candidate's:
  - (1) (text unchanged)
  - (2) [Address] City and state where the candidate resides; and
  - (3) (text unchanged)

C. General Election Candidate. For a petition under Election Law Article, §5-703, Annotated Code of Maryland, to place a candidate on a general election ballot, the description shall include the:

- (1) (text unchanged)
- (2) Candidate's [address] city and state where the candidate resides;

(3) — (4) (text unchanged)

D. Formation of Political Party. For a petition under Election Law Article, §4-102, Annotated Code of Maryland, to form a new political party, the description shall include:

(1) — (2) (text unchanged)

(3) The name [and address] of the proposed political party's State chair *and the city and state where proposed party's State chair resides*; and

(4) (text unchanged)

E. Referral of Act of General Assembly. For a petition under Article XVI of the State Constitution to refer an Act or part of an Act of the General Assembly, whether a public general law or a public local law, the description shall include:

(1) — (2) (text unchanged)

(3) *If applicable*, [A] a copy of the summary approved by the Attorney General of the Act or part of the Act being petitioned.

F. — I. (text unchanged)

### **.03 Sponsor Identification.**

A. — B. (text unchanged)

C. Persons to Whom Applicable. The information specified in §B of this regulation shall be given for:

(1) (text unchanged)

(2) If the sponsor is an organization:

(a) An individual [responsible to the organization] who has been designated by the organization to receive notices in connection with the petition, or

(b) (text unchanged)

### **33.06.03 Signature Pages**

Authority: Election Law Article, §§2-102(b)(4), 6-103, 6-201, and 6-203, Annotated Code of Maryland

### **.02 Placement of Information and Signatures.**

A. One Side Only. Except as provided in §B of this regulation, only one side of a signature page may be used for:

(1) Signatures; [or] *and*

(2) (text unchanged)

B. Summary or Text of Question. If the petition is to place a question on the ballot, the [required summary or full text of the proposal may be printed on the] reverse side of the signature page *may contain*:

(1) *A complete and accurate summary of the substantive provisions of the proposal*; or

(2) *The full text of the proposal.*

### **.06 Signer Identification.**

A. (text unchanged)

B. Required Information. When signing the signature page, each signer shall:

(1) Sign the [signer's] *individual's name as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names*; and

(2) (text unchanged)

C. (text unchanged)

### **.07 Circulator Identification.**

A. (text unchanged)

B. Information To Be Provided. The identification of the circulator shall include that individual's:

(1) — (2) (text unchanged)

(3) Telephone [numbers] *number*.

## **33.06.04 Filing Procedures**

Authority: Election Law Article, §§2-102(b)(4), 6-103, and 6-205, Annotated Code of Maryland

### **.01 Candidate's Declaration of Intent.**

A petition candidate who is required by Election Law Article, §5-703, Annotated Code of Maryland, to file a declaration of intent with the State Board or a local board [may do so by mail, as long as the completed and notarized declaration is received by the appropriate board office before the deadline] *shall file in person before the deadline.*

LINDA H. LAMONE  
State Administrator of Elections

## **Subtitle 07 ELECTION DAY ACTIVITIES**

### **Notice of Proposed Action**

[10-056-P]

The State Board of Elections proposes to:

(1) Amend Regulations **.01** and **.02** under **COMAR 33.07.02 Election Equipment and Materials**;

(2) Amend Regulations **.02 — 04** and adopt new Regulation **.06** under **COMAR 33.07.03 Officials' Duties Generally**;

(3) Amend Regulations **.01** and **.02** under **COMAR 33.07.04 Order and Decorum**;

(4) Amend **.01 — .03** under **COMAR 33.07.05 Special Assistance**;

(5) Amend Regulations **.02** and **.03** under **COMAR 33.07.07 Challenging Voters**; and

(6) Amend Regulations **.01** and **.06** under **COMAR 33.07.08 Electioneering; Exit Polling**.

### **Statement of Purpose**

The purpose of this action is to alter the process and content of the transportation plan for election day, expand the list of individuals who can prepare polling places, require the submission of certain information upon request of the State Administrator, require the use of certain forms in the polling place evaluation program, require the local boards to have an area where the public can observe the return of polling place supplies, specify to whom the media and exit polling organizations should provide certain information, establish a broad prohibition on electronic equipment at polling places, clarify who and how assistance at the polls can be provided, reference the election judges' manual for certain procedures, establish grounds for challenging a voter's identity, update regulations to reflect statutory changes, and make other clarifying changes.

### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

### **Estimate of Economic Impact**

The proposed action has no economic impact.

### **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 Nikki Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis MD 21401, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**33.07.02 Election Equipment and Materials**

Authority: Election Law Article, §§2-102(b)(4) and 2-202(b), Annotated Code of Maryland

**.01 Delivery to and Return from Polls.**

A. Board to Develop. The [local board] *State Administrator* shall develop, *in consultation with the local boards*, [and, with the approval of the State Board, adopt] a written plan for the prompt and secure delivery of voting [machines] *units* and other election day equipment and materials to *and from* polling places.

B. Inclusions. The plan shall specify the methods of and time frames for these deliveries *and returns*.

**.02 Polling Place Readiness and Set-Up.**

Election judges *and other assigned personnel* shall prepare and set up their respective polling places as required by:

- A. The applicable judges' manual; and
- B. All supplemental directives of the local board or State Board.

**33.07.03 Officials' Duties Generally**

Authority: Election Law Article, §§2-102(b)(4) and 2-202(b), Annotated Code of Maryland

**.02 Election Day Communications.**

A. Between Office and Polls. The local board shall assure that, throughout election day, each polling room is equipped with [communication services capable of direct access to] *the ability to communicate directly with* the local board office.

- B. (text unchanged)
- C. Communications Log.
  - (1) — (2) (text unchanged)

(3) *If requested by the State Administrator, the election director shall submit, within the time the State Administrator requests, a copy of the communications log.*

**.03 Board Counsel.**

Throughout election day and the ensuing [canvass] *canvasses*, the local board's counsel shall be at the board office or immediately reachable by telephone, pager, or other direct means of communication.

**.04 Polling Place Evaluation Program.**

A. Establishment Required. Each election director shall develop and, with the approval of the State Administrator, establish and implement a polling place evaluation program *using the polling place evaluation form issued by the State Administrator.*

- B. — C. (text unchanged)

**.06 Return of Election Supplies.**

*A local board shall establish a separate, clearly delineated area for members of the public and the media so that they can reasonably observe the return of election supplies without obstructing or hindering the process.*

**33.07.04 Order and Decorum**

Authority: Election Law Article, §§2-102(b)(4) and 2-202(b), Annotated Code of Maryland

**.01 Media.**

- A. (text unchanged)
- B. Notice Requested.

(1) Media organizations are requested to [identify] *provide the State Administrator or the election director with a list of those polling places that they intend to cover, so that the election judges can be informed.*

- (2) (text unchanged)

**.02 Cell Phones, Pagers, Cameras, etc.**

A. In General. Except as specified in §B of this regulation, [the following devices] *electronic communication devices* may not be used in a polling place. *Prohibited devices include:*

- (1) Cameras; *and*
- (2) Any [audible] electronic devices, including:
  - (a) — (b) (text unchanged)
  - (3) (text unchanged)
- B. (text unchanged)

**33.07.05 Special Assistance**

Authority: Election Law Article, §§ 2-102(b)(4), 2-202(b), 3-101, [3-601,] 9-406, [and] 10-310(c), *and 10-311(d)*, Annotated Code of Maryland

**.01 Inability to Sign [VAC].**

A. In General. Subject to the requirements of §B of this regulation:

(1) If a voter is unable to sign [the voter authority card] *a form used at a polling place*, an "X" or similar mark will be accepted as that individual's signature; and

- (2) (text unchanged)

B. Endorsement. In either of the situations described in §A of this regulation, the election judge [in charge of voter authority cards] *checking in or otherwise assisting the voter* shall sign and date, on the back of the [voter authority card] form, an endorsement indicating that:

- (1) [the] *The voter was unable to sign the voter's name; and*
- (2) *If the form that the voter was unable to sign was the voter authority card, the voter was found qualified to vote by that election judge.*

**.02 Assistance Needed to Cast Ballot.**

A. Scope. This regulation applies when, because of a physical disability or an inability to read or write English, a voter requests assistance in *marking or casting the ballot or in filling out [the application for and voting] a provisional ballot application.*

- B. Voter's Options.

(1) As provided in Election Law Article, Annotated Code of Maryland, the voter may select anyone to assist the voter, except:

- (a) (text unchanged)
- (b) The voter's union representative; [or]
- (c) An officer or agent of the voter's employer or union[.]; *or*
- (d) *A challenger or watcher who has been designated as such for this election.*

- (2) (text unchanged)

- C. (text unchanged)

D. Voter Assistance Record — Signing by Individual Assisting. If the voter has selected someone to assist the voter, the individual selected by the voter shall:

- (1) (text unchanged)
- (2) Sign the record to affirm that she or he:
  - (a) Has been asked by the voter to assist the voter in marking or casting the voter's ballot or in filling out [the application for and voting] a provisional ballot application;
  - (b) — (c) (text unchanged)
  - (d) *Has not been appointed as a challenger or watcher for this election;*

[(d)] (e) Will assist the voter only by:

- (i) (text unchanged)
- (ii) [Operating] *As directed by the voter, marking or casting the ballot, operating the voting [machine] unit, or completing [an application form and] a provisional ballot application[, as directed by the voter];* and

[(e)] (f) (text unchanged)

E. (text unchanged)

F. Scope of Assistance. Assistance provided under this regulation shall be limited to:

- (1) (text unchanged)
- (2) [Operating] *As directed by the voter, marking or casting the ballot, operating the voting [machine] unit, or completing [an application form and] a provisional ballot application[, as directed by the voter].*

### **.03 Name Not in [Precinct] Election Register.**

A. Manual Procedures. If a voter's name does not appear in the [precinct] election register, the election judges shall follow the procedures specified in the Judges' Manual [for:

- (1) Checking the inactive and removal lists;
- (2) When appropriate, issuing a:
  - (a) Provisional ballot; or
  - (b) Voter authority card and a voter registration application; and
- (3) When required, obtaining instructions from the local board office].

B. (text unchanged)

### **33.07.07 Challenging Voters**

Authority: Election Law Article, §§2-102(b)(4), [and] 2-202(b), and 10-312, Annotated Code of Maryland

#### **.02 Grounds for Challenge.**

[An individual's right to vote may be challenged only on the ground that the individual seeking to vote is not the registered voter that the individual claims to be] *A challenger may challenge an individual's right to vote only if the challenger has a reasonable basis for asserting that the individual seeking to vote is not the registered voter that the individual claims to be.*

#### **.03 Challenge Record.**

- A. (text unchanged)
- B. Contents. The form shall contain appropriate places for:
  - (1) (text unchanged)
  - (2) The signature of the Chief Judge who administered each oath; and
  - (3) The reason given for the challenge[;
  - (4) The identification presented by the challenged voter].

### **33.07.08 Electioneering; Exit Polling**

Authority: Election Law Article, §§2-102(b)(4) and 2-202(b), Annotated Code of Maryland

#### **.01 Electioneering — [Local Board Office] Election Offices.**

(text unchanged)

#### **.06 Exit Polling.**

A. — B. (text unchanged)

C. Notice Requested.

(1) Polling organizations are requested to [identify] provide the State Administrator or the election director with a list of those polling places that they intend to cover, so that the election judges can be informed.

(2) (text unchanged)

LINDA H. LAMONE  
State Administrator of Elections

## **Subtitle 08 CANVASSING**

### **33.08.01 Definitions; General Provisions**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 11-201, Annotated Code of Maryland

#### **Notice of Proposed Action**

[10-059-P]

The State Board of Elections proposes to amend to Regulations .02 and .02-1 under COMAR 33.08.01 Definitions; General Provisions. This action was considered by the State Board of Elections at an open meeting held on December 17, 2009, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### **Statement of Purpose**

The purpose of this action is to incorporate the oath requirements for local board members and counsel and correct an omission.

#### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

#### **Estimate of Economic Impact**

The proposed action has no economic impact.

#### **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 Nikki Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis MD 21401, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

#### **.02 Board Responsibilities.**

A. In General.

(1) — (2) (text unchanged)



(3) *Oath or Affirmation.*

(a) *In an election where there is no early voting, each member of the local board shall, not later than 5 p.m. on election day, take and subscribe the following oath or affirmation: I, . . . . ., do swear, (or affirm as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitutions and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of Board of Canvassers, according to the Constitution and Laws of this State.*

(b) *The oath or affirmation shall be administered and recorded by the clerk of the circuit court.*

B. (text unchanged)

**.02-1 Board Counsel.**

A. *Oath or Affirmation Required.*

(1) *Each local board counsel shall take and subscribe the following oath or affirmation: I, . . . . ., do swear, (or affirm as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitutions and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, serve as counsel to the . . . . . Board of Canvassers, according to the Constitution and Laws of this State.*

(2) *The clerk of the circuit court or chairman of the local board shall administer and record the oath or affirmation in §A(1) of this regulation to the local board counsel.*

(3) *The oath or affirmation shall be administered on or before the day of the election but not later than 5 p.m. on that day.*

[A.] B. *Presence During Decision Sessions.*

(1) *During each canvass, the local board's counsel shall be present at any time the local board is deciding questions or otherwise making decisions on the legality or acceptability of a vote on an absentee or provisional ballot, an absentee ballot, provisional ballot application, or provisional ballot.*

(2) (text unchanged)

[B.] C. (text unchanged)

LINDA H. LAMONE  
State Administrator of Elections

**Subtitle 08 CANVASSING**

**Notice of Proposed Action**

[10-057-P]

The State Board of Elections proposes to amend:

(1) Regulations **.05, .06, .07, .09, .10,** and **.12** under **COMAR 33.08.01 Definitions; General Provisions;**

(2) Regulation **.03** under **COMAR 33.08.02 Uniform Definition of a Vote;**

(3) Regulation **.02** under **COMAR 33.08.03 Canvass Control and Safeguards;** and

(4) Regulations **.01, .02, .04,** and **.06** under **COMAR 33.08.04 Central Count Procedures.**

**Statement of Purpose**

The purpose of this action is to remove references to election night central canvasses, establish when certain write-in votes can be counted, and make clarifying and technical changes.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**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 Nikki Trella, Election Reform Director, State Board of Elections, P. O. Box 6486, Annapolis MD 21401, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**33.08.01 Definitions; General Provisions**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 11-201, Annotated Code of Maryland

**.05 Stages of Canvass.**

A. (text unchanged)

[B. Election Night — Central Count. The canvass of votes at the counting center shall:

(1) Start immediately after the polls have closed and ballots have begun to arrive from the polling places; and

(2) Be conducted as provided in this subtitle.] *Repealed.*

C. — D (text unchanged)

**.06 Working Sessions.**

The local board shall determine and announce the:

A. — B. (text unchanged)

**.07 Public Attendance at Canvass.**

[A. In General.] Throughout the canvass, all sessions, deliberations, and proceedings shall be open to the public and the media.

[B. Election Night. For the election night canvass, the local board shall establish a separate, clearly delineated area for members of the public and the media so that they can reasonably observe all phases of the canvass without obstructing or hindering the process.]

**.09 Voting System Verification.**

[Promptly after the election night canvass, the] A local board shall verify the voting system as provided in COMAR 33.10.

**.10 Post-Election Audit.**

A. Required.

(1) (text unchanged)

(2) The election director shall first audit the precincts selected for verification under COMAR 33.10.[02.38.]

B. Materials To Be Audited. The election materials to be audited shall include:

(1) (text unchanged)

(2) [Precinct registers] *Reports produced by the electronic pollbooks;*

[(3) Temporary certificates;]

[(4)] (3) — [(7)] (6) (text unchanged)

C. Voting Units Audit. If any discrepancies arise that cannot be reconciled, the voting [machines] units shall be audited until the cause of the discrepancy has been determined.

D. (text unchanged)

### .12 Release of Voting Systems.

Once secured, as required by COMAR 33.10, no part of the voting system may be released except:

A. (text unchanged)

B. On the written authorization of the State [Board] Administrator.

### 33.08.02 Uniform Definition of a Vote

Election Law Article, §§2-102(b)(4) and 2-202(b),  
Annotated Code of Maryland,  
42 U.S.C. §15481(a)(6)

### .03 Write-in Voting Generally.

A. — B. (text unchanged)

B-1. *Writing in only the first name or initials of a candidate constitutes a valid vote, unless there is more than one filed candidate with the same first name or initials for that office. If there is more than one filed candidate with the same first name or initials for that office, writing in only the first name or initials is not a valid vote.*

C. — D. (text unchanged)

### 33.08.03 Canvass Control and Safeguards

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 11-201,  
Annotated Code of Maryland

### .02 Public Inspection of Ballots and Other Documents.

Observers and challengers are allowed to visually inspect ballots, [memory packs,] *provisional ballot applications, and absentee ballot envelopes*, and the like, at a reasonable distance, but may not touch them.

### 33.08.04 Central Count Procedures

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 11-201,  
Annotated Code of Maryland

### .01 Scope.

A. (text unchanged)

B. [Exceptions] *Exception*. This chapter does not apply to votes cast on[:

(1) The AVC Advantage Direct Recording Electronic Voting System; or

(2) Any] *any* other direct recording electronic voting equipment certified for use in this State.

### .02 Special Teams.

A. Appointment; Composition.

(1) The local board shall:

(a) [appoint] *Appoint* special teams to perform various functions during the canvass; and

(b) *Assign an identification number to each team.*

(2) (text unchanged)

B. — C. (text unchanged)

### .04 Ballot Inspection.

For the ballots of each precinct, a ballot inspection team shall:

A. — B. (text unchanged)

C. *If there is more than one ballot box for a precinct, [Assemble] assemble* them with other ballots from the same precinct; and

D. (text unchanged)

### .06 Write-In Votes.

A. (text unchanged)

B. Requisites for Validity. A write-in vote is not valid and may not be counted [or recorded] unless the [voter:

(1) Wrote the name of the individual for whom the vote is cast on the blank line provided for write-in voting; and

(2) Marked the voting position on the same line as that on which the name is written] *write-in vote meets the requirements of COMAR 33.08.02.03.*

C. (text unchanged)

LINDA H. LAMONE  
State Administrator of Elections

## Subtitle 17 EARLY VOTING

### Notice of Proposed Action

[10-058-P]

The State Board of Elections proposes to:

(1) Adopt new Regulations .01 and .02 under a new chapter, **COMAR 33.17.01 Definitions; General Provisions;**

(2) Adopt new Regulation .06 under **COMAR 33.17.04 Election Equipment and Materials;**

(3) Adopt new Regulations .01 — .10 under a new chapter, **COMAR 33.17.06 Early Voting Activities;** and

(4) Adopt new Regulations .01 — .04 under a new chapter, **COMAR 33.17.07 Non-Voting Hours Procedures.**

This action was considered by the State Board of Elections at an open meeting held on December 17, 2009, notice of which was given pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

### Statement of Purpose

The purpose of this action is to define terms used for early voting and for which elections early voting must be conducted, establish the quantities of supplies that must be deployed to and information that must be posted at early voting centers, require training for election judges serving during early voting, and establish the requirements for voting during early voting and during non-early voting hours.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

**I. Summary of Economic Impact.** There might be an economic impact if a local board of elections compensates an individual or organization for conducting unannounced visits to polling places. The proposed regulation requires two unannounced visits per early voting center. If a local board compensates an individual or organization to make these visits, the local board might have to compensate the individual or organization more if they will be making the unannounced visits to the early voting center(s) and to polling places on election day.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments: Early Voting Center Evaluation Program	(E+)	Minimal
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
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.)

C. A local board compensates an individual or organization to make the unannounced visits to the early voting center(s).

**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 Nikki Trella, Election Reform Director, State Board of Elections, P.O. Box 6486, Annapolis MD 21401, or call 410-269-2843, or email to ntrella@elections.state.md.us, or fax to 410-974-2019. Comments will be accepted through March 1, 2010. A public hearing has not been scheduled.

**33.17.01 Definitions; General Provisions.**

*Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 10-301.1, Annotated Code of Maryland*

**.01 Definitions.**

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Early voting center" means a voting location in a county that is selected pursuant to COMAR 33.17.02 at which a voter may vote during the early voting period established by Election Law Article, §10-301.1(d), Annotated Code of Maryland.

(2) "Optical scan voting unit" includes the ballot box that is affixed to the optical scan voting unit.

**.02 Applicability to Elections.**

A. Early voting is applicable for the following regularly scheduled elections:

- (1) Presidential primary and general elections;
- (2) Gubernatorial primary and general elections; and
- (3) Baltimore City primary and general elections.

B. Early voting is not applicable for special primary and general elections.

**33.17.04 Election Equipment and Materials**

*Authority: Election Law Article, §§ 2-102(b)(4), 2-202(b), and 10-301.1, Annotated Code of Maryland*

**.06 Information for Voters at Early Voting Centers.**

A. Except as provided in §B of this regulation, a local board shall post at each early voting center:

(1) The information required by Election Law Article, §10-306, Annotated Code of Maryland;

(2) The number of voters who have voted as specified in the election judges' manual or supplement;

(3) A sign, prescribed by the State Administrator, informing voters that:

(a) Absentee ballots cannot be issued or returned at an early voting center; and

(b) A voter may not leave with a ballot issued at an early voting center; and

(4) Any other sign required by the State Administrator.

B. If a county has five or more different ballot styles in an election, posting a list of candidates and ballot questions for that election satisfies the requirement to post a specimen ballot in Election Law Article, §10-306, Annotated Code of Maryland.

**33.17.06 Early Voting Activities.**

*Authority: Election Law Article, §§ 2-102(b)(4), 2-202(b), and 10-301.1, Annotated Code of Maryland*

**.01 Officials' Duties Generally.**

A. In General. All local boards, their members, attorneys, election directors, staff members, election judges, and other assigned personnel shall faithfully and diligently perform all of the functions and duties that are assigned to them, collectively or categorically, by federal or State law or regulation, or by any manual, procedure, guideline, directive, or other instruction issued under federal or State law or regulation.

B. Local Board Members.

(1) Oath or Affirmation.

(a) Each local board member shall, before the start of early voting, take and subscribe the following oath or affirmation: I . . . . ., do swear, (or affirm as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of Board of Canvassers, according to the Constitution and Laws of this State.

(b) The oath or affirmation shall be administered and recorded by the clerk of the circuit court.

(2) Throughout early voting, local board members shall be at the board office or immediately available by telephone.

C. Board Counsel.

(1) Oath or Affirmation.

(a) Each local board counsel shall, before the start of early voting, take and subscribe the following oath or affirmation: I . . . . ., do swear, (or affirm as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitutions and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, serve as counsel to the . . . . Board of Canvassers, according to the Constitution and Laws of this State.

(b) The clerk of the circuit court or chairman of the local board shall administer the oath or affirmation to the local board counsel.

(2) Throughout early voting, the local board counsel shall be at the board office or immediately available by telephone.

D. *Office Hours.* During early voting, the local board office shall be open to the public during its regularly scheduled business hours and all early voting hours.

#### **.02 Communications During Early Voting.**

A. *Between Office and Early Voting Centers.* The local board shall ensure that, throughout early voting, each early voting center is equipped with the ability to communicate directly with the local board office.

##### **B. Communications Log.**

(1) Each local board shall maintain an early voting communications log.

(2) The communications log shall contain the information listed in COMAR 33.07.03.02C.

(3) If requested by the State Administrator, the election director shall submit, within the time the State Administrator requests, a copy of the communications log.

#### **.03 Early Voting Center Evaluation Program.**

A. *Establishment Required.* Each election director shall develop and, with the approval of the State Administrator, establish and implement an early voting center evaluation program using the early voting center evaluation form issued by the State Administrator.

##### **B. Elements.**

(1) The program shall provide for at least two unannounced visits to each early voting center to assess the election judges' compliance with applicable procedures and their general performance.

(2) Board members, staff members, independent contractors, or volunteers may be used to make these visits and assessments, as long as they have been properly trained in the early voting procedures outlined in the election judges' manual and supplement.

##### **C. Reports to Administrator.**

(1) If requested by the State Administrator, the election director shall submit a report of the results of that election's evaluation.

(2) The report shall be submitted within the time and in the form that the State Administrator requests.

#### **.04 Order and Decorum.**

##### **A. Media.**

(1) *Presence Allowed.* Representatives of print or electronic media are permitted in an early voting center as long as their activities do not:

(a) Cause disruption;

(b) Infringe on voter privacy;

(c) Inhibit election judges from performing their duties; or

(d) Otherwise interfere with the orderly conduct of the election.

##### **(2) Notice Requested.**

(1) Media organizations are requested to provide the State Administrator or the election director with a list of those early voting centers that they intend to cover, so that the election judges can be informed.

(2) Failure to provide this information, however, does not in any way diminish or otherwise affect the rights granted by this regulation.

##### **B. Cell Phones, Pagers, Cameras, etc.**

(1) *In General.* Except as specified in §B(2) of this regulation, electronic communication devices may not be used in an early voting center. Prohibited devices include:

(a) Cameras;

(b) Any electronic devices, including:

(i) Cellular telephones; and

(ii) Pagers; or

(c) Computer equipment.

(2) *Exceptions.* This regulation does not apply to the use of:

(a) Cameras by media representatives; or

(b) Cellular telephones, pagers, or computer equipment by election officials or law enforcement officers, when acting in their official capabilities.

#### **.05 Ballots — In General.**

A. *Absentee Ballots.* During early voting, a local board shall:

(1) Issue and receive absentee ballots at the local board office pursuant to COMAR 33.11; and

(2) Ensure that absentee ballots are not issued or received at an early voting center.

B. *Regular Ballots.* The local board shall ensure that a voter does not remove a ballot issued at an early voting center.

##### **C. Provisional Ballots.**

(1) Except as provided in §C(2) of this regulation, the local board shall ensure that a voter receives the ballot style for the voter's current residence.

(2) If the voter moved after the close of voter registration, the voter may receive the ballot style for the address listed in the statewide voter registration list.

#### **.06 Special Assistance.**

##### **A. Inability to Sign.**

(1) Subject to the requirements of §A(2) of this regulation:

(a) If a voter is unable to sign a form used at an early voting center, an "X" or similar mark shall be accepted as that individual's signature; and

(b) If a voter is unable to make a mark, the requirement for a signature is met by the execution of the endorsement described in §A(2) of this regulation.

(2) In either of the situations described in §A(1) of this regulation, the election judge checking in or otherwise assisting the voter shall sign and date, on the back of the form, an endorsement indicating that the voter was:

(a) Unable to sign the voter's name; and

(b) If the voter was unable to sign the voter authority card, found qualified to vote by that election judge.

##### **B. Assistance Needed to Cast Ballot.**

(1) This section applies when, because of a physical disability or an inability to read or write English, a voter requests assistance in marking or casting the ballot or in filling out a provisional ballot application.

##### **(2) Selection of Individual to Assist.**

(a) As provided in Election Law Article, Annotated Code of Maryland, the voter may select anyone to assist the voter, except:

(i) The voter's employer;

(ii) The voter's union representative;

(iii) An officer or agent of the voter's employer or union; or

(iv) A challenger or watcher who has been designated as such for this election.

(b) If the voter declines to select an individual to assist the voter, two election judges representing different political parties shall assist the voter.

(3) The election judges or person assisting the voter shall complete the Voter Assistance Form and the information required by COMAR 33.07.05.

(4) Assistance provided under this regulation shall be limited to:

(a) Reading the instructions or the content of the ballot or the application form to the voter; and

(b) As directed by the voter, marking or casting the ballot, operating the voting unit, or completing a provisional ballot.

**C. Name Not on Election Register.**

(1) If a voter's name does not appear in the election register, the election judges shall follow the procedures specified in the election judges' manual.

(2) When providing instruction to election judges, the election director shall comply with the procedures required by COMAR 33.07.05.03B.

**D. Powers of Attorney.** The right to vote may not be delegated to any other person, whether by power of attorney or otherwise.

**.07 Identification Requirements.**

**A. Scope.** This regulation applies only to an individual who:

(1) Registered to vote in Maryland after January 1, 2003;

(2) Submitted the voter registration application by mail or is required to provide personal identification information to complete a verification inquiry under COMAR 33.05.04.04;

(3) Is voting in Maryland for the first time after January 1, 2004; and

(4) Is voting in person at an early voting center.

**B. Definitions.** In this regulation, the following terms have the meanings indicated:

(1) "MVA" means the Motor Vehicle Administration.

(2) "VRA" means voter registration application.

**C. Identification Required.** Except as provided in §D of this regulation, an individual covered by this chapter shall present personal identification information on the request of an election judge.

**D. Requirement Satisfied.** Personal identification information is not required at the time of voting if:

(1) The State Board has matched with an existing State identification record the individual's name, date of birth, and the MVA identification number or at least the last four digits of the Social Security number provided by the individual on or with the VRA; or

(2) The individual has previously submitted to the local board a copy of personal identification information.

**E. Issuance of Provisional Ballot.** If an individual covered by this regulation does not present the required personal identification information, an election judge shall offer the individual a provisional ballot application and, upon completing the application, the individual shall be issued a provisional ballot under COMAR 33.16.

**.08 Challenging Voters.**

**A. Challenger/Watcher to be Registered in State.** An individual may serve as an accredited challenger or watcher at an early voting center only if that individual:

(1) Is a Maryland registered voter; and

(2) Has been designated as a challenger or watcher by:

(a) A candidate,

(b) A political party,

(c) A group of voters supporting or opposing a candidate, principle, or proposition on the ballot,

(d) The State Board, or

(e) For early voting centers within its jurisdiction, a local board.

**B. Grounds for Challenge.** A challenger may challenge an individual's right to vote only if the challenger has a reasonable basis for asserting that the individual seeking to vote is not the registered voter that the individual claims to be.

**C. Challenge Record.**

(1) **In General.** If a challenge is made to a voter's identity and the challenged individual does not present any of the forms of identification specified in Election Law Article, §10-312(a)(2), Annotated Code of Maryland, the Chief Judge or Chief Judges shall record the proceedings on an identity challenge record, in the form that the State Administrator prescribes.

(2) **Contents.** The form shall contain appropriate places for:

(a) The challenger and the challenged voter to sign an oath or affirmation, under penalties of perjury, that the individual's responses and statements will be the truth;

(b) The signature of the Chief Judge who administered each oath; and

(c) The reason given for the challenge.

**.09 Electioneering.**

**A. Electioneering — Election Offices.** Electioneering is prohibited within the offices of a local board or the State Board on each day of early voting.

**B. Clothing, Buttons, etc., in Polling Place.**

(1) **In General.** Except as specified in §B(2) of this regulation, an individual, including any candidate, watcher, or challenger, may not enter the No Electioneering Zone outside a polling place while visibly wearing or carrying any clothing, button, sticker, sign, or other paraphernalia that indicates support or opposition to a candidate, question, or contest.

(2) **Exception.** This regulation does not apply to clothing, buttons, or stickers worn by a voter who, without lingering, enters the polling place, votes, and then leaves.

**C. No Electioneering Zone.**

(1) Except as provided in §C(2) of this regulation, a No Electioneering Zone for an early voting center is established in accordance with Election Law Article, §16-206(b), Annotated Code of Maryland.

(2) If an early voting center is located in a multiuse facility, the No Electioneering Zone is 100 feet from the space in which early voting is being conducted.

**.10 Exit Polling.**

**A. In General.** Exit polling, whether by questionnaire or interview, is permitted within the No Electioneering Zone outside an early voting center, subject to the conditions specified in §B of this regulation.

**B. Conditions. A pollster:**

(1) May not enter the voting room;

(2) May not ask questions of a voter until the voter has left the voting room;

(3) Shall inform each voter being polled that the voter's participation is voluntary; and

(4) May not electioneer.

**C. Notice Requested.**

(1) Polling organizations are requested to provide the State Administrator or the election director with a list of

those polling places that they intend to cover, so that the election judges can be informed.

(2) Failure to provide this information, however, does not in any way diminish or otherwise affect the rights granted by this regulation.

### **33.17.07 Non-Voting Hours Procedures.**

Authority: Election Law Article, §§2-102(b)(4), 2-202(b), and 10-301.1,  
Annotated Code of Maryland

#### **.01 Voting Equipment Supplies.**

At the end of each night of early voting, the local board shall ensure that:

A. The election judges have closed all equipment in accordance with the procedures in the election judges' manual or supplement;

B. All equipment, unvoted ballots, and supplies are secured in accordance with the security plan required by COMAR 33.17.02.04;

C. The following supplies are returned to the local board office:

(1) Voted ballots and spoiled ballots;

(2) The sealed provisional ballot bag with completed provisional ballot applications and voted provisional ballots; and

(3) All signed voter authority cards;

D. Ballot and other reconciliation procedures specified in the election judges' manual or supplement are performed; and

E. Any other procedure required by the State Administrator is performed.

#### **.02 Early Voting Center.**

At the end of each night of early voting, the local board shall ensure that the room in which early voting is conducted and any designated storage areas are secured in accordance with the security plan required by COMAR 33.17.02.04.

#### **.03 Processing and Storing Ballots.**

A. In accordance with COMAR 33.16, the local board may process provisional ballot applications received during the early voting period.

B. The local board shall maintain ballots voted during early voting:

(1) Grouped by early voting center;

(2) Grouped by day; and

(3) Separate from ballots voted on election day, absentee ballots, and provisional ballots.

#### **.04 Post-Early Voting Activities.**

A. On the last day of early voting, a local board shall transport all voting units used during early voting to the local board office or other location where results will be aggregated and reported on election night.

B. At 8 p.m. on election day or at the conclusion of any court ordered extension of voting hours in any county, each local board shall:

(1) On each voting unit used during early voting, print a totals report; and

(2) Aggregate and report the early voting results.

LINDA H. LAMONE  
State Administrator of Elections

## DEPARTMENT OF STATE POLICE

### HANDGUN ROSTER BOARD

#### Proposed Additions to Handgun Roster and Notice of Right to Object or Petition

The following is a list of handguns that the Handgun Roster Board proposes to add to the official handgun roster. These handguns will be officially placed on the Handgun Roster if no timely objection is received or if all timely objections are dismissed.

Under the Public Safety Article, §5-405, Annotated Code of Maryland, and COMAR 29.03.03.13 and .14, any person may object to the placement of any of those handguns on the Handgun Roster. Objections must be filed within 30 days after **January 29, 2010**. In addition, any person may petition for the placement of an additional handgun on the Handgun Roster. Forms for objections or petitions may be obtained from: Marlene Jenkins, Administrator, Handgun Roster Board, 1201 Reisterstown Road, Pikesville, Maryland 21208.

MANUFACTURER	MODEL NAME	MODEL NUMBER	CALIBER
BUL Transmark, Ltd.	Cherokee	10901	9mm, .40 S&W
Chiappa Firearms	Plinkerton		.22 LR, .22 Mag
Cimarron Arms (Aldo Uberti)	Thunderer		.357 Mag, .38 Sp, 44-40, .44 Spec, .45 LC, .45 ACP
Citadel	1911 A-1	CIT 45	.45 ACP
Kimber	Pro Carry II	All	9mm (Caliber Addition)
Para-Ordnance	Super Hawg	PLX 745 S	.45 ACP
Sturm Ruger	Super Blk Hunter	KS-457NHB	.45 Colt (Model Addition)
Taurus Walther	Tracker PK380	M991	.22 Mag .380 ACP

[10-03-51]

## DEPARTMENT OF THE ENVIRONMENT

### Air and Radiation Management Administration

#### Proposal to Submit COMAR 26.11.08.07 and .08 and COMAR 26.11.14.05 to the Environmental Protection Agency for Approval as Part of Maryland's State Implementation Plan

##### Purpose of this Action

The purpose of this action is to allow opportunity for public comment on the Department's proposal to submit COMAR 26.11.08.07 and .08 (relating to municipal waste combustors) and COMAR 26.11.14.05 (relating to Kraft pulp mills) to the Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan (SIP).

##### Background

COMAR 26.11.08.07 and .08 and COMAR 26.11.14.05 were adopted by the Department and approved by the EPA as part of the Clean Air Act Section 111(d) Plan for Maryland. These regulations address the use of Continuous Emission Monitoring (CEM) at Kraft pulp mills and municipal waste combustors. The regulations are referenced in COMAR 26.11.01.11 which is a part of the Department's revised opacity regulations to be submitted to EPA as a SIP revision.

Although CEM requirements for Kraft pulp mills and municipal waste combustors are State and federally enforceable under the Section 111(d) Plan, they must also be enforceable and would be creditable under Maryland's approved SIP. Therefore, the Department proposes to consider public comment before submitting these regulations to EPA for inclusion in Maryland's approved SIP.

##### Sources Affected and Location

This action affects the owner or operators of CEMs at Kraft pulp mills and municipal waste combustors. The one Kraft pulp mill is located in Allegany County. There is one municipal waste combustor in Baltimore City, one in Harford County, and one in Montgomery County.

##### Requirements

The provisions in COMAR 26.11.01.11 require large sources to install continuous monitors. More specific CEM requirements are included in COMAR 26.11.08 for municipal waste combustors and in COMAR 26.11.14 for Kraft pulp mills. There are no changes to these requirements, only a proposal to include the requirements in Maryland's approved SIP.

##### OPPORTUNITY FOR PUBLIC COMMENT

The Department of the Environment will hold a public hearing on this proposed action on **March 3, 2010**, at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor, AERIS Conference Room, Baltimore, Maryland 21230-1720. Interested persons are invited to attend and express their views. Comments may be sent to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to drabin@mde.state.md.us. Comments must be received not later than **March 3,**

**2010**, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Copies of the proposed action and supporting documents are available for review at the following locations: The Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisbury; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

[10-03-30]

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## Notice on ADA Compliance

The State of Maryland is committed to ensuring that individuals with disabilities are able to fully participate in public meetings. Anyone planning to attend a meeting announced below who wishes to receive auxiliary aids, services, or accommodations is invited to contact the agency representative at least 48 hours in advance, at the telephone number listed in the notice or through Maryland Relay.

### BOARD OF BARBERS

**Subject:** Public Meeting  
**Date and Time:** March 8, 2010, 9:30 a.m. — 4 p.m.  
**Place:** 500 N. Calvert St., Centre Street Entrance, 2nd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Robert Wood (410) 230-6195 [10-03-10]

### CANAL PLACE PRESERVATION AND DEVELOPMENT AUTHORITY

**Subject:** Public Meeting  
**Date and Time:** February 16, 2010, 1:30 — 3:30 p.m.  
**Place:** Western MD Railway Station, 13 Canal St., Rm. 302, Cumberland, MD  
**Add'l. Info:** Meetings are held the third Tuesday of each month. Notices are posted in the entryway elevator tower of the Western MD Railway Station.  
**Contact:** Renee Bone (301) 724-3655 [10-03-28]

### CHESAPEAKE BAY TRUST

**Subject:** Public Meeting  
**Date and Time:** February 17, 2010, 3 — 6 p.m.  
**Place:** Loews Hotel Downtown Annapolis, Annapolis, MD  
**Contact:** Heather Adams (410) 974-2941 [10-03-29]

### BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

**Subject:** Public Meeting  
**Date and Time:** February 13, 2010, 9:30 — 11 a.m.  
**Place:** Metro Executive Bldg., 4201 Patterson Ave., Baltimore, MD  
**Contact:** Kim Mayer (410) 764-5996 [10-03-11]

### BOARD OF CHIROPRACTIC EXAMINERS

**Subject:** Public Meeting on Regulations  
**Date and Time:** February 18, 2010, 10 a.m. — 3 p.m.  
**Place:** Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rms. 108/109, Baltimore, MD  
**Add'l. Info:** At a General Session Meeting on February 18, 2010, the MD Board of Chiropractic and Massage Therapy Examiners will review and vote on proposed revisions to COMAR 10.43.01 — 10.43.20 regarding regulations for chiropractors, chiropractic as-

sistants, and massage therapists. For further information, call the Executive Director, Mr. J.J. Vallone at (410) 764-4726.  
**Contact:** Maria (410) 764-5902 [10-03-55]

### COMPTROLLER OF THE TREASURY

**Subject:** Announcement  
**Add'l. Info:** Pursuant to State Finance and Procurement Article, §8-128, Annotated Code of Maryland, which provides that, if within 2 years after the date of an authorization of State debt, no part of the project or program for which the enabling act authorized the State debt is under contract and the Board of Public Works has not committed money for any part of the project or program, the authorization terminates unless:

- (1) The enabling act provides otherwise; or
- (2) In an emergency, the Board unanimously grants a temporary exception for a period of 1 year.

Therefore, with Board of Public Works approval of item #5B dated January 6, 2010, we submit for publication the following cancellation of bond authorization in accordance with the above-referenced article:

MCCBL of 2001 — MDE: Comprehensive Flood Management Loan of 2001 — Ch. 111, Acts of 2001; \$18,561; to provide funds to local governments for projects which reduce the risk of loss of life and property from flooding.  
**Contact:** Jim Bilbrough (410) 260-7909 [10-03-40]

### BOARD OF COSMETOLOGISTS

**Subject:** Public Meeting  
**Date and Time:** March 1, 2010, 9:30 a.m. — 4 p.m.  
**Place:** 500 N. Calvert St., Centre St. Entrance, 2nd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Robert Wood (410) 230-6195 [10-03-09]

### BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS

**Subject:** Public Meeting  
**Date and Time:** February 19, 2010, 11 a.m. — 4 p.m.  
**Place:** 4201 Patterson Ave., Baltimore, MD  
**Contact:** Aileen Taylor (410) 764-4734 [10-03-08]

### OFFICE OF THE DEAF AND HARD OF HEARING/MARYLAND ADVISORY COUNCIL FOR THE DEAF AND HARD OF HEARING

**Subject:** Public Meeting  
**Date and Time:** March 2, 2010, 11 a.m. — 2 p.m.  
**Place:** Maryland Dept. of Transportation, Hanover, MD  
**Add'l. Info:** For security reasons, RSVP is required for visitors that are Non-State of MD Employees. This Advisory Council Business meeting is open for the public to observe. (There will be no public forum following this Advisory Council meeting.) Sign Language interpreters, real-time captioning services, and assistive listening devices will be provided. For additional communication accommodations, please contact Laura Quinn at: lquinn@gov.state.md.us. For directions go to www.e-mdot.com.  
**Contact:** Laura Quinn (410) 767-7794 [10-03-42]

### DEPARTMENT OF EDUCATION/DIVISION OF REHABILITATION SERVICES

**Subject:** Public Meeting  
**Date and Time:** February 19, 2010, 12 — 3 p.m.; April 16, June 18, August 20, October 15, and December 17, 2010  
**Place:** Workforce & Technology Center, 2301 Argonne Dr., Rm. T-130, Baltimore, MD  
**Add'l. Info:** Toll Free Number 866-996-0961  
**Contact:** Tonya Gilchrist, Administrative Officer (410) 554-5412 [10-03-15]

### MARYLAND STATE BOARD OF EDUCATION

**Subject:** Public Meeting  
**Date and Time:** February 23, 2010, 9 a.m. — 5 p.m.; February 24, 2010, 9 a.m. — 12 p.m.  
**Place:** Nancy S. Grasmick State Education Bldg., 200 W. Baltimore St., Baltimore, MD  
**Contact:** Charlene Necessary (410) 767-0467 [10-03-05]

### PROFESSIONAL STANDARDS AND TEACHER EDUCATION BOARD

**Subject:** Public Meeting  
**Date and Time:** February 4, 2010, 9:30 a.m. — 12 p.m.

**Place:** Nancy S. Grasmick State Education Bldg., 200 W. Baltimore St., Baltimore, MD

**Contact:** Madeline Koum (410) 767-0385

[10-03-02]

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#### EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL

**Subject:** Public Meeting

**Date and Time:** February 4, 2010, 1 — 3 p.m.

**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD

**Add'l. Info:** The Statewide Emergency Medical Services Advisory Council (SEMSAC) meets regularly the 1st Thursday of each month.

**Contact:** Leandra M. Gilliam (410) 706-4449

[10-03-20]

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#### EMERGENCY MEDICAL SERVICES BOARD

**Subject:** Public Meeting

**Date and Time:** February 9, 2010, 9 — 11 a.m.

**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD

**Add'l. Info:** The State Emergency Medical Services Board (EMS Board) meets regularly the 2nd Tuesday of each month. Part of the meeting may include a closed session.

**Contact:** Leandra M. Gilliam (410) 706-4449

[10-03-19]

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#### MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

**Subject:** Public Meeting

**Date and Time:** February 10, 2010, 10 a.m. — 12 p.m.

**Place:** 653 W. Pratt St., Ste. 212, Baltimore, MD

**Add'l. Info:** The Protocol Review Committee meets regularly the 2nd Wednesday of every other month.

**Contact:** Leandra M. Gilliam (410) 706-4449

[10-03-18]

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#### BOARD FOR PROFESSIONAL ENGINEERS

**Subject:** Public Meeting

**Date and Time:** February 11, 2010, 9 a.m.

**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

**Contact:** Pamela J. Edwards (410) 230-6263

[10-03-43]

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#### DEPARTMENT OF THE ENVIRONMENT/LAND MANAGEMENT ADMINISTRATION

**Subject:** Public Meeting

**Date and Time:** February 4, 2010, 9:30 — 11:30 a.m.

**Place:** MDE, 1800 Washington Blvd.,

Aeris Conf. Rm., Baltimore, MD

**Add'l. Info:** Meeting of the Governor's Lead Poisoning Prevention Commission

**Contact:** Tracy Smith (410) 537-3847

[10-03-31]

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#### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting

**Date and Time:** March 3, 2010, 9 a.m. — 4 p.m.

**Place:** Howard Co. DPW, 8250 Old Montgomery Rd., Columbia, MD

**Add'l. Info:** A portion of this meeting may be held in closed session.

**Contact:** Kathy Glass (410) 537-3597

[10-03-01]

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#### FIRE PREVENTION COMMISSION

**Subject:** Public Meeting

**Date and Time:** February 18, 2010, 9:30 a.m.

**Place:** Laurel Municipal Bldg., 8103 Sandy Spring Rd., Council Chambers, Laurel, MD

**Add'l. Info:** If public schools in Prince George's County are closed due to inclement weather, the meeting and any appeals will be rescheduled.

**Contact:** Heidi Ritchie (977) 890-0199

[10-03-27]

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#### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/LABORATORIES ADMINISTRATION

**Subject:** Public Hearing

**Date and Time:** March 2, 2010, 8:30 a.m. — 12 p.m.

**Place:** O'Connor Bldg., 201 W. Preston St., Rm. L-37, Baltimore, MD

**Contact:** Georgette P. Zoltani (410) 764-2899

[10-03-34]

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#### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

**Subject:** Maryland Medicaid State Plan

**Add'l. Info:** The Secretary of Health and Mental Hygiene proposes to amend the Maryland Medicaid State Plan in order to reduce certain provider reimbursement rates in accordance with the budget action of the Board of Public Works. Specifically, reimbursement for Home Health services will remain at their current rates effective January 1, 2010 through December 31, 2010 in order to save \$52,455 during this period. Copies of the proposed change are available for public review at the local health department in each county and Baltimore City. Written comments may be sent to Susan Tucker, Executive Director, Office of Health Services, Department of Health and Mental Hygiene, 201 W. Preston St., Rm. 127, Baltimore, MD 21201, or fax to 410-333-5185.

**Contact:** Susan J. Tucker (410) 767-1430

[10-03-49]

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#### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MEDICAID PHARMACY AND THERAPEUTICS COMMITTEE

**Subject:** Public Meeting

**Date and Time:** February 11, 2010, 9 a.m. — 1 p.m.

**Place:** Conference Center, Sheppard Pratt Hospital, 6501 N. Charles St., Towson, MD

**Add'l. Info:** Meeting of the Maryland Medicaid Pharmacy Program's Pharmacy and Therapeutics Committee (Preferred Drug List). Classes of drugs to be reviewed are posted on the Maryland Pharmacy Program website at <http://www.dhmm.state.md.us/mma/mpap/prefdruglist.html>. See website for agenda, speaker registration, restrictions, and driving directions. Submit email questions to MarylandPDLQuestions@dhmm.state.md.us.

**Contact:** Alex Taylor (410) 767-5878

[10-03-56]

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#### DIVISION OF LABOR AND INDUSTRY/MARYLAND OCCUPATIONAL SAFETY AND HEALTH (MOSH) ADVISORY BOARD

**Subject:** Public Meeting

**Date and Time:** February 3, 2010, 10 a.m.

**Place:** Laurel College Center, 312 Marshall Ave., Rm. 600, Laurel, MD

**Add'l. Info:** The Board is scheduled to meet to discuss issues relating to occupational safety and health. Interested persons should call the contact person to confirm the meeting.

**Contact:** Debbie Stone (410) 767-2225

[10-03-54]

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#### MARYLAND STATE LOTTERY COMMISSION

**Subject:** Public Meeting

**Date and Time:** February 19, 2010, 10 a.m. — 12 p.m.

**Place:** Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD

**Contact:** Marie A. Torosino (410) 230-8790

[10-03-53]

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#### MARYLAND HEALTH CARE COMMISSION

**Subject:** Receipt of Application

**Add'l. Info:** On January 8, 2010, the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by Kaiser Permanente Baltimore Surgical Center — Matter No. 10-03-2306 — Establishment of a new freestanding ambulatory surgery facility with 2 operating rooms to be located at 1601 Odensos Lane, Baltimore, MD 21227.

The proposed cost of the project is \$9,091,490. The MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties. Please refer to the Matter No. listed above in any correspondence on the application. A copy of the application is available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Pamela W. Barclay, Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.  
**Contact:** Ruby Potter (410) 764-3276  
[10-03-45]

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#### MARYLAND HEALTH CARE COMMISSION

**Subject:** Receipt of Application  
**Add'l. Info:** On January 8, 2010, the Maryland Health Care Commission (MHCC) received an application for Certificate of Need submitted by NMS Healthcare of Hagerstown, LLC — Matter No. 10-21-2307 — Construction of a new 78 bed addition to accommodate 43 beds purchased from Home-wood at Williamsport and 35 beds being relocated internally through elimination of all 3 and 4 person rooms. The proposed cost of the project is \$15,084,498.

The MHCC shall review the application under Health-General Article, §19-101 et seq., Annotated Code of Maryland, and COMAR 10.24.01.

Any affected person may make a written request to the Commission to receive copies of relevant notices concerning the application. All further notices of proceedings on the application will be sent only to affected persons who have registered as interested parties. Please refer to the Matter No. listed above in any correspondence on the application. A copy of the application is available for review in the office of the MHCC, during regular business hours by appointment. All correspondence should be addressed to Pamela W. Barclay, Director, Center for Hospital Services, MHCC, 4160 Patterson Avenue, Baltimore, Maryland 21215.  
**Contact:** Ruby Potter (410) 764-3276  
[10-03-46]

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#### MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

**Subject:** Public Meeting  
**Date and Time:** February 17, 2010, 8:30 a.m. — 5 p.m.  
**Place:** Harry R. Hughes Dept. of Transportation Bldg., 1st Fl., Richard Trainor Conf. Rm., Hanover, MD  
**Contact:** Catherine Svoboda (410) 865-1357  
[10-03-36]

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#### BOARD OF MORTICIANS AND FUNERAL DIRECTORS

**Subject:** Public Meeting  
**Date and Time:** February 10, 2010, 10:30 a.m. — 12:30 p.m.  
**Place:** 4201 Patterson Ave., Rms. 108/109, Baltimore, MD  
**Add'l. Info:** Review statutes and regulations and vote as necessary. Sign language interpreter and/or other appropriate accommodations for qualified individuals with disabilities will be provided upon request.  
**Contact:** Louann Cox (410) 764-4792  
[10-03-06]

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#### BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

**Subject:** Public Meeting  
**Date and Time:** February 10, 2010, 9:30 a.m.  
**Place:** 4201 Patterson Ave., Rm. 110, Baltimore, MD  
**Contact:** Patricia A. Hannigan (410) 764-4750  
[10-03-32]

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#### BOARD OF OCCUPATIONAL THERAPY PRACTICE

**Subject:** Public Meeting  
**Date and Time:** February 19, 2010, 8:30 a.m. — 2 p.m.  
**Place:** Spring Grove Hospital Center, 55 Wade Ave., Tulip Dr., Benjamin Rush Bldg., Catonsville, MD  
**Add'l. Info:** Health Occupations Article, Title 10, Annotated Code of Maryland, and COMAR 10.46, amendments, additions, and revisions, including fee changes, may be discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session. Sign language interpreters and/or appropriate accommodations for qualified individuals with disabilities will be provided upon request. Please call 1-800-735-2255.  
**Contact:** Marilyn Pinkney (410) 402-8556  
[10-03-44]

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#### BOARD OF PLUMBING

**Subject:** Public Meeting  
**Date and Time:** February 18, 2010, 10:30 a.m. — 12:30 p.m.  
**Place:** 500 N. Calvert St., Rm. 302, Baltimore, MD

**Contact:** Brenda Clark (410) 230-6164  
[10-03-14]

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#### BOARD OF PODIATRIC MEDICAL EXAMINERS

**Subject:** Public Meeting  
**Date and Time:** February 11, 2010, 1 — 6 p.m.  
**Place:** DHMH, Metro Executive Bldg., Baltimore, MD  
**Contact:** Eva Schwartz (410) 764-4785  
[10-03-17]

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#### BOARD OF PODIATRIC MEDICAL EXAMINERS

**Subject:** Public Meeting  
**Date and Time:** March 11, 2010, 1 — 3 p.m.  
**Place:** 4201 Patterson Ave., Baltimore, MD  
**Contact:** Eva Schwartz (410) 764-4785  
[10-03-24]

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#### BOARD OF PUBLIC ACCOUNTANCY

**Subject:** Public Meeting  
**Date and Time:** March 2, 2010, 9 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Dennis L. Gring (410) 230-6224  
[10-03-04]

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#### MARYLAND PUBLIC BROADCASTING COMMISSION

**Subject:** Public Meeting  
**Date and Time:** February 23, 2010, 8:30 a.m.  
**Place:** Maryland Public Television, Owings Mills, MD  
**Contact:** Sharon Abernathy (410) 581-4141  
[10-03-22]

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#### RACING COMMISSION

**Subject:** Public Meeting  
**Date and Time:** February 16, 2010, 12:30 — 1:30 p.m.  
**Place:** Laurel Park, Laurel, MD  
**Contact:** J. Michael Hopkins (410) 296-9682  
[10-03-25]

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#### MARYLAND BUSINESS TAX REFORM COMMISSION

**Subject:** Public Meeting  
**Date and Time:** February 8, 2010, 2 — 4 p.m.  
**Place:** Louis L. Goldstein Treasury Bldg., 80 Calvert St., Assembly Rm., Annapolis, MD  
**Contact:** Linda I. Vasbinder (410) 260-7450  
[10-03-07]

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**UNIVERSITY SYSTEM OF  
MARYLAND BOARD OF REGENTS**

**Subject:** Public Meeting

**Date and Time:** February 12, 2010,  
8:30 — 11 a.m.

**Place:** University of Baltimore, Balti-  
more, MD

**Contact:** Susan Jiacinto (301) 445-1901  
[10-03-26]

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**WORKERS' COMPENSATION  
COMMISSION**

**Subject:** Public Meeting

**Date and Time:** February 11, 2010,  
9 — 11 a.m.

**Place:** 10 E. Baltimore St., Baltimore,  
MD

**Add'l. Info:** A portion of this meeting  
may be held in a closed session.

**Contact:** Amy Lackington (410) 864-  
5300

[10-03-03]

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- 04 Fiscal
- 05 Freestanding Ambulatory Care Facilities
- 06 Diseases
- 07 Hospitals
- 08 Health Facilities Grants
- Part 2**
- 09 Medical Care Programs
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- 12 Adult Health
- 13 Drugs
- 14 Cancer Control
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- 17 Sanitation
- 18 Human Immunodeficiency Virus (HIV) Infection and Acquired Immunodeficiency Syndrome (AIDS)
- 19 Dangerous Devices and Substances
- 20 Kidney Disease Program
- 21 Mental Hygiene Regulations
- 22 Developmental Disabilities
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- 23 Advance Directive Registry
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- 25 Maryland Health Care Commission
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- 27 Board of Nursing
- 28 Board of Examiners in Optometry
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- 30 Commission on Kidney Disease
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- 34 Board of Pharmacy
- 35 Postmortem Examiners Commission
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- Part 5**
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- 38 Board of Physical Therapy Examiners
- 39 Board of Nursing – Certified Nursing Assistants
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- 42 Board of Social Work Examiners
- 43 Board of Chiropractic Examiners
- 44 Board of Dental Examiners
- 45 Maryland Community Health Resources Commission
- 46 Board of Occupational Therapy Practice
- 47 Alcohol and Drug Abuse Administration
- 48 Child Abuse and Neglect Medical Reimbursement Program
- 49 State Anatomy Board
- 50 Tissue Banks
- 51 Vacant
- 52 Preventive Medicine
- 53 Board of Nursing—Electrology Practice Committee
- 54 Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- 55 State Board of Spinal Cord Injury Research
- 56 Board of Dietetic Practice
- 57 Board for Certification of Residential Child Care Program Administrators
- 58 Board of Professional Counselors and Therapists
- 59 Catastrophic Health Emergencies

### Title 11

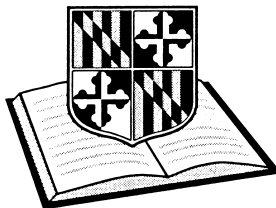
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- 03 Maryland Aviation Administration
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- 09 Vacant
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- 17 MVA – Driver Licensing and Identification Documents
- 18 MVA – Financial Responsibility Requirements
- 19 MVA – School Vehicles
- 20 MVA – Motorcycle Safety Program
- 21 MVA – Commercial Motor Vehicles
- 22 MVA – Preventative Maintenance Program
- 23 MVA – Drivers' Schools, Instructors, Driver Education Program

### Title 26

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- 04 Regulation of Water Supply, Sewage Disposal, and Solid Waste
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- 06 Waterworks and Waste Systems Operators
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