Maryland Register

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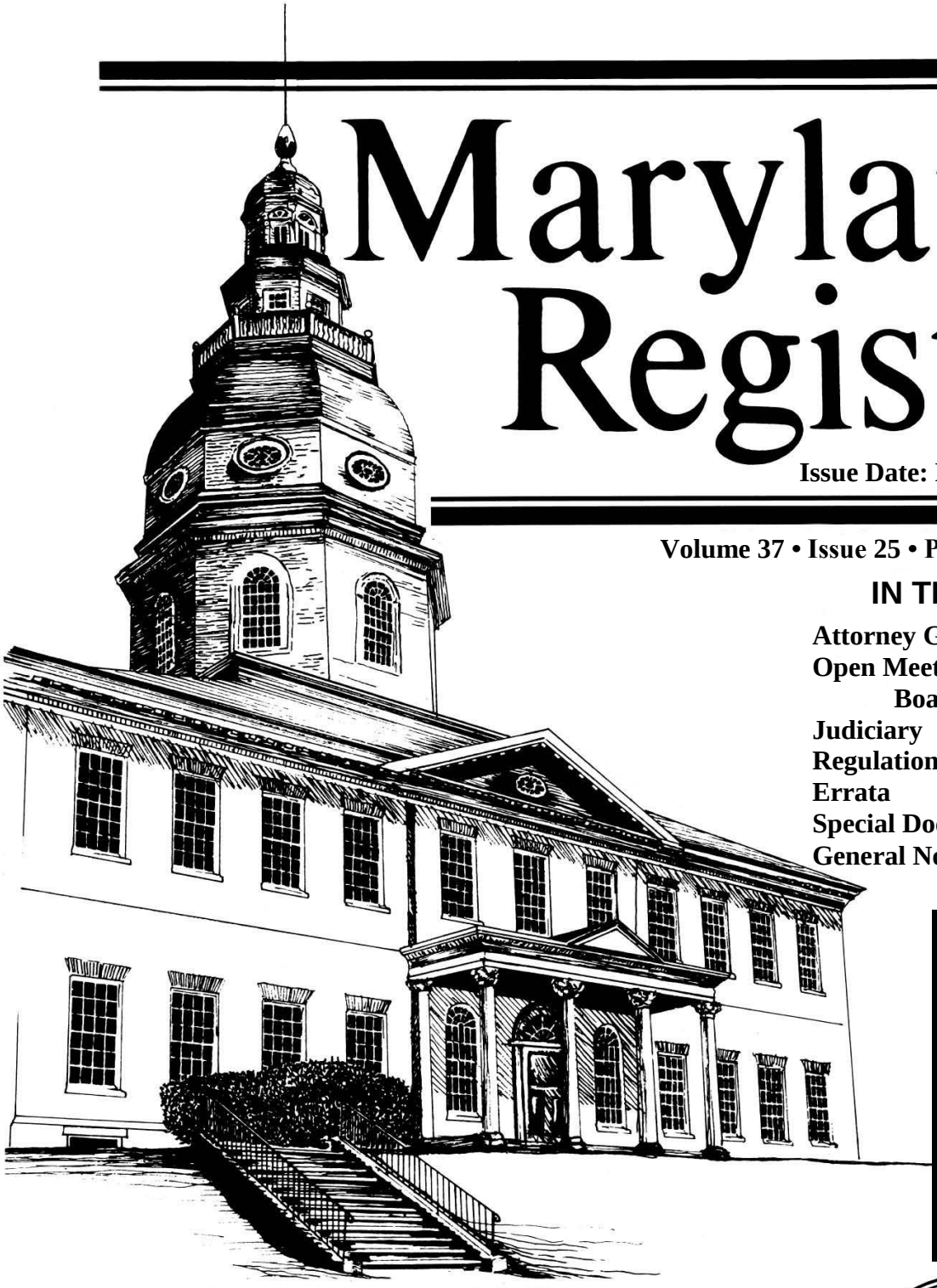

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ATTENTION COMAR SUBSCRIBERS:
Please see important information contained in the back of this issue regarding changes to COMAR. Please also complete the information sheet in the back of this issue and return it to our office as soon as possible.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before November 15, 2010, 5 p.m.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 November 15, 2010.

Brian Morris
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
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- Agency Hearing and Meeting Notices
- Synopses of Bills Introduced and Enacted by the General Assembly
- 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.

DOCUMENTS INCORPORATED BY REFERENCE

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.

HOW TO RESEARCH REGULATIONS

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. 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.

SUBSCRIPTION INFORMATION

For subscription forms for the Maryland Register and COMAR, see the back pages of the Maryland Register. Single issues of the Maryland Register are $5.00 per issue, plus $2.00 for postage and handling.

CITIZEN PARTICIPATION IN THE REGULATION-MAKING PROCESS

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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Martin O'Malley, Governor; **John P. McDonough**, Secretary of State; **Brian Morris**, Acting Administrator; **Gail S. Klakring**, Senior Editor; **Mary D. MacDonald**, Editor, Maryland Register and COMAR; **Elizabeth Ramsey**, Editor, COMAR Online; **Marcia M. Diamond**, Subscription Manager, COMAR; **Tami Cathell**, Help Desk, COMAR and Maryland Register Online.

Front cover: State House, Annapolis, MD, built 1772—79.

Illustrations by Carolyn Anderson, Dept. of General Services

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The Code of Maryland Regulations is available at www.dsd.state.md.us as a free service of the Office of the Secretary of State, Division of State Documents. The full text of regulations is available and searchable. Note, however, that the printed COMAR continues to be the only official and enforceable version of COMAR.

The Maryland Register is also available at www.dsd.state.md.us.

For additional information, visit www.sos.state.md.us, Division of State Documents, or call us at (410) 974-2486 or 1 (800) 633-9657.

Availability of Monthly List of Maryland Documents

The Maryland Department of Legislative Services receives copies of all publications issued by State officers and agencies. The Department prepares and distributes, for a fee, a list of these publications under the title ''Maryland Documents''. This list is published monthly, and contains bibliographic information concerning regular and special reports, bulletins, serials, periodicals, catalogues, and a variety of other State publications. ''Maryland Documents'' also includes local publications.

Anyone wishing to receive ''Maryland Documents'' should write to: Legislative Sales, Maryland Department of Legislative Services, 90 State Circle, Annapolis, MD 21401.

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* Due date for documents containing 8 to 18 pages—48 hours before date shown

Due date for documents exceeding 18 pages—1 week before date shown

NOTE: ALL DOCUMENTS MUST BE SUBMITTED IN TIMES NEW ROMAN, 9-POINT, SINGLE-SPACED FORMAT. THE REVISED PAGE COUNTS REFLECT THIS FORMATTING REQUIREMENT.

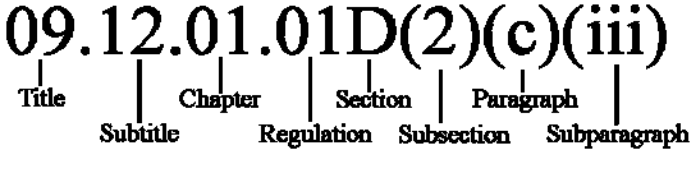
** Note closing date changes

*** Note issue date change

The regular closing date for Proposals and Emergencies is Monday.

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.



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.

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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.

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The Attorney General

OPINIONS

May 24, 2010

Ms. Linda H. Lamone, Administrator
Maryland State Board of Elections

You have requested legal advice regarding a letter submitted to the State Board of Elections ("SBE") by the Maryland Democratic Party alleging that former Governor Robert Ehrlich and WBAL Radio have violated Maryland's campaign finance law. In essence, the letter asserts that, because the former Governor acts as host or co-host of a show on WBAL Radio, the station has made an illegal in-kind contribution to his gubernatorial campaign. The legal issue concerns the circumstances under which the broadcast of political discussion or commentary by a candidate or prospective candidate would amount to an in-kind contribution by the broadcaster.

In general, state efforts to regulate media appearances by a candidate, potential candidate, or others through a state's campaign finance laws raise significant First Amendment concerns. This is true even where the person appearing has some practical control over the content of the broadcast, including as host. Significantly, research by our Office has revealed no recent instances, under either federal law or the laws of other states, where in-kind contribution limits have been successfully applied in the way urged by the complaint. To the contrary, courts have routinely disapproved efforts to closely regulate the content of print or broadcast media featuring political discussion. The role of the candidate or potential candidate in that discussion does not fundamentally change that analysis. Our Office therefore advises that, consistent with its past practice with respect to media coverage of a candidate or potential candidate, SBE should decline to treat the radio broadcasts complained of as an illegal contribution to the Ehrlich campaign.

Several objective, content-neutral factors may be of special relevance. First, if the radio show at issue significantly pre-dates the current campaign season, it is unlikely that a court would find the station created the program as a vehicle to promote an actual or prospective candidacy. Second, a live call-in show featuring political discussion that is similar in format to other broadcasts regularly aired by the station would tend to negate an inference that the show was created especially for a campaign purpose. Third, if the program appears to be part of the station's ordinary broadcasting business, sponsored by paid commercial advertisements, that, too, makes it unlikely the program would be deemed a contribution to a particular campaign. In such circumstances, it would not appear that a station has donated to a campaign free air-time for which it would ordinarily charge a fee. *Cf.* Letter from Assistant Attorney General Kathryn M. Rowe to Delegate George W. Owings, III (August 25, 1994) (concluding that political use of a public access channel is not an in-kind contribution, in part because the cable franchisee does not charge for time). Therefore, regardless of any reason a candidate or potential candidate might have for hosting this type of show, from the station's perspective, the show would not amount to an unpaid "infomercial."

Unquestionably, Maryland has a strong interest in preventing the evasion of its campaign finance limits through indirect means. This includes, of course, misconduct by media companies. But the First Amendment demands a lighter touch in this area, due to the media's role in providing a forum for public debate. This calls for a regulatory approach narrowly tailored to prevent the threatened harm, while avoiding unnecessary burdens on political speech. In our view, applying in-kind contribution limits to the type of activity at issue here would not be sufficiently tailored to the problem to justify its likely impact on political speech. Accordingly, SBE should treat a broadcast hosted by a candidate or potential candidate no differently than it does other appearances or commentary by political figures in the print or broadcast media.

Greater scrutiny may be appropriate during the period immediately preceding the election, when both the temptation to abuse and the potential for harm are at their greatest. *See e.g.*, *Citizens United v. Federal Election Comm'n*, 130 S.Ct. 876, 895 (2010) ("It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held."). Other regulations, such as the Federal Communication Commission's ("FCC") "equal time" rule, are specifically targeted at such pre-election campaign activity. In any event, because we understand that this latter issue is not immediately of concern, it is not addressed in this advice letter.[1]

I

Background

A. First Amendment Standards

A major purpose of the First Amendment is "to protect the free discussion of governmental affairs ... includ[ing] discussions of candidates." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). The First Amendment guarantee "'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). More recently, the Supreme Court has warned against laws that, either through imprecision or complexity, impose impermissible burdens or uncertainties on speakers "discussing the most salient political issues of our day." *Citizens United*, 130 S.Ct. at 888. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v. Button*, 371 U.S. 415, 433 (1963).

This need for specificity means that not all campaign-related speech may be regulated. Only campaign speech that can be identified as "express advocacy or its functional equivalent" meets a sufficiently definite standard that it may be subject to some government imposed limits. *Federal Election Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007) ("WRTL").[2] Therefore, in the case of a radio broadcast involving a candidate or potential candidate, the question whether the appearance is subject to regulation, including as an in-kind contribution, arises *only* to the extent the broadcast involves express advocacy or its equivalent. If it does not, no further analysis is needed; the First Amendment precludes regulation of the appearance through campaign finance laws. If the broadcast *does* involve express advocacy or its equivalent, the issue becomes whether the purported restriction may be constitutionally applied. *See, e.g.*, *Citizens United*, 130 S. Ct. at 898 ("Laws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.")(citation and internal quotations omitted).

States have a strong interest in enacting laws to preserve the integrity and fairness of the electoral process. *Federal Election Comm'n v. National Right to Work Comm.,* 459 U.S. 197, 208

[1] According to public statements by the Ehrlich campaign and WBAL station management, the program will not be aired after the former Governor files a certificate of candidacy on or before the July 6, 2010 deadline. From that date, the FCC's "equal time" rule would apply to any "use" of the station by a filed candidate. *See* 47 U.S.C. §315(a); 47 CFR §73.1940 *et seq.*

[2] The "functional equivalent" of express advocacy is a political message that is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL*, 551 U.S. at 469-70.

(1982). This includes measures relating to campaign finance. *Buckley*, 424 U.S. at 26-29; *see also Nixon v. Shrink Missouri PAC*, 528 U.S. 377, 389 (2000). Limits on campaign contributions – which generally have their most direct impact on the First Amendment right of free association, *see Buckley,* 415 U.S. at 25 – are subject to a somewhat less rigorous standard of review than are more direct restrictions on speech. In analyzing laws that limit campaign contributions, courts will uphold the restriction if it promotes a "sufficiently important" government interest and is "closely drawn" to avoid unnecessary abridgment of the right to free association. *Id*. Under either standard, however, the test to be applied is a demanding one.

With regard to dollar limits on the value of contributions, the Supreme Court has recognized two "sufficiently important" state interests: an "anti-corruption" interest and an "anti-circumvention interest." The first embraces not only express or implied *quid pro quo* arrangements, but also the threat of undue influence by large donors over elected officials, or the appearance of it, which undermines public confidence in the integrity and fairness of the electoral system. *Buckley,* 424 U.S. at 26-29; *see also Shrink Missouri PAC,* 528 U.S. at 389 ("In speaking of improper influence and opportunities for abuse ... we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors."). The second interest is furthered by measures designed to prevent evasion or circumvention of legitimate campaign finance restrictions, so that individuals or organizations may not undermine valid contribution limits indirectly. *See Buckley*, 414 U.S. at 46-47. In-kind contribution limits promote both of these interests.

B. Federal Media Exception

Federal law provides a useful example of how First Amendment values may be accommodated in campaign finance regulation. The Federal Election Campaign Act ("FECA"), 2 U.S.C. §431, *et seq*., was amended shortly after its enactment to provide a specific statutory exception for most media appearances by a candidate. *See* 2 U.S.C. §431(9)(B)(i). When it added the media exception in 1974, Congress indicated that it was intended to make clear that campaign finance regulation would not "limit or burden in any way the First Amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the ... media to cover and comment on political campaigns." H. Rep. No. 93-943, 93d Congs., 2d Sess. at 4 (1974); *see also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 781 (1978) (discussing rationale for media exception). This special protection of press freedoms is justified not because of any special privilege the press enjoys, but because press entities serve a critical role in our society as a forum for public debate.[3]

Under regulations adopted pursuant to FECA, contributions and expenditures are defined so as to exclude "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station ..., Web site, newspaper, magazine, or other periodical publication ..." except when the facility is "owned or controlled by any political party, political committee, or candidate ...." *See* 11 CFR §§100.73(contributions), 100.132 (expenditures). For media facilities owned by a party, candidate, or political committee, federal law exempts only news stories that meet other criteria to ensure fairness.[4] However, fairness, balance, or lack of bias are not requirements for media outlets not owned or controlled by a party, candidate, or political committee. *Id.*

Courts interpreting this provision have set forth a two-part analysis. *Federal Election Comm'n v. Phillips Publishing, Inc.*, 517 F.Supp. 1308, 1312-13 (D.D.C. 1981) (citing *Reader's Digest Ass'n v. Federal Election Comm'n*, 509 F.Supp. 1210 (S.D.N.Y. 1981).

> Under the *Reader's Digest* procedure, the initial inquiry is limited to whether the press entity is owned or controlled by any political party or candidate and whether the press entity was acting as a press entity with respect to the conduct in question. ... If the press entity is not owned or controlled by a political party or candidate and it is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint.

Phillips Publishing, 517 F.Supp. at 1313 (citations omitted). In other words, provided an independent press entity acts "as a press entity," the content of any political message it disseminates is largely irrelevant for federal campaign finance purposes. A number of states have adopted similar explicit media exceptions as part of their campaign finance laws to accommodate First Amendment values.

C. Maryland Campaign Finance Law

Regulation of Contributions and Expenditures

The Maryland Campaign Finance Law regulates contributions and expenditures in connection with State elections. *See* Annotated Code of Maryland, Election Law Article, §13-101 *et seq.* Under that law, all campaign finance activity must be conducted through a "campaign finance entity." EL §13-202(a). In addition, the establishment of a campaign finance entity is made an express prerequisite to the filing of a certificate of candidacy for State office. EL §13-202(b).

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[3] The Supreme Court has explained:

> The press cases emphasize the special and constitutionally recognized role of that institution in informing and educating the public, offering criticism, and providing a forum for discussion and debate. *Mills v. Alabama*, 384 U.S., at 219, 86 S.Ct., at 1437; *see Saxbe v. Washington Post Co.*, 417 U.S. 843, 863-864, 94 S.Ct. 2811, 2821-2822, 41 L.Ed.2d 514 (1974) (Powell, J., dissenting). But the press does not have a monopoly on either the First Amendment or the ability to enlighten. *Cf. Buckley v. Valeo*, 424 U.S., at 51 n. 56, 96 S.Ct., at 650; *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 389-390, 89 S.Ct. 1794, 1806-1807, 23 L.Ed.2d 371 (1969); *New York Times Co. v. Sullivan*, 376 U.S. 254, 266, 84 S.Ct. 710, 718, 11 L.Ed.2d 686 (1964); *Associated Press v. United States*, 326 U.S. 1, 20, 65 S.Ct. 1416, 1424, 89 L.Ed. 2013 (1945).

Bellotti, 435 U.S. at 781-82 (footnotes omitted).

[4] For a candidate-owned facility, only a news story:

> (a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and
>
> (b) That is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

11 CFR §100.73(a)(b).

Once established, the campaign finance entity is to file regular reports with SBE of all contributions received and expenditures made. *See* EL §13-304. SBE publishes a Summary Guide to assist candidates, contributors, officers of campaign finance entities, and others in complying with these requirements. EL §13-103. Campaign finance obligations are continuing in nature. So long as an individual maintains a campaign finance entity registered with SBE, the campaign remains subject to the Title 13's bookkeeping requirements, periodic reporting duties, and contribution limits. *See, e.g.*, EL §13-312; *see also* EL §13-305 (treasurer may file affidavit in lieu of report in certain circumstances). Winding down or terminating a campaign finance entity requires compliance with several provisions of the Election Law Article, including those relating to disposition of remaining campaign funds and the filing of a final report. EL §§13-247, 13-310, 13-311.

Contribution Limits and In-kind Contributions

The Campaign Finance Law generally imposes limits on a donor's political contributions based on a four-year election cycle. *See* EL §1-101(w) (defining "election cycle"). In general, during any election cycle, the statute caps a donor's contributions to any one candidate at $4,000, and at $10,000 to all campaign finance entities in the aggregate. EL §13-226. The State election law defines a "contribution" as "the gift or transfer, or promise of gift or transfer, of money *or other thing of value* to a campaign finance entity to promote or assist in the promotion of the success or defeat of a candidate, political party, or question." EL §1-101(o)(1) (emphasis added). When a contribution is made in a form other than a direct gift of money to the campaign treasurer, it is considered an in-kind contribution.

The Summary Guide provides, in relevant part, the following explanation of an in-kind contribution:

> An in-kind contribution includes any thing of value (except money). For example: a person can contribute bumper stickers to a candidate's committee. The amount of the contribution equals the fair market value of the bumper stickers. An in-kind contribution counts towards the donor's contribution limits.

Summary Guide – Maryland Candidacy & Campaign Finance Laws (revised July, 2006) at 27. In addition to giving a thing of value directly to a campaign, there are two other generic situations in which an in-kind contribution occurs: if a payment is made to a third party to defray a charge incurred by the campaign (*see, e.g.*, EL §13-602(a)(4)(i)), or if spending in support of a candidate is done in "coordination" with the campaign. *Compare* EL §1-101(bb) (defining an "independent expenditure," which is *not* treated as an in-kind contribution). The complaint letter appears to suggest that the broadcast of a talk show hosted by a candidate might be viewed as either a donation of free air-time or as an expenditure by the station made in coordination with the campaign.

II

Analysis

In contrast to federal law and the campaign finance laws of some other states, Maryland statutes do not expressly except from the definition of a "contribution" the imputed cost or fair market value of media coverage of a campaign. *See* EL §13-101(l) (defining "contribution"). Even so, it has been SBE's longstanding administrative practice not to regard traditional media coverage of candidates as in-kind contributions. This policy has been followed without regard to the political content, if any, of the candidate's message. SBE's past practice is thus entirely appropriate in light of the First Amendment concerns outlined above. Intrusive inquiry into the content of a candidate's speech inevitably has a chilling effect on free expression. Faced with a possible campaign violation, some candidates would doubtless censor their remarks, inhibiting the quantity and quality of public discourse.

On the other hand, the First Amendment does not exempt media outlets from all campaign finance regulation. Unrestricted campaign finance activity could result in the exact type of harm that contribution limits were intended to prevent.[5] Certainly, the possibility exists that elected officials could become too reliant upon or indebted to a media company in the same way this could occur with other private interests. *See, e.g.*, *Citizens United*, 130 S.Ct. at 905 (expressing concerns about unequal treatment of corporations under federal media exception). This concern is legitimate.[6] However, it seems plain that mechanical application of the in-kind rule to prevent possible misconduct by broadcasters would not be sufficiently "tailored" to the problem to meet the First Amendment standard.

As an example, because campaign finance obligations exist so long as a "candidate" maintains a campaign finance entity to support any current or future campaign – regardless of current activity or an intention to run – the in-kind rule could in theory be applied to any past media appearance by the candidate, at any time, throughout the entire course of the candidate's State political career. In addition, the in-kind requirements could be triggered by others as well, including a spokesperson, strategist, consultant, or any other person, acting in coordination with the campaign. Thus, a significant amount of core political speech might be suppressed solely to guard against a mostly theoretical, or at least rare, threat of abuse. This is regulation the First Amendment does not allow. *See, e.g., Citizens United*, 130 S. Ct. at 891 (First Amendment requires giving "benefit of any doubt to protecting rather than stifling speech.") (quoting *WRTL*, 551 U.S. at 469 (2007)).

Our Office is not aware of any similar cases in which a federal or state agency has successfully upheld a finding that media commentary by a candidate (or those coordinating with the candidate's campaign) amounted to an impermissible in-kind contribution. *See, e.g., San Juan County v. No New Gas Tax*, 157 P.3d 831 (Wash. S. Ct. 2007) (criticism of gas tax by radio talk show hosts during regularly scheduled program for which the broadcaster did not normally require payment was not an in-kind contribution to political committee seeking to overturn tax by ballot initiative); 2003 Ariz. Op. Atty. Gen. 12, 2003 WL 23966055 (Ariz. A.G.) (candidate's media appearance not a contribution under statutory exception); *In re Dornan*, MUR 4689, Statement of Reasons ("SOR") of Chm'n Wold and Commr's Elliott, Mason, and Sandstrom (FEC "Matters Under Review," Feb. 14, 2000) (concluding media exception applies to guest host of radio show, whether before or after becoming a candidate for federal office).[7]

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[5] Candidates often promote their candidacies through paid radio advertisements. If a radio station were to permit a candidate to air a campaign ad for free when it charged other advertisers, including other candidates, the free air time would be an in-kind contribution to the candidate by the radio station. Similarly, if a third party paid for the candidate's ad on behalf of the campaign, that, too, would be an in-kind contribution.

[6] Although we recognize the potential for abuse, in the "free media" context this risk is arguably less as compared to other forms of in-kind contribution. In the case of a public broadcast, there can be no question as to the relationship between the candidate and the broadcaster. This may, in itself, encourage candidates and broadcasters to remain at arms-length with respect to policy issues affecting the company.

[7] FEC Advisory Opinions and enforcement actions ("Matters Under Review") are available on-line at the FEC's website: www.fec.gov (last visited May 20, 2010).

Nor does the absence of a statutory media exception require a different outcome. For example, the Arizona Attorney General noted that that Office had reached the same conclusion before the exception was added to the Arizona Code. "In 1988, even though there was not yet a news media exemption in Arizona's campaign finance laws, the Arizona Attorney General opined that 'regulation of newspaper editorials would clearly run afoul of constitutional guarantees of freedom of the press..." 2003 Ariz. Op. Atty. Gen. No. I03-003 at 2 (quoting Arizona Attorney General Opinion No. 188-020 (1988)).

Thus, even if a state lacks an explicit media exception in its campaign finance law, one may be implied in construing the law consistent with constitutional limitations. For example, in *Laffey v. Begin*, 137 Fed. Appx. 362 (1st Cir. 2005), the Rhode Island board of elections brought an enforcement action against an incumbent mayor, alleging that he had received an in-kind contribution when a local radio station allowed him to host a weekly radio show. The mayor sued, claiming that the board action abridged his First Amendment rights. Eventually, the board agreed to suspend its enforcement action and the First Circuit remanded the case for an assessment of how the state election law accommodated the First Amendment.

The clear teaching of these authorities is that any enforcement policy that involves close regulation of the content of political speech can impermissibly threaten the values protected by the First Amendment. The Constitution is better served by a content-neutral analysis specifically targeting efforts to evade applicable campaign finance limits. *See, e.g., San Juan County,* 157 P.3d at 841 (observing that Washington Code "limits judicial inquiry into the content of the speech, focusing instead on the content-neutral question of whether the radio station ordinarily would collect a fee for the broadcast"); *compare* EL §13-602(a)(4)(i) (prohibiting persons from defraying costs of campaign finance entity directly or indirectly); *see also Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 250-51 & n.5 (1986) (holding, in part, that a "Special Edition" newsletter expressly advocating election of pro-life candidates was not covered by FECA's media exception and was not akin to the normal business activity of a press entity, relying on content-neutral factors).

It is true that in some earlier cases, the FEC sought to put content restrictions on the on-air statements of candidates. *See, e.g.*, FEC Advisory Op. 1977-42 (limiting candidate's permissible speech as host of public affairs radio program). But that is clearly no longer the case, provided the candidate appears on an "independent" media outlet that is performing its normal press function. *See In re Dornan*, MUR 4689, SOR of Com'r Wold *et al.*; *see also* FEC Advisory Op. 2005-19, at 5 (regarding press exemption for non-candidate despite "lack of objectivity" in coverage). Nor does the identity of the host change the analysis. Whatever control over program content a host might exercise, the relevant consideration under FECA is ownership or control of the station itself. *Id*. Nor is there a constitutionally relevant distinction between programs where a candidate acts as "host," as compared to those where a candidate responds to questions from a friendly interviewer or audience of supporters. For First Amendment purposes, the identity of the speaker should be irrelevant. *Citizens United,* 130 S. Ct. at 898 ("Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some, but not by others.").

To avoid a potential chilling effect on free expression, courts are likely to give considerable leeway to the editorial or programming decisions of media companies, including a company's choice of host. *See, e.g., Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 244 (1974) (holding 'right of reply' statute to be an unconstitutional intrusion into the function of editors).[8] Therefore, generally speaking, the use of objective, content-neutral criteria is an approach better suited to the First Amendment. In this regard, some factors to consider might include whether the program at issue is consistent with the station's usual format, whether it was created well in advance of the campaign season or to provide a campaign vehicle for the candidate, and whether the station would ordinarily have collected a fee for the broadcast. The purpose of these questions would be to help SBE assess whether otherwise protected media activity is in reality an effort to promote a particular candidacy.

III

Conclusion

In light of the more than 35 years' experience of courts and the FEC in interpreting a media exception consistent with the First Amendment, federal law probably offers the most useful guidance on the issue you have asked about. In line with that guidance, we would advise that, in considering possible misconduct relating to the coverage of political discussion by a candidate or potential candidate, the focus should remain on activity by the media outlet that appears to be inconsistent with its ordinary press or broadcast function.

Ordinarily, SBE would not analyze the broadcast of a candidate's political remarks as a possible in-kind contribution. The reason advanced for doing so here appears mainly to derive from the participation of former Governor Ehrlich as a host or co-host of the broadcast, and the control over the show's content that circumstance implies. But as is explained above, this consideration does not appear to be decisive, or even greatly relevant, for First Amendment purposes. Similarly, charges of media bias or a lack of balanced coverage do not provide grounds for subjecting a particular media outlet to campaign finance regulation where it would not be otherwise. Consequently, we see no reason in this situation for SBE to depart from its usual practice.

Douglas F. Gansler, Attorney General
Jeffrey L. Darsie, Assistant Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice

Editor's Note:
This opinion was originally issued as a letter of advice.

[10-25-26]

OPINIONS

August 12, 2010

The Honorable Joel J. Todd
State's Attorney for Worcester County

You have asked for an interpretation of certain provisions of the Annotated Code of Maryland concerning the assessment of the "costs of prosecution" against a person convicted of a crime. In particular, you ask who assesses these costs and how they are determined. You indicate that there has been a disagreement with the Public Defender's Office as to whether "costs of prosecution" in these statutes are the same as court costs.

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[8] As the Supreme Court observed in *Miami Herald*:

> "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time."

418 U.S. at 258 (citations omitted).

In our opinion, the "costs of prosecution" assessed against a convicted defendant are the court costs associated with the criminal case. They are assessed by the court in which the prosecution took place, in accordance with the statutes defining costs and schedules adopted by the State Court Administrator.

I

Liability for Costs of Prosecution

In posing your question, you cite Annotated Code of Maryland, Courts & Judicial Proceedings Article ("CJ"), §7-502 and certain related statutes. CJ §7-502 provides simply:

> A person who is found guilty of a crime shall be liable for the costs of the person's prosecution.

For purposes of this section, "costs" is defined to mean "the cost of prosecuting a person for a crime." CJ §7-501(b).[9] If a defendant fails to pay those costs, the State may collect the unpaid costs from the defendant in the same manner as a civil judgment. CJ §7-505. A defendant who is found not guilty is not liable for costs. CJ §7-203(b)(2). Regardless of the outcome of a criminal case, a county is not liable for the costs of the proceeding. CJ §7-203(b)(1).

Costs are not a fine or part of the penalty for a crime; accordingly, a defendant may not be imprisoned for failure to pay costs. CJ §§7-501(d)(2), 7-505(b). However, payment of costs may be made a condition of probation. Annotated Code of Maryland, Criminal Procedure Article ("CP"), §6-219(b)(2).[10]

To understand a convicted defendant's liability for the "costs of prosecution" under these provisions, one must take a broader look at the subject of "costs." This includes consideration of the various statutes, constitutional provisions, common law rules, and court rules that relate to costs, and their historical development. We focus on the evolution of various provisions of State law concerning costs that relate to criminal prosecution.

II

Analysis

The assessment of costs against a party – in a criminal prosecution or other litigation – was not part of the common law. *See Reese v. Mandel*, 224 Md. 121, 130, 167 A.2d 111 (1961); 20 Am.Jur. 2d *Costs* §103. As a general rule, liability for, and the assessment of, costs is governed by statute. The laws regarding "costs" may be categorized in three ways: (1) laws that set forth the elements of costs; (2) laws that determine liability for costs; and (3) laws that govern the disposition of payments received for costs. In other words, they respond to the questions: What are they? Who pays them? Where do they go?

In Maryland, many of the statutes that govern costs have been part of State law, in some form, for centuries. Others are of very recent origin. Provisions have been codified in disparate parts of the code and recodified over the years, sometimes without explicit cross-references to each other. Initially, costs were part of the system for financing certain State offices that were funded through fees. The laws concerning costs provided the means of assessing liability for, and collecting, those fees. Over time, the link between costs and the funding of specific offices was gradually abandoned. Instead, while costs are still computed as fees associated with particular actions or services of State offices, the resulting revenue is now generally directed to the general fund or certain special funds for appropriation in the State budget.

A. Funding of State Officers through Fees Assessed as Costs

Fees as a Direct Source of Compensation of State Officers

The assessment of costs in criminal cases began as a way of directly funding State entities involved in a prosecution. Beginning in the colonial period, various State offices, including prosecutors, sheriffs, and clerks of court, were funded through fees assessed in connection with individual prosecutions, including attorney appearance fees. *See, e.g.,* Chapter 48, §7, Laws of Maryland 1715 (appearance fees of attorneys);[11] *see also* Chapter 292, Laws of Maryland 1846 (fees of clerk of court); Chapter 164, §1, Laws of Maryland 1820 (fees of constable). In criminal cases resulting in a conviction, such costs were assessed against the individual who had made them necessary – the convicted defendant. *See, e.g.,* Chapter 6, Laws of Maryland 1777 (recovery of fines and forfeitures "with costs"); Chapter 138, §22, Laws of Maryland 1809 (assessing costs of prosecution against incarcerated offender's estate).[12] On the other hand, if the accused were acquitted or sentenced to a minimal fine, the county was liable for costs. *See* Chapter 11, Laws of Maryland 1781.

This practice was enshrined in the original version of the 1867 State Constitution that, in amended form, remains the foundation of Maryland jurisprudence today. Under the original version of Article V, §9 of the State Constitution, State's Attorneys were funded by "such fees and commissions as are now, or may hereafter be, prescribed by law." In 1901, this provision was amended to allow for compensation of State's Attorneys through "fees and commissions *or salary*." Chapter 185, Laws of Maryland 1900, *ratified* November 5, 1901 (emphasis added). This amendment thus offered the option of paying the State's Attorney directly instead of relying on appearance fees related to individual cases.[13]

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[9] For purposes of this statute, "crime" is defined as "any act or omission for which a statute or ordinance imposes a fine or imprisonment." CJ §7-501(c)(1). It does not include a municipal infraction under Annotated Code of Maryland, Article 23A, §3. CJ §7-501(c)(2).

[10] In addition, the payment of costs is a condition for the grant of a *nolle prosequi* by the Governor, which is itself a rare occurrence. CP §1-208.

[11] This law provided, in relevant part:

> ...there shall be paid ... to his majesty's attorney-general, for any action in the provincial court, at the suit of his majesty, indictment, presentment, or information, the sum of four hundred pounds of tobacco and no more, any law, statute or custom to the contrary in anywise notwithstanding.

This law also set appearance fees – also denominated in pounds of tobacco – for private attorneys litigating matters in the provincial and appellate courts.

[12] These provisions are still part of Maryland law, though with substantial revision. *See* CJ §7-502; Annotated Code of Maryland, Correctional Services Article, §9-605.

[13] The effect of that amendment was tested a few years later after the General Assembly passed a public local law that provided for the compensation of the Somerset County State's Attorney by salary paid directly by the county. *Tull v. Sterling,*133 Md. 164, 167, 104 A. 191 (1918) ("The salary of the State's Attorney for Somerset County is not payable from fees, which he is authorized to charge and collect, but by direct payment from the county in equal quarterly installments."). The fees which the State's Attorney had previously received for compensation and expenses of that office and which were taxed as part of costs, were thereafter to be paid over by the clerk to the county commissioners, to be applied to the payment of the State's Attorney's salary. *Id.*

In *Tull*, the State's Attorney claimed an entitlement to appearance fees as additional compensation and brought suit against the court clerk for appearance fees paid by the State related to specific cases he had prosecuted. The Court of Appeals rejected the State's Attorney's complaint, holding that the statute clearly relieved him of any claim to the appearance fees that had been taxed as costs:

> There could hardly be a more plain and positive statement of the legislative

The offices of other locally elected State officials – the clerks of the circuit courts, sheriffs, registers of wills – were similarly funded by fees under the original version of the 1867 Constitution. For example, under the original versions of Article III, §45 and Article IV, §10,[14] the compensation of court clerks and their staffs derived directly from statutory fees that were charged by the clerk. To the extent the clerks collected revenues above the compensation prescribed by law, they were required annually to remit that surplus to the State Treasurer. Maryland Constitution, Article XV, §1.

As of the turn of the 20th century, as the Court of Appeals later wrote, fees directed to State's Attorneys went toward their compensation:

> It seems perfectly clear from these provisions, that appearance fees received by State's Attorneys were intended to be treated, like other fees, as items of compensation for official service, and as such, were required to be reported to the Comptroller and the excess over the prescribed salary paid annually into the State Treasury.

Tull v. Sterling, 133 Md. at 167.

Fees Recovered as Costs of Litigation

The specific fees assessed for the services of State's Attorneys, clerks, and other State officers in connection with criminal cases were set forth in statute. The apportionment of the liability for these costs was governed by separate statutes and by a common law interpretation of the statutes.

Most of the provisions specifying fees, which had been part of Maryland's statutory law for many years, were collected in former Article 36 of the Maryland Code. For example, in the 1911 version of the Maryland Code, various provisions setting forth the fees charged by clerks, registers of wills, sheriffs, constables, and other officers appeared in Article 36 entitled "Fees of Officers." Among the fees related to criminal cases were the appearance fees payable to State's Attorneys. Former Article 36, §10 (1911). Other fees related to criminal cases concerned services provided by clerks, constables, and justices of the peace. *See, e.g.*, Former Article 36, §§12, 14, 19 (1911).

Article 38, entitled "Fines and Forfeitures," had several sections governing the recovery and disposition of fines and forfeitures, and assigned liability for the costs of criminal prosecution to convicted defendants. It provided that a defendant convicted of an offense was to be assessed the "costs of his prosecution", among other things. Former Article 38, §1 (1911). When the Legislature first authorized probation as a possible disposition of a criminal case for first offenders, it gave the sentencing court the option of requiring the offender to pay the "costs of the prosecution" as a condition of that status. Chapter 402, Laws of Maryland 1894, *codified at* Article 27, §304A.

Article 24, entitled "Costs," did not concern the amount of costs – a topic covered in Article 36 – but rather dealt with liability for costs in particular situations – *e.g.,* when a case was removed from one county to another. It specified a number of circumstances under which costs were assessed to the county. With particular relevance to criminal prosecutions, it provided that, if the defendant was acquitted or fined no more than 15 cents, the costs were to be paid by the county. Former Article 24, §7 (1911). In addition, a common law rule developed under which the county paid the costs associated with a criminal prosecution even if there was a conviction, if the defendant was indigent or otherwise failed to pay. *Mayor and City Council of Baltimore v. Pattison*, 136 Md. 64, 67, 110 A. 106 (1920).[15]

B. Evolution of Fee and Cost Provisions in Twentieth Century

Over time, the State Constitution and relevant statutes were amended to eliminate the direct connection between the fees that were taxed as costs of litigation and the funding of local State officers. However, the fees have been retained as a source of State revenue.

Separation of Office Funding from Fee Revenue

By the middle of the 20th century, the provision of the Constitution that dealt with the compensation of State's Attorneys – Article V, §9 – had been amended to eliminate the reference to fees and commissions and to provide solely for salaried compensation of State's Attorneys. Chapter 490, Laws of Maryland 1943, *ratified* November 7, 1944. Shortly thereafter, the General Assembly enacted legislation setting salaries for State's Attorneys to be funded through payments by the respective counties. Chapter 791, Laws of Maryland 1945, *enacting* Article 10, §37A, *now codified as amended at* CP §15-401 *et seq.*[16]

The link between court costs and the expenses of the circuit court clerks was also severed. In 1941, Article III, §45 of the Constitution was amended to delete a provision stating that the clerk's offices were funded solely by fees; instead, compensation was to be "such as may be prescribed by law." Chapter 509, Laws of Maryland 1941, *ratified* November 3, 1942. In 1986, Article IV, §10 of the State Constitution was amended to provide that the clerks of court are to be funded through appropriations in the State budget and that their revenues would be treated as State revenues. Chapter 722, Laws of Maryland 1986, *ratified* November 4, 1986. *See also* 72 *Opinions of the Attorney General* 21 (1987) (discussing background of

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> purpose to limit the State's Attorney's compensation, for all his official services, to the amount of the annual salary which the statute substituted for the fees which he had theretofore been accustomed to receive.

Id. at 167-68. Accordingly, the Court held that the State's Attorney was not entitled to payment of the appearance fees that had been paid to the clerk by the State.

[14] Article IV, §10 provided, in pertinent part:

> The Clerks of the several Courts ... shall ... be allowed the fees which appertain to their several offices, as the same now are or may hereafter be regulated by law ....

Article IV, §10 (1867). A related portion of Article III, §45 provided:

> ... such compensation of Clerks, Registers, assistants and office expenses shall always be paid out of the fees or receipts of the offices, respectively.

Article III, §45 (1867).

[15] In 1924, legislation was enacted that would have relieved Baltimore City of this liability, as well as changed the manner of funding the State's Attorney and other State officers in Baltimore City. Chapter 576, Laws of Maryland 1924. However, the Court of Appeals held that the funding provisions violated the Budget Amendment of the State Constitution (Article III, §52) and that the provision relieving Baltimore City of liability for defendants' costs, though constitutional in itself, was not severable from the rest of the bill. *Mayor and City Council of Baltimore v. O'Conor*, 147 Md. 639, 653, 128 A. 759 (1925).

At the same time, an amendment of Article V, §9 of the State Constitution absolved Baltimore City from paying appearance fees to the State's Attorney. Chapter 177, Laws of Maryland 1924, ratified November 4, 1924.

[16] That section also provided that any fees to which the State's Attorney would be entitled "shall be collected and paid over to the board of county commissioners or county council of his county and credited to the general funds of the county." Article 10, §37A (last paragraph), *now codified at* CP §15-402(b)(2). It is not clear what, if any, fees would currently fall into this category as the appearance fees to which State's Attorneys were entitled under Article 36, §10 are now specifically designated for the support of law libraries in the various counties. *See* CJ §7-204(b)-(w).

constitutional amendment); 68 *Opinions of the Attorney General* 96 (1983) (discussing compensation of clerks and staff prior to amendment).

Recodification of Longstanding Fee and Cost Provisions

In 1973, the creation of the Courts & Judicial Proceedings Article resulted in the recodification of many provisions concerning costs – in particular, the provisions of Article 24 concerning liability for costs assessed by the clerks, along with provisions in Article 36, concerning the precise fees charged by the clerks and the appearance fees payable to attorneys. Chapter 2, §2, First Spec. Sess., Laws of Maryland 1973. The specific fees charged by the clerks were listed in new CJ §7-202. Shortly thereafter, the General Assembly amended that section to eliminate the specification of fees, and instead authorized the State Court Administrator to devise a system of fees subject to the approval of the Board of Public Works. Chapter 548, Laws of Maryland 1975. Attorney appearance fees were recodified in CJ §7-204. Subsequently, the Legislature dedicated the revenues from those fees, for criminal as well as civil cases, to the support of the local law library and related purposes in most counties. *See* CJ §7-204(b)-(w).[17]

The provision that imposed liability for the costs of prosecution on a convicted criminal defendant remained in Article 38, §1 for another 30 years until a later code revision recodified it as CJ §7-502. Chapter 26, §2, Laws of Maryland 2004.[18] The General Assembly also amended and recodified the provision allowing costs to be a condition of probation while expanding the availability of probation. It has retained the option of requiring the probationer to pay costs. *See* CP §6-219(b)(2).

As part of the 1973 code revision, the provision that imposed liability for costs on county governments in criminal cases when there was an acquittal or minimal sentence was moved from Article 24, §7 to Article 38, §4A. Chapter 2, §2, First Spec. Sess., Laws of Maryland 1973. Subsequently, Baltimore City disputed its liability to the State for costs associated with criminal prosecutions under Article 38, §4A, when the accused prevailed, was sentenced to a minimal fine, or was indigent. Attorney General Burch confirmed the clerk's authority to charge the City for such costs. 60 *Opinions of the Attorney General* 63 (1975). The City later declined to pay; the Comptroller withheld corresponding State funds due to the City. Litigation ensued in which the Court of Appeals held that the City was liable for such costs. *State v. Mayor and City Council of Baltimore*, 296 Md. 67, 459 A.2d 585 (1983).

After the Court of Appeals decision, the City pursued repeal of Article 38, §4A in the General Assembly. It succeeded in 1986. Chapter 550, Laws of Maryland 1986. That legislation also added CJ §7-203, which bars a clerk from assessing costs of a criminal prosecution against a county (or Baltimore City). It also retained the part of the former statute that barred the clerk from assessing costs against a defendant who is found not guilty.

Finally, as part of the creation of the Courts & Judicial Proceedings Article, the Legislature recodified Article 36, §14, concerning fees charged by the clerks of the appellate courts, as CJ §7-102 and included in the same subtitle other provisions concerning liability for appellate costs that had previously appeared in former Article 5 of the code. A few years later, CJ §7-102 was amended to dispense with the list of specific fees in favor of granting the State Court Administrator authority to set fees subject to the approval of the Board of Public Works. Chapter 523, Laws of Maryland 1976.

C. Modern Cost Provisions

In recent years, the Legislature has created certain costs to be assessed in criminal cases unrelated to fees for any particular office or service.

Additional Costs in Criminal Cases to Finance Special Funds

In 1968, as part of the Criminal Injuries Compensation Act, the General Assembly directed that additional costs in the amount of $5 be imposed on convicted defendants in criminal cases. Chapter 455, §1, Laws of Maryland 1968, codified at Article 26A, §17. The statute stated that political subdivisions would not be responsible for this cost and also directed that the proceeds be paid to the State's general fund. Later amendments increased the amount of costs for certain offenses and designated the proceeds for three special funds related to services for crime victims – the Maryland Victims of Crime Fund, the Victim and Witness Protection and Relocation Fund, and the Criminal Injuries Compensation Fund. The cost provisions were moved to Article 27, §830 and ultimately recodified as CJ §7-409. Chapter 585, §2, Laws of Maryland 1996; Chapter 10, §§1, 3, Laws of Maryland 2001. This statute thus not only establishes the amount of the particular fee and assigns the liability for that as costs to a particular party – *i.e.*, a convicted defendant – but also directs the disposition of the proceeds.

Creation of the District Court; Costs Designated as State Revenues

After the District Court was created in 1970 pursuant to a constitutional amendment,[19] the General Assembly enacted legislation providing for the imposition and collection of costs in the District Court. Chapter 528, §1, Laws of Maryland 1970; Chapter 423, §9, Laws of Maryland 1971. The cost provisions were originally codified in Article 26, §§150A, 155. With respect to criminal cases, those provisions provided for the collection of costs in the amount of $5, in addition to any costs required by the Criminal Injuries Compensation Act, and directed that the proceeds be remitted to the State. As part of the creation of the Courts & Judicial Proceedings Article, these cost provisions were recodified as CJ §§7-301, 7-302. Chapter 2, §1, First Spec. Sess., Laws of Maryland 1973.

D. Judicial Construction of "Costs of Prosecution" in Relation to "Court Costs"

The history of cost provisions in State law outlined above indicate that the "costs of prosecution" mentioned in CJ §7-502 are simply the "costs" or "court costs" that are set forth in other parts of the code or in the schedules devised by the State Court Administrator. The reasoning of two decisions of the Court of Appeals confirms that conclusion.

In *Turner v. State*, 61 Md. App. 1, 484 A.2d 641 (1984), *rev'd*, 307 Md. 618, 516 A.2d 579 (1986), the defendant pled guilty to a robbery offense and was sentenced to five years imprisonment, with credit for time served; the remainder of the sentence was suspended and the defendant was placed on probation on the condition that he pay court costs within 60 days of sentencing. The defendant failed to pay the entire amount of costs within the allotted time, he was found in violation of probation, and probation was revoked.

On appeal, the Court of Special Appeals held that the trial court's finding that the defendant had the ability to pay the fine was not clearly erroneous and affirmed the revocation of probation. However, the Court of Appeals reversed, holding that the record demonstrated that the defendant failed to pay the costs because he was indigent. In the course of their opinions, both appellate courts referred to the "costs of prosecution" assessed under Article 38, §1, the predecessor of CJ §7-502, as "court costs." 61 Md. App. at 4-5; 307 Md. at 620-25.

[17] The General Assembly eliminated the collection of appearance fees in Montgomery County. Chapter 662, Laws of Maryland 1985. Also, as noted above, a 1924 amendment of Article V, §9, had relieved Baltimore City of liability for appearance fees to the State's Attorney. *See* note 7 above.

[18] The same legislation also recodified most of the other provisions of Article 38 as part of Title 7, subtitle 5, of the Courts & Judicial Proceedings Article.

[19] *See* Chapter 789, Laws of Maryland 1969, *ratified* November 3, 1970.

In *Medley v. State*, 386 Md. 3, 870 A.2d 1218 (2005), the Court of Appeals made clear that a particular expense could only be awarded as a "cost of prosecution" under CJ §7-502 if that expense was a "cost" as defined in other statutes or rules concerning costs. In that case, the defendant was convicted of possession of marijuana, based upon a guilty plea and an agreed statement of facts. The trial court sentenced him to time served, $125 in court costs, and a "fine" of $1,000 for the cost of the jury venire that had been assembled for the case. The defendant filed a motion to correct an illegal sentence and appealed when the motion was denied.

The Court of Appeals acknowledged that "a sentencing judge may assess court costs to a defendant in a criminal trial" citing former Article 38, §1, but observed that the statute provided that costs could not be part of a fine. 386 Md. at 6-7, 10. It thus implicitly equated the "costs of prosecution" in that statute with the concept of "court costs." The Court then considered whether any statute or rule would have allowed the trial court to award the costs of the jury venire as part of the costs of prosecution. It found none. Because there was "no plausible statutory authority" allowing the assessment of such costs, the Court reversed the sentence and remanded for a new sentencing. *Id* at 10-11.

E. Summary

As the discussion above indicates, CJ §7-502 authorizes a court to assess the costs of prosecution against a convicted defendant. The elements of costs are set forth in various statutes. Thus, in a particular case, the court must look to the pertinent statutes to assess costs.[20] The key laws can be summarized as follows.[21]

1. Costs of Criminal Cases in the Trial Courts

Unless the court orders otherwise, a trial court is to include an assessment of "court costs" against the defendant as part of any judgment of conviction, or disposition by probation before judgment, or plea of nolo contendere. Maryland Rule 4-353.

District Court

In the District Court, court costs paid by a convicted defendant are $22.50, in addition to any costs imposed under CJ §7-409,[22] which is described below. CJ §7-301(b). Some of the proceeds of this assessment under CJ §7-301 are designated for the Criminal Injuries Compensation Fund and the Victim and Witness Protection and Relocation Fund. CJ §7-301(e).

Circuit Courts

Costs and fees in the circuit courts are determined by the State Court Administrator and are to be uniform throughout the State. CJ §7-202(a). The State Court Administrator has issued a schedule of costs that includes criminal cases. *See* Revised Schedule of Circuit Court Charges, Costs and Fees, §II.A.3 (July 1, 2010), available at <http://www.courts.state.md.us/circuit/feeschedule.html>. As a general rule, costs are to be assessed against a convicted defendant in the amount of $80; a $25 charge may be assessed with respect to certain filings related to bail bonds. *Id.* A circuit court may not assess costs if the defendant is found not guilty. CJ §7-203.

Additional Costs under CJ §7-409

In both the District Court and the circuit courts, the court must impose additional costs in the amount of $3 against a convicted defendant. CJ §7-409(d). The revenues generated by these costs are divided between the State victims of Crime Fund and the Criminal Injuries Compensation Fund, according to a statutory formula. CJ §7-409(f). For certain enumerated crimes, both the District Court and the circuit courts are to impose additional costs against convicted defendants, the proceeds of which are distributed to the two funds mentioned above, as well as the Victim and Witness Protection and Relocation Fund. CJ §7-409(a)-(c), (e). In the circuit courts, the additional cost is $45; in the District Court, it is $35. CJ §7-409(b)-(c). These additional costs may not be waived by the court, unless the defendant is indigent. CJ §7-405.

2. Costs of Criminal Cases in the Appellate Courts

In cases before the appellate courts, costs include "any cost other than counsel fees necessary for the prosecution of an appeal, application for leave to appeal, or filing a petition for writ of certiorari including but not limited to":

- clerk's fees,
- the cost of preparing a transcript of the testimony,
- the cost of preparing and transmitting the record, and
- the cost of the briefs, appendices, and printed record extract.

CJ §7-101; *see also* CJ §7-104. Pursuant to statute, the State Court Administrator has established a schedule of clerk's fees. *See* Revised Schedule of Fees to be Charged by the Clerk of the Court of Appeals and the Clerk of the Court of Special Appeals (January 1, 1995), *reprinted in* Editor's Note to CJ §7-102 (2006 Repl. Vol.).

Costs may be assessed against the State in a criminal appeal. In that instance, the political subdivision in which the case originated is to pay those costs, upon notice by the Attorney General. CJ §7-104(b). Conversely, if costs are assessed against the defendant, they are to be paid to the jurisdiction in which the case originated. If the defendant fails to pay them, the State's Attorney is authorized to recover them for the political subdivision. CJ §7-104(c).

III

Conclusion

In our opinion, the "costs of prosecution" assessed against a convicted defendant are the court costs associated with the criminal case. They are assessed by the court in which the prosecution took place, in accordance with the statutes defining costs and schedules adopted by the State Court Administrator.

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice
[10-25-27]

OPINIONS

August 17, 2010

Steven Kaufman, L.Ac., Chair
Board of Acupuncture
Maryland Department of Health and Mental Hygiene

On behalf of the State Acupuncture Board, your predecessor asked for our opinion concerning a procedure known as "dry needling" that is performed by some physical therapists. Dry needling involves the insertion of acupuncture needles into the skin at certain locations for a therapeutic effect – usually relief of pain. He asked whether the insertion of acupuncture needles in a patient falls within the

[20] Similarly, federal law authorizes federal district courts to order a convicted defendant to pay the costs of prosecution. 28 U.S.C. §1918(b). The elements of those costs are set forth in statute. 28 U.S.C. §1920. A court may not award costs that are not enumerated in that statute. *See United States v. Mink,* 476 F.3d 558 (8th Cir. 2007) (district court lacked authority to assess jury costs against defendant as cost of prosecution); *United States v. Bevilacqua*, 447 F.3d 124 (1st Cir. 2006) (trial court lacked authority to require defendant to pay cost of special prosecutor as a cost of prosecution).

[21] A particular criminal case may include other costs authorized by statute. *See, e.g.,* CJ §7-402 (sheriff's fees).

[22] CJ §7-301(b)(2) actually refers to additional costs imposed "under the Criminal Injuries Compensation Act." As indicated earlier in this opinion, the cost provision of that Act has been substantially amended since the original passage of the Act in 1968 and is now recodified separately at CJ §7-409. (The rest of the Act now appears largely in the Criminal Procedure Article). The General Assembly may wish to amend CJ §7-301(b)(2) in order to provide a more precise reference to the cost provision it describes.

definition of the practice of physical therapy in Maryland and whether it is appropriate for the Board of Physical Therapy Examiners ("Physical Therapy Board") to include it within the scope of practice of physical therapy without legislation on the subject. He stated that the Acupuncture Board believes that the authority to insert needles is reserved, under the Maryland Acupuncture Act, to licensed acupuncturists and certain health care professionals specifically exempted from its licensing requirements.

The authority to use acupuncture needles for therapeutic purposes is not necessarily reserved exclusively to licensed acupuncturists or those specifically exempted from the licensing requirement for acupuncturists. State law recognizes that the scope of practice of health care professions may overlap and confers extensive discretion on licensing boards to define the scope of a profession within statutory limits. In our opinion, the Physical Therapy Board may determine that dry needling is within the scope of practice of physical therapy if it conducts rulemaking under the State Administrative Procedure Act and adopts a regulation that relates dry needling to the statutory definition of practice of physical therapy. Any such process should consider standards for education and training that presumably would be at least as strict as those set by the Legislature for physicians who use acupuncture needles for similar therapeutic purposes.

I

Background

A. Dry Needling

"Dry needling" refers to the insertion of one or more solid needles into the skin for a therapeutic purpose without injecting or withdrawing any fluids. There apparently are several variants of the technique, including "trigger point dry needling" (also called intramuscular stimulation or intramuscular manual therapy by some), in which an acupuncture needle is inserted into the skin and muscle for the treatment of pain. J. Dommerholt, et al., *Trigger Point Dry Needling*, 14:4 Journal of Manual and Manipulative Therapy E70 (2006).

Dry needling is controversial. Few physical therapists have been trained in it or use the technique. *Id.* Physical therapy boards in at least half a dozen states and several countries have embraced it as within the scope of practice of physical therapy while others have declared it to be outside the scope of practice. *Id.; see also* Federation of State Boards of Physical Therapy, *Intramuscular Manual Therapy (Dry Needling) – Resource Paper* (March 8, 2010) at p. 6; Memorandum of Debi Mitchell, Practices Issues Coordinator, Physical Therapy Board of California (December 8, 2006) (stating that physical therapists in California are not authorized to perform dry needling).[23]

B .Dry Needling in Maryland

In Maryland, the Physical Therapy Board and the Acupuncture Board have staked out contrary positions concerning regulation of dry needling.

Physical Therapy Board

In 1997, the Physical Therapy Board informally advised one of its licensees that it was of the opinion that "there is nothing in the Physical Therapy Statute ... to preclude a physical therapist from performing intramuscular stimulation (IMS) by dry needling if adequate training and competency can be demonstrated.... The Board feels that physical therapists, especially those with manual therapy skills, are qualified to perform dry needling." Letter of Charles M. Dilla, P.T., Chairman of the Maryland Board of Physical Therapy Examiners, to Jan Dommerholt, MPS, P.T. (September 18, 1997). The Physical Therapy Board has not adopted any regulations that address dry needling or that specify any particular training or education as a prerequisite to using the technique.

After the Acupuncture Board requested this opinion, the Physical Therapy Board provided us with various materials to support its position that dry needling, as well as certain other invasive procedures,[24] are within the scope of practice of physical therapy. The Physical Therapy Board defines dry needling as "a technique used to treat myofascial [muscle] pain that uses a dry needle, without medication, that is inserted into a trigger point with the goal of releasing/inactivating the trigger points and relieving pain." Federation of State Boards of Physical Therapy, *Intramuscular Manual Therapy (Dry Needling) – Resource Paper* (March 8, 2010) at p. 3.[25] The Physical Therapy Board contrasts dry needling, which it argues is based on modern western ideas concerning anatomy and neurology, to acupuncture, which it characterizes as a form of health care based on a theory derived from Chinese medicine. The Physical Therapy Board also asserts that use of the technique by physical therapists is limited by virtue of the Board's regulation providing that a "physical therapist shall work within the physical therapist's competency in physical therapy evaluation and treatment." COMAR 10.38.03.02A(2)(f).

Acupuncture Board

The State Acupuncture Board has a different view. It reports that it recently received a complaint that an acupuncturist was performing a physical therapy technique – *i.e.*, dry needling. The Acupuncture Board determined that dry needling is within the scope of practice of acupuncture and closed its investigation. In the letter requesting this opinion, the Acupuncture Board stated that it believes not only that dry needling is within the scope of practice of acupuncture, but also that the authority to insert needles in skin is reserved to licensed acupuncturists and to those health care professionals exempted by the acupuncture statute from the licensing requirement – physicians, dentists, and veterinarians.[26] Some of the materials submitted to us maintain that the theory underlying dry needling is identical to a particular branch of Chinese medicine called Ashi and that dry needling is therefore indistinguishable from acupuncture.

We need not resolve the academic debate whether acupuncture is limited to the application of Chinese medical theories or whether the theory underlying dry needling can be traced to a branch of Chinese medicine. As indicated in the next section, the General Assembly has defined acupuncture, for purposes of Maryland law, both with and without reference to Chinese medicine. More importantly, the scope of practice of physical therapy and the scope of practice of acupuncture are not necessarily mutually exclusive.

[23] The Acupuncture Board and Maryland Acupuncture Society provided copies of minutes of meetings of other state physical therapy boards in which those boards expressed the view that dry needling is outside the scope of practice of physical therapy. *See, e.g.,* Minutes of Delaware Examining Board of Physical Therapists and Athletic Trainers (October 27, 2009) at p. 6; Minutes of Idaho State Board of Physical Therapy (May 4, 2007) at p. 2; Minutes of New Jersey State Board of Physical Therapy Examiners (November 28, 2006) at p. 3.

[24] Among the other invasive procedures described in those materials were electromyography, wound debridement, staple removal, and other procedures. This opinion addresses only dry needling.

[25] We also received materials from the Maryland Chiropractic Association supporting the conclusion that dry needling is within the scope of practice of physical therapy. The State Board of Chiropractic and Massage Therapy Examiners may authorize individuals to practice chiropractic with a right to practice physical therapy, if the certain criteria are met. Annotated Code of Maryland, Health Occupations Article, §§3-101(g), 3-301, 3-302(d), 3-303, 3-304(e)(2).

[26] We also received materials from the Maryland Acupuncture Society and nearly identical letters from approximately 30 licensed acupuncturists arguing that there is no substantive difference between acupuncture and dry needling.

C. Regulation of Use of Acupuncture Needles in Maryland

There appears to be no dispute that dry needling involves the same type of needles used by acupuncturists and that the technique bears at least a superficial similarity to acupuncture. The use of acupuncture needles for therapeutic purposes has been a key part of traditional Chinese medicine for millennia. 80 *Opinions of the Attorney General* 180 (1995). It was brought to the United States by Chinese immigrants during the 19th century, but was not practiced outside the Chinese community until the early 1970s. *Id.* At that time, the State began to regulate the use of acupuncture needles.

1. 1970s: Regulation of Acupuncture as Practice of Medicine

In late 1973 and again in early 1974, Attorney General Burch advised that the practice of acupuncture was the practice of medicine and therefore could be performed only by a licensed physician. 59 *Opinions of the Attorney General* 3 (1974); Advice Letter to Daniel T. Doherty, Chairman, Workmen's Compensation Commission (November 28, 1973). That opinion also stated that the Board of Medical Examiners could adopt a regulation allowing physicians to delegate limited, specific manual procedures to unlicensed assistants in connection with acupuncture. Shortly thereafter, the Legislature confirmed that advice in legislation. Chapter 530, Laws of Maryland 1974. That law did not define acupuncture, but simply included acupuncture within the scope of practice of medicine and authorized non-physicians to perform acupuncture only under the supervision of a licensed physician.

2. 1982: Definition of "Acupuncture" Performed by Physicians

In 1982, the General Assembly amended the licensing statute for physicians to provide for the registration of individuals whom the Board of Medical Examiners found to have adequate education, training, or experience in acupuncture. The statute authorized registered practitioners to perform acupuncture under the general supervision of physicians who had themselves completed special training in acupuncture. Chapter 644, Laws of Maryland 1982. That law also provided, for the first time, a definition of acupuncture. It defined "perform acupuncture" to mean:

> to stimulate a certain point or points on or near the surface of the human body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of ailments or conditions of the body.

Annotated Code of Maryland, Health Occupations Article ("HO"), §14-101(h) (1981 & 1982 Supp.). As is evident, this definition would include the current practice of dry needling. This definition does not refer to any particular philosophy that informs the use of the needles.

3. 1994: Maryland Acupuncture Act

In 1994, the General Assembly created the State Acupuncture Board and began to regulate acupuncturists as a separate health care profession. Chapter 620, Laws of Maryland 1994, *codified at* HO §1A-101 *et seq*. In the definition of "acupuncture" in the licensing statute, the General Assembly for the first time made reference to a particular philosophy guiding the use of the needles by that profession. In particular, it defined acupuncture as a form of health care based on "a theory of energetic physiology" involving the "use of oriental medical therapies."[27] Physicians, dentists, and veterinarians were specifically excluded from regulation under the State Acupuncture Law. HO §1A-102.[28]

The 1994 law retained the provision in the physician licensing statute that required registration of physicians who perform acupuncture. The definition of "perform acupuncture" in the Medical Practice Act has remained unchanged since 1982. In particular, that definition refers generally to the insertion of needles "to prevent or modify the perception of pain or to normalize physiological functions" without reference to any particular theory of medicine. HO §14-101(i).[29] In order to register to "perform acupuncture," a physician must complete at least 200 hours of instruction in acupuncture and satisfy other conditions set by the Physicians'Board. HO §14-504(c).

II

Scope of Practice of a Health Care Profession

Disputes over the boundaries of the scope of practice of licensed occupations are not uncommon. On occasion, this Office has been asked to provide guidance on how to navigate those boundaries. *See* 88 *Opinions of the Attorney General* 182 (2003) (professional engineers and private detectives); 80 *Opinions of the Attorney General* 180 (1995) (acupuncturists and veterinarians); 76 *Opinions of the Attorney General* 3 (1991) (physical therapists and chiropractors); 73 *Opinions of the Attorney General* 208 (1988) (clinical social workers and physicians); 71 *Opinions of the Attorney General* 149 (1986) (whether chiropractors may use certain laboratory diagnostic techniques).

It is frequently the case that the scopes of practice of two occupations overlap. "[T]here is nothing intrinsically amiss about legislative authorization for two separate health occupations to perform some of the same acts." 76 *Opinions of the Attorney General* at 13; *see also* 80 *Opinions of the Attorney General* at 181 ("Depending on the statutory scheme, the same activities could fall within the scope of practice of two separate health occupations.").

The scopes of practice of regulated health care professions are set forth in the definitional sections of the various titles of the Health Occupations Article of the Annotated Code of Maryland. The licensing statutes presume that there are areas of overlap among the scopes of practice of various health care professions. Thus, each licensing statute provides that it "does not limit the right of an individual to practice a health care occupation that the individual is authorized to practice under the [Health Occupations Article]." *See, e.g.,* HO §1A-102(a) (Maryland Acupuncture Act); HO §13-102(1) (Maryland Physical Therapy Act); *see also* 76 *Opinions of the*

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[27] The Maryland Acupuncture Act defines acupuncture as "a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points." HO §1A-101(b). The statute defines the practice of acupuncture as:

> (1) ... the use of *oriental medical therapies* for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.
> (2) "Practice acupuncture " includes:
> (i) Stimulation of points of the body by the insertion of acupuncture needles;
> (ii) The application of moxibustion; and
> (iii) Manual, mechanical, thermal, or electrical therapies only when performed *in accordance with the principles of oriental acupuncture medical theories*.

HO §1A-101(f) (emphasis added). In 80 *Opinions of the Attorney General* 180 (1995), Attorney General Curran relied in part on the references to "oriental medical therapies" in concluding that the Acupuncture Act authorized licensed acupuncturists to treat animals.

[28] In addition, several other categories of individuals were excluded from the licensing requirements – *e.g.,* federal employees practicing acupuncture within the scope of their employment, students, visiting teachers. *See* HO §1A-301(b).

[29] Effective October 1, 2010, this definition will be recodified as HO §14-101(k).

Attorney General at 6. In providing for overlapping scopes of practice for various health care professions, the General Assembly has fostered consumer choice in the selection of treatment and practitioner. 80 *Opinions of the Attorney General* at 182 (concluding that both acupuncturists and veterinarians could perform acupuncture on animals within the scope of their respective practices).

Thus, as appropriately phrased in your predecessor's letter, the critical question for resolving this dispute is whether dry needling falls within the scope of practice of physical therapy, regardless of whether it would also fall within the scope of practice of acupuncture.

In answering such a question we first look to whether the General Assembly has clearly resolved the issue. Has the General Assembly, in the Physical Therapy Act, clearly included dry needling within the scope of practice of physical therapy? If the statutory language does not clearly settle the issue, then we must assess whether the licensing board has sufficient authority to find that the technique is within the scope of practice of the profession it regulates. In other words, would the Physical Therapy Board be acting within its statutory authority if it adopted a regulation allowing its licensees to perform the dry needling? *See* 76 *Opinions of the Attorney General* at 8-11.

If a licensing board has authority to declare a particular technique to be within the scope of practice of its profession, it can exercise that authority only in certain ways. Such a determination would be without legal effect if the board does not follow the rulemaking or declaratory ruling procedures of the Administrative Procedure Act. 76 *Opinions of the Attorney General* at 6-7 (Physical Therapy Board's statement that certain procedures were within the scope of practice of physical therapy was without legal effect as the board did not follow APA procedures in reaching that conclusion).

III

Scope of Practice of Physical Therapy

A. Statute

The Maryland Physical Therapy Act sets forth the scope of practice of physical therapy as follows:

(1) "Practice physical therapy" means to practice the health specialty concerned with:

(i) The prevention of disability in patients or clients; and

(ii) The physical rehabilitation of patients or clients with a congenital or acquired disability.

(2) "Practice physical therapy" includes:

(i) Performing an evaluation of the physical therapy needs of patients or clients;

(ii) Performing and interpreting tests and measurements of neuromuscular and musculoskeletal functions to aid treatment;

(iii) Planning treatment programs that are based on test findings; and

(iv) Except as provided in paragraph (3) of this subsection, administering treatment with therapeutic exercise, therapeutic massage, mechanical devices, or therapeutic agents that use the physical, chemical, or other properties of air, water, electricity, sound, or radiant energy.

(3) "Practice physical therapy" does not include using:

(i) X-rays;

(ii) Radioactive substances;

(iii) Electricity for cauterization or surgery.

HO §13-101(i). The Physical Therapy Board is authorized to adopt regulations to carry out its licensing statute. HO §13-206(a)(1). The Board thus has authority to adopt legislative rules – *i.e.*, regulations that have binding effect – on scope of practice matters. 76 *Opinions of the Attorney* General at 7; 75 *Opinions of the Attorney General* 37, 47-49 (1990).[30] Such rules must, of course, be consistent with the statute. *Fogle v. H&G Restaurant, Inc.*, 337 Md. 441, 453, 654 A.2d 449 (1995).

As is evident, the Physical Therapy Act makes no specific mention of "dry needling," "trigger points," or any other use of needles. On the other hand, treatment by needles is not explicitly excluded from the statute either, as is the use of x-rays. The various methods of administering treatment that are explicitly authorized in the statute appear to be unrelated to dry needling, unless acupuncture needles would be considered "mechanical devices." Thus, the statute itself does not clearly answer the question whether dry needling is within the scope of practice of physical therapy.

Whether dry needling is within the scope of physical therapy therefore depends on whether the Physical Therapy Board has authority to adopt a regulation that finds acupuncture needles to be a "mechanical device" for purposes of this statute.

B. Whether the Term "Mechanical Device" Could Include Acupuncture Needles

The reference to the use of "mechanical devices" by physical therapists has been a part of the law since the State first regulated physical therapists in 1947. *See* Chapter 906, Laws of Maryland 1947. Then, as now, the statute defined physical therapy to include treatment of injuries or disabilities by a variety of means, including exercise, massage, heat, cold, air, and light, among other things. There is no legislative history that sheds light on the range of implements covered by the phrase "mechanical devices." And we have not found a judicial construction of the phrase. But it seems fair to conclude that, in using general terms like "exercise," "heat," "cold," and "mechanical device," the General Assembly did not intend to catalog each particular technique or limit the practice of physical therapy to the particular devices in existence in 1947. The general phrase "mechanical device" could encompass new devices that might be developed for physical therapists to administer treatment. In our view, the General Assembly intended to give the Physical Therapy Board substantial discretion to recognize new mechanical devices that might be employed in the practice of physical therapy.

The phrase "mechanical device"appears susceptible to a broad reading. A widely used dictionary defines "mechanical" as "of or relating to machines or tools" and "device" as "something constructed for a particular purpose." Webster's New College Dictionary (1995) at pp. 310, 679. In other words, in this context a mechanical device could be any tool designed for purposes related to physical therapy – *i.e.,* the prevention of disability or the physical rehabilitation of individuals with congenital or acquired disabilities.

Acupuncture needles have an ancient lineage in other parts of the world. But their use among the general population in Maryland for therapeutic purposes is relatively recent. As best we can tell from the materials available to us, the practice of dry needling as a form of therapy supposedly distinct from acupuncture did not appear until the 1970s. Hobbs, *Dry Needling and Acupuncture: Emerging Professional Issues*, Qi-Unity Report (September/October 2007). It apparently first came to the attention of the Physical Therapy Board in the mid-1990s. In our view, the Physical Therapy Board has discretion to determine by regulation whether acupuncture needles are a mechanical device for purposes of the Physical Therapy Act.

C. Process

The Physical Therapy Board's informal statement that dry needling is consistent with the practice of physical therapy does not

[30] The Act forbids the practice of physical therapy without a license from the Physical Therapy Board or other authorization by law. HO §§13-301(a), 13-401(a).

carry the force of law, as it is not a regulation adopted pursuant to the State Administrative Procedure Act, Annotated Code of Maryland, State Government Article, §10-101 *et seq.* It thus has no legal effect. *See* 76 *Opinions of the Attorney General* at 6-7 (Physical Therapy Board statement concerning scope of practice that was not incorporated in a regulation was without legal effect); 80 *Opinions of the Attorney* General at 185-86 (Acupuncture Board's statement concerning scope of practice was ineffective legally because it had not been adopted as a regulation). In order to adopt a policy concerning dry needling that has legal effect, the Physical Therapy Board must undertake a rulemaking process that gives fair consideration to the objections to the use of acupuncture needles by physical therapists – objections that apparently have led a number of state physical therapy boards to find dry needling to be outside the scope of practice of physical therapy. In a previous opinion, Attorney General Curran outlined the type of inquiry the Physical Therapy Board must undertake:

> We suppose that, for example, the Physical Therapy Board would need to consider whether the procedure is akin to those for which physical therapists are trained; whether the procedure, if misapplied, entails an unusual risk of injury; and whether special diagnostic safeguards beyond those used by physical therapists are needed. We do not pretend to know whether these are the only questions, or even exactly the right ones to ask. Our point is that experts in physical therapy, not lawyers, are the people to answer them, through a procedure that allows all pertinent material to be considered. The purpose of the rulemaking would be to enable the Physical Therapy Board to learn and evaluate the legislative facts necessary to a sound decision.

76 *Opinions of the Attorney General* at 14 (footnote omitted). Moreover, as part of its process the Physical Therapy Board cannot ignore that, beginning 35 years ago, the Legislature has closely regulated the use of acupuncture needles in several respects under the rubric of "acupuncture," defined in at least two ways. If, after conducting a rulemaking process, the Physical Therapy Board finds that an acupuncture needle is a "mechanical device" and that dry needling is within the scope of practice of physical therapy, it should also define the standards for the use of dry needling, including standards for the education and training of physical therapists who engage in the practice.

In developing any such standards, the Physical Therapy Board should consider the standards the Legislature has established for physicians who "perform acupuncture." The practice of dry needling, as described in the materials provided to us, appears to be indistinguishable from the definition of "perform acupuncture" in the Maryland Medical Practice Act. A physician who performed dry needling would be stimulating certain points near the surface of a person's body "by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of ailments or conditions of the body." Such a physician would, in the words of the Maryland Medical Practice Act, "perform acupuncture." HO §14-101(i). Under the Medical Practice Act, a physician must obtain at least 200 hours of instruction and meet other conditions set by the State Board of Physicians in order to use acupuncture needles in that way. HO §14-504.

It seems very unlikely that the General Assembly would intend that physicians satisfy such education requirements and specially register with their own licensing board in order to insert "needles to prevent or modify the perception of pain or to normalize physiological functions," but permit physical therapists to perform the same technique without any special educational requirements or oversight. Given that the Legislature has placed specific limitations on a physician's use of acupuncture needles in the Medical Practice Act, any rulemaking process adopted by the Physical Therapy Board would presumably need to consider standards and restrictions at least as stringent as those imposed on physicians.

IV

Conclusion

The authority to use acupuncture needles for therapeutic purposes is not necessarily reserved exclusively to licensed acupuncturists or those specifically exempted from the licensing requirement for acupuncturists. State law recognizes that the scope of practice of health care professions may overlap and confers extensive discretion on licensing boards to define the scope of a profession within statutory limits. In our opinion, the Physical Therapy Board may determine that dry needling is within the scope of practice of physical therapy if it conducts rulemaking under the State Administrative Procedure Act and adopts a regulation that relates dry needling to the statutory definition of the practice of physical therapy. Any such process should consider standards for education and training that presumably would be at least as strict as those set by the Legislature for physicians who use acupuncture needles for similar therapeutic purposes.

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice

[10-25-28]

OPINIONS

September 15, 2010

Richard M. Duvall, Esquire

On behalf of the Wicomico County Board of License Commissioners ("Licensing Board") you have requested our opinion concerning the relationship between the Licensing Board and the Wicomico County Liquor Control Board ("Control Board"). You posed the following questions:

1. Is the retail sale of alcoholic beverages by the Control Board subject to the enforcement authority of the Licensing Board, either generally or specifically under Article 2B, §15-108.1 and §15-112(x)(3)?

2. Does the State Alcoholic Beverages Law permit the Licensing Board to fine the Control Board or to revoke or suspend its authority to engage in the retail sale of alcoholic beverages for violation of Article 2B, §12-108 or other provisions of the Alcoholic Beverages Law?

In our opinion, the answers to your questions are as follows:

1. The State Alcoholic Beverages Law does not give the Licensing Board enforcement authority over the sale of alcoholic beverages by the Control Board.

2. The Licensing Board may not take enforcement action against the Control Board under Article 2B, §12-108, or other provisions of the Alcoholic Beverages Law.[31]

[31]In accordance with our longstanding policy, we requested and received legal memoranda on these questions from counsel for the two agencies. The

I

Background

Title 15 of the Alcoholic Beverages Law, Annotated Code of Maryland, Article 2B, provides for two types of liquor boards – boards of license commissioners and liquor control boards. Every county has a board of license commissioners; only a few have liquor control boards. Both types of boards are State entities created to carry out the underlying purpose of the Alcoholic Beverages Law – "to foster and promote temperance." §1-101(a).[32] Boards of license commissioners license, inspect, and otherwise regulate their licensees – generally, retail sellers of alcoholic beverages. By contrast, liquor control boards are directly involved in the sale of alcoholic beverages. They make wholesale sales of alcoholic beverages and operate local "dispensaries" for retail package sales of certain alcoholic beverages. *See generally* 94 *Opinions of the Attorney General* 134, 135-39 (2009) (describing various liquor control boards).

A. Wicomico County Board of License Commissioners

The Licensing Board consists of three members appointed by the Governor, with the advice and consent of the Senate, to four-year terms. §15-101(x). It issues licenses for the retail sale of alcoholic beverages in Wicomico County. §15-112(a). It may revoke or suspend a license and impose a fine of up to $5,000 for violations of the Alcoholic Beverages Law. §§10-401 *et seq*.; §16-507(x). It also coordinates the enforcement of all alcoholic beverages licensing laws for the county. §15-112(x)(3).

To carry out its duties, the Licensing Board may employ an attorney and other staff, including inspectors and clerical personnel. §15-112(a)(2), (x). It may adopt regulations and conduct inspections of places where licensees are authorized to keep or sell alcoholic beverages. §§16-301(a), 16-405. In connection with its hearings and investigations, the Licensing Board may issue summonses and obtain testimony under oath. §16-410(b). It may also subpoena records from licensed businesses. §16-410(c).

To apply for a license from the Licensing Board, an individual must complete a form devised by the Comptroller, provide fingerprints and specified information, and swear to the accuracy of the information in the application. §§10-103, 10-104. In deciding whether to grant an application, the Licensing Board is to consider various factors, including the public need and desire for the license, the potential effect on existing licensees, the general welfare of the community, and the fitness, moral character, and financial responsibility of the applicant, among other things. §10-202(a), (k). License fees are paid over to the County government, which is responsible for the salaries and expenses of the Licensing Board. §10-204(a), (x).

B. Wicomico County Liquor Control Board

The Control Board consists of three members appointed by the Governor, with the advice and consent of the Senate, to two-year terms. §15-201(b), (c), (e). The General Assembly has granted the Control Board an "absolute monopoly" over the sale of alcoholic beverages in the County, except that it is to make wholesale sales to holders of certain retail licenses in the County.[33] §15-204(a), (d). The Control Board is authorized to establish and operate its own dispensaries for the retail sale of beer, wine, and liquor, as well as ice and bottled water. §15-203(a), (e-1).

The Control Board may hire the necessary staff, lease or purchase premises for its dispensaries,[34] purchase inventory from licensed wholesalers and manufacturers, enter into contracts, set prices and hours of operation, refuse to sell to unsuitable customers, and adopt rules and regulations. §15-205(a)-(e), (g)-(h). The Control Board may borrow money, through the County or directly from a financial institution, to finance its operations. §15-202. The Control Board is to keep accurate records of its activities, which are subject to inspection by the Comptroller. §15-206(a). It is also to provide monthly reports of the results of its operations to the County government and publish those reports in a newspaper. §15-206(c).

Revenues generated by the dispensaries, after payment of expenses, are to be applied to any debt of the Control Board. §15-207(g)(2). With the approval of the County government, the Control Board may place a portion of the profits in a reserve fund for working capital and future operating deficits. §15-207(g)(3). The remaining net profits are to be paid to the County on a quarterly basis. §15-207(g)(4).

II

Analysis

A. Origin of Licensing Boards and Control Boards

In responding to your questions concerning the legal relationship between the Control Board and the Licensing Board, it is instructive to review briefly the historical developments that led to the creation of licensing boards and control boards as modes of alcoholic beverage regulation. The two types of boards are both progeny of a seminal work on the regulation of alcoholic beverages published nearly 80 years ago. In anticipation of the imminent repeal of nationwide Prohibition[35] by the Twenty-First Amendment, John D. Rockefeller, Jr., commissioned a study as to how states could control consumption of alcoholic beverages when they became legal.[36] R. Fosdick & A. Scott, *Toward Liquor Control* (1933) ("Fosdick and Scott").

The study contained detailed guidelines for alternative modes of regulation. The preferred method of regulation, in Fosdick and Scott's view, was to establish a public monopoly over the sale of alcoholic beverages for off-premises consumption. Fosdick and Scott at 18-19, 63-93. They cited examples of such monopolies in Canada and the Scandinavian countries. A second alternative was a licensing and regulatory system for controlling private entities involved in the sale of alcoholic beverages. *Id.* at 18, 35-62. Fosdick and Scott rated a licensing system as inferior to the first alternative because they believed that public control of retail outlets eliminated the profit motive that otherwise would stimulate excessive consumption. *Id*. at 56-57, 79-80. They contrasted the two methods of regulation as follows:

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information and views provided in those memoranda proved helpful in the preparation of this opinion.

[32]Unless otherwise indicated, all statutory references in this opinion are to the Alcoholic Beverages Law found in Article 2B of the Annotated Code of Maryland.

[33]The mark-up on wholesale sales may not exceed 15%. §15-204(d).

[34]The lease or purchase of locations for the dispensaries is subject to the approval of the County government. §15-205(g). This provision, as well as others in the Alcoholic Beverages Law, refer to the "county commissioners" of Wicomico County. However, Wicomico County has adopted charter home rule. Pursuant to the Article XI-A, §3 of the State Constitution, the references to the "county commissioners" would be construed to refer to the current governing body. *See* 95 *Opinions of the Attorney General* 95, 97-98 (2010).

[35]Nationwide Prohibition had been imposed by the Eighteenth Amendment to the United States Constitution, which was ratified by the states in January 1919 and went into effect in January 1920. *See generally* D. Okrent, Last Call (2010).

[36]Rockefeller was a teetotaler and former advocate of Prohibition who later concluded that it was a failed experiment. *See* Fosdick and Scott at vii-xi (Foreword by John D. Rockefeller, Jr.). He sought to replace it with legal controls on alcoholic beverages that would encourage temperance. *Id.*

> It should be observed, first of all, that the objective is the same under both plans, namely, to place the sale of liquor under a series of restrictions devised to curtail excessive consumption. The only difference lies in the method of achieving this object. The licensing system endeavors to establish these controls through *negative* rules, regulations, conditions, and taxes, *imposed from without*, upon *private* enterprise, which necessarily is conducted for *personal profit*. The State Authority [control board] plan endeavors to impose those controls through *positive management* from *within a public* enterprise conducted for the *benefit of society.*

Id. at 78-79 (emphasis in original). Fosdick and Scott also favored oversight by a statewide authority, particularly with respect to manufacturers and wholesalers. *Id*. at 41-42, 54-55.

The report, which was published two months before repeal was finally ratified by the states, was favorably received in most quarters. Its proposals became the model for state alcoholic beverages laws passed in the wake of the demise of Prohibition. *See* Levine, *The Birth of American Alcohol Control*, Contemporary Drug Problems (Spring 1985). Among those laws was Maryland's Alcoholic Beverages Law. Chapter 2, Special Session, Laws of Maryland 1933.

In Maryland, the General Assembly adopted parts of both methods recommended by Fosdick and Scott. It created control boards with monopoly authority in a few jurisdictions, but relied largely on a licensing and regulatory system overseen by local licensing boards.[37] However, the predominance of licensing boards over control boards in absolute numbers did not change the nature of the control board in the counties where one was established. It remained a government entity intended as one method of controlling consumption of alcoholic beverages. Indeed, a detailed follow-up survey of state regulation conducted by two staff members involved in the Fosdick and Scott study identified Maryland as a state involving local variation in regulatory approach "including as the most important elective feature a system of county-operated dispensaries." L. Harrison & E. Laine, After Repeal: A Study of Liquor Control Administration (1936) at 48 & n.10.[38] We found no indication in the 1936 survey, or in the earlier 1933 report, of any expectation that a licensing board would regulate a control board.

B. Whether the Licensing Board Has Enforcement Authority over the Control Board

You first ask whether the Licensing Board has enforcement authority over the Control Board generally and specifically pursuant to §15-108.1 and §15-112(x)(3).

1. General Authority of Licensing Board

The Alcoholic Beverages Law provides generally that "a person may not sell ... any alcoholic beverages unless otherwise provided in this article, or the Tax-General Article." §1-201(a)(2).[39] The remainder of the law spells out the situations that are "otherwise provided." For example, the Comptroller may issue permits and licenses for certain activities involving sales of alcoholic beverages, sometimes in conjunction with the local licensing board. *See, e.g.*, §2-101 *et seq.;* §6-501 *et seq*.; §6-701. Other types of licenses are issued solely by local licensing boards. *See, e.g.*, §3-101 *et seq.* (beer licenses), §4-101 *et seq.* (wine licenses), §5-101 *et seq.* (beer and wine licenses), §6-101 through §6-401, §6-701.1 *et seq.* (beer, wine and liquor licenses).

Yet another exception to the general prohibition against the sale of alcoholic beverages is the authorization for control boards and their dispensaries to engage in wholesale and retail sales. This authority is distinct from the authority granted by a license; there is no provision for the issuance of a license to a control board or a county dispensary.[40] *Cf.* 19 *Opinions of the Attorney General* 114 (1934) (no authority in State law for Comptroller to issue wholesale liquor license to a control board). Rather, the law directly authorizes control boards to make wholesale sales and to operate retail stores. With respect to retail sales, it states that a liquor control board may "establish and maintain stores to be known as 'county liquor dispensaries,' for the sale of any sparkling or fortified wine and any other alcoholic beverages containing more than 14 percent of alcohol by volume, in sealed packages or containers." §15-203(a)(1). In the case of Wicomico County, §15-203(e-1) plainly states that the dispensaries operated by the Control Board "may sell chilled beer, nonchilled beer, wine, liquor, ice, and bottled water" and does not condition that authorization on assent by the Licensing Board. *See Richardson v. State*, 175 Md. 216, 200 A. 362 (1938) ("separate provision" for sales by Control Board in Wicomico County not related to prohibition in Alcoholic Beverages Law against unlicensed sale of whiskey). Thus, this authorization is independent of the licensing regimes created in other portions of the law relating to the Comptroller and licensing boards.

Because the Control Board's activities are inextricably linked to public policy concerning consumption of alcohol, they are governmental functions. *Fowler v. Harris*, 174 Md. 398, 402, 200 A. 825 (1938) (liquor control board "is in no sense a private business or enterprise"); *see also* 62 *Opinions of the Attorney General* 45, 50-51 (1977). Accordingly, the Control Board is not subject to the regulatory control that other governmental agencies might exercise over private entities engaged in the sale of alcoholic beverages. *See, e.g.,* 62 *Opinions of the Attorney General* 45 (1977) (liquor control boards not subject to municipal zoning); 40 *Opinions of the Attorney General* 620 (1955) (liquor control boards not subject to State income

[37]It also established a statewide authority for certain regulatory functions in the Comptroller's Office, including some oversight of control boards.

[38]That 1936 survey continued to describe public monopolies as the preferred method of liquor control. However, the authors expressed the view that the ultimate test was in how well the particular board was run:

> We are convinced that the best of the state monopolies have in them greater potentialities for curbing the evils arising from the use of liquor than have the best of the private-license systems. ... It should be observed, however, that more is expected of monopolies because their pretensions to beneficial social control are greater. It is not enough, therefore, for a monopoly to be merely as good as a license system in a state having similar conditions; it must be better in order to justify its existence.

Harrison and Laine at 11.

[39]Provisions of the Tax-General Article concern imposition of the alcoholic beverage tax. Annotated Code of Maryland, Tax-General Article, §5-101 *et seq*. That law prohibits, among other things, the sale of alcoholic beverages unless the alcoholic beverage tax has been paid; it contains several exceptions to that prohibition.

[40]Indeed, the law contemplates that retail licenses will be issued to individuals. In the case of a collective entity such as partnership, corporation, or limited liability company, the license is to be issued to individuals "who shall assume all responsibilities as individuals and be subject to all of the penalties, conditions and restrictions imposed upon licensees ..." §9-101(a). Notably, there is no reference to the issuance of a license to anyone on behalf of a control board.

tax).[41] Similarly, in our view, the Control Board is not subject to regulation by the Licensing Board.

In your letter requesting this opinion, you noted that the definition of "licensee" in the Alcoholic Beverages Law includes a county liquor control board and a county dispensary. §1-102(15).[42] You suggested that the definition effectively renders the Control Board a licensee of the Licensing Board. However, in our view, the definition simply means that the Control Board and its dispensaries may keep and sell alcoholic beverages just as a licensee or permit holder may – *i.e.*, they have the status of a licensee with respect to their authority to sell alcoholic beverages. *See* 24 *Opinions of the Attorney General* 126 (1939) (citing definition of "wholesaler" that included a control board in concluding that Montgomery County control board had the status of a licensed wholesaler and therefore had right to make sales to retail dealers). It is not an implicit grant of enforcement authority to licensing boards over control boards. It does not authorize the Licensing Board – or any other agency – to suspend or revoke the authority of the Control Board to sell alcoholic beverages, but simply confirms the authority that the General Assembly itself has granted to the Control Board.[43]

2. Authority under §15-108.1

Section 15-108.1 provides simply that the Licensing Board "is a State agency that administers this article and may grant, refuse, revoke, or suspend licenses for the sale of alcoholic beverages." The first clause of this provision indicates that the Licensing Board is a State, as opposed to a County, agency. Given that the Licensing Board is created by State law, its members are appointed by the Governor, and it administers the State Alcoholic Beverages Law, this is not an unexpected conclusion.[44] The second clause of §15-108.1 essentially summarizes the Licensing Board's authority over its licensees, which is delineated in other provisions of Article 2B. Nothing in §15-108.1 pertains to the Control Board, either explicitly or by inference.

Thus, on its face, §15-108.1 simply summarizes the status and powers of the Licensing Board that are spelled out in detail elsewhere in the Annotated Code of Maryland. Its legislative history confirms that interpretation. This provision was a recent addition to Article 2B. Chapter 145, Laws of Maryland 2006. The Fiscal and Policy Note accompanying the legislation stated that it "clarifies current law." Fiscal and Policy Note to Senate Bill 620 (2006). The bill analysis focused on existing law that already indicated that the Licensing Board was a State agency. *Id.*

3. Authority under §15-112(x)(3)

Section 15-112(x)(3) provides that the Licensing Board "shall coordinate the enforcement of all alcoholic beverages *licensing* laws for the county." (emphasis added). Again, this provision seems unremarkable, given that the Licensing Board is charged with granting, suspending, and revoking most alcoholic beverage licenses that affect Wicomico County (Some licenses and permits issued by the Comptroller may also affect the County). The Alcoholic Beverages Law enlists other agencies in the enforcement of its provisions. *See, e.g.,* §16-401 (providing that various law enforcement officials are to assist in the enforcement of the alcoholic beverages laws and acknowledging the authority of political subdivisions to appropriate funds for that purpose). The Legislature has logically charged the Licensing Board with coordinating enforcement of the licensing provisions.

On the other hand, the statute does not state that the Licensing Board is to coordinate the enforcement of *all* alcoholic beverages laws in the County or that it has authority over the Control Board as part of its coordination of licensing enforcement. We cannot infer such authority from the statutory language.[45]

C. Whether the Licensing Board May Impose a Sanction Against the Control Board

You also ask whether the Licensing Board may impose various sanctions against the Control Board, including revocation or suspension of a license and imposition of a fine, for violations of the Alcoholic Beverages Law. You make specific reference to §12-108, which concerns sales to underage or visibly intoxicated individuals.

1. Licensing Board's Authority to Impose Sanctions

Suspension or revocation of alcoholic beverage licenses are governed by §10-401 *et seq*. The statute describes the various bases on which an "issuing authority" – *e.g.*, the Licensing Board – may suspend or revoke a license. The statute clearly grants an issuing authority the power to suspend or revoke a license for the listed reasons. However, it also makes clear that the licensing board has such authority "with respect to licenses approved by [the licensing board]." §10-401(a)(1)(ii); *see also* §10-403(a) (after notice and hearing, licensing board may "revoke or suspend any *license issued under the provisions of this article*"). Thus, the Licensing Board has authority to suspend or revoke licenses only of those that it regulates – *i.e.,* those to whom it has issued licenses. The Board's authority to impose fines under §16-507(x) extends to any violation "that is cause for suspension under the alcoholic beverages law affecting Wicomico County."

On several occasions, the Court of Appeals has alluded to the elaborate detailed regulation wrought by the General Assembly in Article 2B and concluded that close statutory control of this area means that the authority of licensing boards is "more circumscribed than the typical administrative body." *Thanner Enterprises, LLC v. Baltimore County,* 414 Md. 265, 279-81, 995 A.2d 257 (2010).

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[41]As noted above, the law does grant some oversight authority to the Comptroller's Office.

[42]The definition states, in pertinent part:

> "License holder" or "licensee" means the holder of any license or permit, issued under the provisions of this article or of any other law of this State, and includes a county liquor control board and a county dispensary.

§1-102(15)(i). We note that the definition of "wholesaler" includes a liquor control board and a county wholesale dispensary. §1-102(27). Also, the definition of "retail dealer" includes a county dispensary. §1-102(23). The references to control boards and dispensaries in these definitions were added to the law shortly after the Alcoholic Beverages Law was first enacted upon the repeal of Prohibition. Chapter 411, Laws of Maryland 1937; Chapter 775, Laws of Maryland 1939. Although there is no surviving legislative history that indicates why references to dispensaries and control boards were added to these definitions, it seems likely that they were intended to make clear that the control boards and dispensaries were not operating in violation of the new law's broad prohibition against unlicensed sales of alcoholic beverages. *See* Annotated Code of Maryland, Article 2B, §2 (1924 & 1935 Supp.). Notably, these definitions do not relate the status of a control board as "licensee" to any particular license-issuing authority.

[43]We thus agree with the analysis and conclusion of a recent letter of advice of this Office. *See* Letter of Assistant Attorney General Kathryn M. Rowe to Delegate Rudolph C. Cane (March 3, 2010).

[44]The members of the Licensing Board are designated "local officials" for purposes of the Maryland Public Ethics Law. *See* Annotated Code of Maryland, State Government Article, §15-102(y)(2). The Legislature enacted that provision after Attorney General Sachs concluded, in a 1979 opinion, that members of a board of licensing commissioners were officers of the executive branch subject to the then-existing State Code of Ethics. *See* Chapter 860, Laws of Maryland 1982; 64 *Opinions of the Attorney General* 151 (1979).

[45]This provision has been part of the Alcoholic Beverages Law since 1977. Chapter 753, Laws of Maryland 1977. There is no mention of the Control Board in the legislative file for the 1977 bill, or any indication that the Legislature intended to grant the Licensing Board authority over any entity other than licensees and applicants. Furthermore, it is noteworthy that the title of the bill was amended to clarify that the Licensing Board's authority pertained to enforcement of "licensing" laws.

Accordingly, the power to impose a sanction that is not specifically delegated in the statute will not be implied. *Id.*

As noted in the previous section of this opinion, nothing in the Alcoholic Beverages Law requires the Control Board to obtain a license from the Licensing Board to carry out its statutory function. Accordingly, there would be no occasion for the Licensing Board to deny, suspend, or revoke the authority of the Control Board to operate a retail dispensary. That power resides with the General Assembly, which authorized the Control Board to establish dispensaries. Indeed, the framework of the Alcoholic Beverages Law starts from the premise that the Control Board has an "absolute monopoly" over the sale of alcoholic beverages in the County and then provides an exception for holders of certain licenses granted by the Licensing Board. Nor is it possible to infer that the Licensing Board has authority to fine the Control Board for violations of the Alcoholic Beverages Law.

Accordingly, the Licensing Board may not suspend or revoke the "license" of the Control Board. Nor may it assess a fine against the Control Board.

2. Enforcement of §12-108

You specifically asked about the application of §12-108 to the Control Board. That section prohibits sales of alcoholic beverages to individuals under the age of 21 or to visibly intoxicated individuals. With respect to Wicomico County, it provides, in relevant part:

> A licensee under the provisions of this article, or any of the licensee's employees, may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age, either for that person's own use or for the use of any other person, or to any person who, at the time of such sale or delivery, is visibly under the influence of any alcoholic beverage.

§12-108(c)(2).[46] Somewhat more broadly, the statute also prohibits a licensee, proprietor, "or operator of *any establishment dispensing alcoholic beverages*" from permitting the consumption or possession of alcoholic beverages by an underage individual on its premises. §12-108(d) (emphasis added). In these provisions the General Assembly has set limits on the retail sale of alcoholic beverages that undoubtedly were meant to apply to all those authorized to make such sales, including dispensaries operated by the Control Board. In our view, just as the inclusion of dispensaries in the definition of licensee confirms their authorization to sell alcoholic beverages, it also sets the same limit on sales to underage and inebriated patrons. However, these provisions would not be enforced by the Licensing Board but rather by the Control Board itself. Presumably for that purpose, among others, the General Assembly has specifically authorized the Control Board to refuse sales to individual consumers. §15-205(d).

Various other provisions relating to underage consumption are contained in the Criminal Law Article. *See* Annotated Code of Maryland, Criminal Law Article, §10-113 *et seq*. An employee of the Control Board who violates those provisions concerning underage consumption may be prosecuted for a Code violation in the District Court, but not directly sanctioned by the Licensing Board.

III

Conclusion

In our opinion, the answers to your questions are as follows:

1. The State Alcoholic Beverages Law does not give the License Commissioners enforcement authority over the sale of alcoholic beverages by the Control Board.

2. The License Commissioners may not take enforcement action against the Control Board under Article 2B, §12-108, or other provisions of the Alcoholic Beverages Law.

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice

[10-25-30]

[46]Some prohibitions of §12-108 do not apply in Wicomico County. *See* §12-108(c)(5).

Open Meetings Compliance Board

OPINIONS

October 14, 2010

Tom Marquardt
Editor and Publisher
Capital-Gazette Communications

The Open Meetings Compliance Board has considered your complaint alleging that committees of the General Assembly have failed to comply with the requirements of the Open Meetings Act. Specifically, you alleged that the House Rules and Executive Nominations Committee ("HRC") and Senate Rules Committee ("SRC") have conducted meetings without giving proper notice in accordance with the Act and have failed to keep minutes of meetings as required under the Act. You further alleged that the House and Senate standing committees fail to keep minutes of their meetings as required by the Act.

For the reasons explained below, we find that the HRC and SRC did not violate the notice requirements of the Act for those sessions that were announced in the Committee Meetings and Hearing Schedule. Furthermore, oral notice of a HRC meeting held on the final day of the 2010 session satisfied the Act in that advance written notice prescribing a time that the committee would meet was impractical on the last day of session. However, absent special circumstances that might preclude advance written notice, the HRC and SRC were obligated to give advance written notice of meetings at which the committees considered re-referrals of late filed legislation. Finally, we find that the failure of standing committees to prepare and adopt minutes of their meetings violated the Act.

I

Complaint and Response

The first part of the complaint concerned the practices of the HRC and the SRC. According to the complaint, each committee meets as the need arises and the meetings are announced on the floor of the respective chambers and occur immediately after the session. This practice, in the view of the complainant, is a violation of §10-506(a),[1] requiring "reasonable advance notice" of a meeting, and §10-506(b), requiring that, whenever reasonable, notice is to be in writing.

The complainant states that his newspaper was told by the communications director in the House Speaker's Office that the HRC "usually just tries to have meetings when all of the committee chairs are around." While the complaint recognizes that this practice may be convenient, it is "not in accordance with the law created by the very body violating it." The complaint further alleged that the committees do not produce minutes of their meeting as required by §10-509(b) and (c)(1), which require that minutes, reflecting each item considered, the action taken on each item, and each recorded vote, be prepared as soon as practicable after a public body meets.

By way of example, the complaint stated that the HRC met on March 1, 2010, to hear House Bill 660 ("State Officials - Limitations of Terms") and perhaps conduct other business.[2] On April 12, the HRC reported on 21 pieces of legislation. However, as far as the complainant knows, no notice of the meetings was given to the public or the media. Based on bill information posted on the General Assembly's website, the complaint indicated that the SRC held hearings on February 25 and March 5, 9, 12, and 18. However, "[b]ecause of the lack of minutes, [the complainant is] unaware how often the [SRC] met during the 2010 session or what it discussed." To the complainant's knowledge, no notice of these meetings was ever posted nor were minutes prepared. According to the complaint, an aide to the Senate President indicated that "[t]here's no technical announcement of the meetings."

The second part of the complaint focused on the standing committees of both the House and Senate. According to the complaint, none of these committees prepare minutes as required by the Act.

Assistant Attorney General Sandra Benson Brantley, Office of Counsel to the General Assembly, submitted a timely response on behalf of the legislative committees that were the subject of the complaint. According to the response, although the HRC and SRC "occasionally consider the substance of bills, ...the principal function of both ... Committee[s] is to consider the acceptance of late filed bills." The response indicated that the HRC held bill hearings only twice during the 2010 Session, on March 1 and 8. The hearing on House Bill 660 occurred March 8. As evidenced by attachments submitted with the response, the HRC gave notice of these meetings in the Committee Meetings and Hearing Schedule published by the Department of Legislative Services.

The response acknowledged that the HRC met on several additional dates "for the limited purpose or re-referring late filed House bills to the appropriate standing committees." "Because these meetings are not bill hearings at which substantive testimony ... is presented, but rather re-referrals of bills after the bill sponsor is given an opportunity to explain why the bill was filed late, notice of these meetings was simply announced from the House floor, typically a day in advance of the meeting, if time permitted." (footnotes omitted).

The voting session held on April 12 – the final day of the legislative session – was announced orally on the House floor, a "standard practice and the only reasonable alternative in the waning hours of the legislative session." The response cited 4 *OMCB Opinions* 147, 152 (2005), for the proposition that, under the circumstances, oral notice satisfies the Act.

The response stated that the SRC did not meet on 4 of the 5 dates identified in the complaint. The Committee did meet on March 9; however, advance notice of this meeting appeared in the Committee Meetings and Hearing Schedule. The response also included a list of the dates on which the SRC met during the session.

As for the allegation that the Legislature's standing committees fail to keep minutes as required by the Open Meetings Act, the response noted that §10-509 makes clear that it does not "require any change in the form or content of the Journal of the Senate of Maryland or Journal of the House of Delegates ..." §10-509(a)(1). The response also argued that, under the Maryland Constitution, "the General Assembly alone is vested with the power to 'determine the rules of its proceedings.'" Md. Const. Art. III, §19. The response referred to the applicable House and Senate rules governing committee procedures, including provisions governing the recording and reporting of votes. The response also noted that traditionally a bill file is maintained on each bill and that the file "contains all the information required to be included in a public body's minutes of meetings." Thus, according to the response, "the bill file serves the functional equivalent of minutes, even if not so labeled." In other words, "[t]he bill file materials, which are publicly available, fulfill the purpose of ... §10-509." The response further discussed the value of the bill file as the official legislative history of legislation.

II

Notice

When a public body conducts a meeting governed by the Open Meetings Act, it must give "reasonable advance notice" of the session. §10-506(a). "Whenever reasonable, ... notice ... shall: (1) be in writing; (2) include the date, time, and place of the session; and (3) if appropriate, include a statement that a part or all of [the] meeting may be conducted in closed session." §10-506(b). The Act prescribes a nonexhaustive list of the methods by which notice may be provided. §10-506(c); *see* 7 *OMCB Opinions* 18, 19 (2010).

Whether advance notice is "reasonable" depends on the facts, namely, the interval of time between when a meeting is scheduled

[1] Unless otherwise noted, all statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

[2] Based on attachments to the complaint, the hearing on House Bill 660 occurred on March 8. The March 1 reference appears to have been a typographical error.

and notice to the public is provided. 6 *OMCB Opinions* 110, 112 (2009). A public body should give notice of a meeting as soon as practicable after it has determined the date, time , and location where the meeting will occur. *Id.*. Timing may also affect the method by which notice is given. For example, when a meeting is scheduled on very short notice, verbal notice to a reporter may well prove sufficient. However, when sufficient time is available, some form of written notice is required.

As noted in the committees' response, we have previously recognized special concerns that arise in the scheduling of committee meetings during the legislative session:

> As anyone who has participated in or observed the legislative process knows, the last few days of the General Assembly's annual session are a period of intense activity that does not follow a preordained schedule. ... [C]ommittees have no control over the timing of voting sessions, because bills requiring a vote arrive on no set timetable, and lulls in floor action, when committee members might briefly absent themselves from the floor, cannot be predicted. In our opinion, under these circumstances oral notice from the committee chairman during a floor session is reasonable. There is no practical alternative.

4 *OMCB Opinions* 147, 152 (2005). Thus, while the HRC or SRC may anticipate the need for a meeting, it is unlikely that the actual time could be announced in sufficient time for publication. Similar scheduling difficulties may sometimes occur at other points during the session such as immediately before "crossover day" when each house pushes to complete its work, moving legislation by the date required to avoid legislation being assigned to the opposite chamber's Rules Committee.

Turning to the specifics of the complaint, it is clear that no violation of the Open Meetings Act's written notice requirements occurred for those meetings where the HRC or SRC published notice of meetings in the Committee Meetings and Hearing Schedule.[3] Nor would a violation occur with respect to the dates when the SRC did not meet. As to the HRC meeting held April 12, 2010, the final day of the session, we find that the announcement on the floor would appear to satisfy the Act for the reasons stated above.

However, we cannot agree that a floor announcement alone satisfies the Act whenever the rules committees meet for the sole purpose of considering the reassignment of late filed legislation. The notice requirements of the Open Meetings Act apply to any meeting in which a legislative committee deliberates concerning legislation, even if the substantive merits of the legislation are not addressed. *See, e.g.*, *Avara v. Baltimore News Am. Div.*, 292 Md. 543, 552-53 (1982), *quoting City of New Carrollton v. Rogers*, 287 Md. 56, 72 (1980). (Open Meetings Act applies "not only to final decisions made by a public body exercising legislative functions ... but as well to all deliberations which precede the actual legislative act or decision ...") After all, the decision of the rules committees at these meetings determines whether proposed legislation is given an opportunity to advance. Members of the public may well be interested in why a legislator felt it was necessary to file particular legislation late or why the committee is willing (or not) to excuse a deadline. In our view, absent special circumstances that would have precluded advance written notice, when the HRC met to consider bill reassignments without providing reasonable advance written notice, it violated the Open Meetings Act.

[3] We note that this document is readily available to the public in that it is routinely posted on the General Assembly's website, http://mlis.state.md.us.

Apparently, notice of the House Rules Committee meeting held on March 8 and the Senate Rules Committee meeting held March 9 appeared in the Committee Meeting and Hearing Schedule dated March 4, 2010. There is no evidence before us when these meetings were actually scheduled. However, the amount of notice does not appear unreasonable during the legislative session.

III

Minutes

The remaining allegation in the complaint is that the House and Senate standing committees, including each chamber's rules committee, have failed to prepare minutes of their meetings.[4] The Open Meetings Act provides that, "[a]s soon as practicable after a public body meets, it shall have written minutes of its session prepared." §10-509(b). In terms of content, the minutes must, at a minimum, reflect "(i) each item that the public body considered; (ii) the action that the public body took on each item; and (iii) each vote that was recorded." §10-509(a)(2) and (c)(1).[5] To be sure, the requirement for minutes does not envision a transcript, although a transcript would likely satisfy the requirement for minutes. 6 *OMCB Opinions* 164, 168 (2009). However, we have previously advised that the minutes should describe each item considered in sufficient detail to allow a member of the public who reviews the minutes can gain an appreciation of the issue under discussion. *Id*. Furthermore, we have also long held that minutes of a meeting do not satisfy the requirements of the Act until such time as the public body has approved them. *See, e.g.*, 2 *OMCB Opinions* 11, 13 (1998); 3 *OMCB Opinions* 303, 306 (2003); 6 *OMCB Opinions* 47, 51 (2008). With these general principles in mind, we turn to the committees' response to the complaint.

In the response, the committees offered several arguments why the committees' practices are not inconsistent with the Act. While the Act's provisions governing minutes do not require any change in the form or content of the House or Senate journals, §10-509(a)(1), the journals reflect the floor proceedings of each body. Although committee reports are reflected, the journals do not address the actual committee proceedings. Each standing committee is a distinct public body for purposes of the Act. It is true that under Article III, §19 of the Maryland Constitution, each house is vested with the power to "determine the rules of its proceedings" and that both chambers have adopted rules governing committee procedures, including how votes are to be recorded and reported. However, the Open Meetings Act itself was enacted by the General Assembly which did not exclude itself from the Act's scope. *Contrast* federal Government in Sunshine Act, 5 U.S.C. §552(b) (limited to certain executive branch and independent agencies). While the rules governing committee proceedings are in some respects more detailed, nothing in these rules appears to supersede provisions governing minutes under the Open Meetings Act.

While some of the information routinely found in the legislative bill files clearly would duplicate information in written minutes of a meeting, the bill files do not qualify as minutes. To be sure, the files reflect documentary material developed on each bill, including written testimony, amendments considered in the committee, and the committee voting record on a bill. But individual bill files are not necessarily organized according to particular meetings. Nor do they necessarily record all actions taken at a particular meeting. Finally, as explained above, minutes do not qualify as such until they have actually been approved by the membership of a public body – in this case, the individual standing committees of the Legislature. To the extent that a standing committee fails to adopt minutes for each meeting in accordance with §10-509, the committee violates the Act.

In light of the publicly available bill files with detailed information, including any written testimony and actions taken on each bill by the committees, minutes of meetings would not need to

[4] The complaint names specifically the House Appropriations, Economic Matters, Environmental Matters, Health and Government Operations, Judiciary, Ways and Means, and Rules and Executive Nominations committees and the Senate Budget and Taxation, Education, Health and Environmental Affairs, Finance, Judicial Proceedings, and Rules committees.

[5] The provisions requiring minutes make no distinction between public and closed sessions. Thus, minutes are required for both. Office of the Maryland Attorney General, *Open Meetings Act Manual* p. 23 (6th ed. 2006). The Act requires further disclosures as part of publicly-available minutes subsequent to a session closed pursuant to the Act or a closed administrative function session during the course of a public meeting governed by the Act. *See* §§10-503(c) and 10-509(c)(2).

be elaborate. We also note that the public currently has access to recordings of Senate bill hearings. It is our understanding that in the House committees, video recordings are now available at least for a limited period. While recordings clearly are not a substitute for written minutes, the availability of the recordings reduces the level of detail that minutes might need to contain in order to reflect a committee's consideration of individual bills. Nevertheless, the public is entitled to review a record of every public meeting governed by the Open Meetings Act, reflecting the minimal information required under §10-509(c)(1) in the form of approved minutes.

IV

Conclusion

We find that the HRC and SRC did not violate the notice requirements of the Open Meetings Act for those sessions that were announced in the Committee Meetings and Hearing Schedule. Furthermore, oral notice of a HRC meeting held the final day of the 2010 session satisfied the Act in that advance written notice prescribing a time that the committee would meet probably was impractical on the last day of session. However, absent special circumstances that might preclude advance written notice, the rules committees were obligated to give advance written notice of earlier meetings at which the committees considered re-referrals of late filed legislation. Finally, we find that the failure of standing committees to prepare and adopt minutes of their meetings violated the Act.

Open Meetings Compliance Board
Elizabeth L. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire

[10-25-24]

OPINIONS

October 29, 2010

Angela Breck, Editor Maryland Independent
Pauleen Brewer
George R. "Rusty" Talcott, V

The Open Meetings Compliance Board has considered your complaints alleging that the Board of County Commissioners of Charles County violated the Open Meetings Act. Ms. Breck focused on two meetings - a closed session conducted May 13, 2010, and a "by invitation" session conducted at the College of Southern Maryland, La Plata Campus, on May 21, 2010. Ms. Brewer and Mr. Talcott's complaints both focused on the latter meeting. Given the overlap in the complaints we address all three in a single opinion.

For the reasons explained below, we find that the County Commissioners violated the Open Meetings Act on May 13 when they addressed the elimination of a County agency in closed session to the extent that discussions exceeded the provision of legal advice by counsel or consideration of personnel matters pertaining to specific, identifiable employees, matters distinct from the entire class of employees affected by the Commissioners' action. We also find that the Commissioners failed to properly document the closed session at the time the session was closed. Finally, we find that the exclusion of members of the public on May 21 based on the reservation of seats for those individuals selected by the County violated the Act.

I

Complaints and Response

The first aspect of Ms. Breck's complaint focused on a Board of County Commissioners meeting held on May 13, 2010. According to the complaint, the Commissioners held a closed session at 9:00 a.m. "to discuss personnel and legal issues." The Commissioners then convened in a public session to approve the County's Fiscal Year 2011 budget. The Commissioners announced that certain positions would be eliminated. That afternoon, a press release was issued addressing, among other matters, the outsourcing of the County's economic development efforts and a "reduction in force of 8.92 Full-Time Equivalent position" in order to achieve a balanced budget. As described in the complaint, "[w]ith this announcement the [C]ommissioners dismantled the Charles County Economic Development and Tourism Department." Five staff members affiliated with this department lost their jobs. In her newspaper's view, the elimination of the department was a budgetary decision or policy decision rather than a personnel decision. Thus, in the complainant's view, the issue ought to have been discussed in a public session. According to the complaint, the Commissioners never voted during a public session nor did they announce at a public session that a county department would be eliminated.

The second aspect of Ms. Breck's complaint focused on a session held May 21, 2010, "when the Board of Charles County Commissioners hastily put together a meeting of selected local business leaders." According to the complaint, a notice of the meeting appeared on the County's website and the newspaper was alerted about the meeting by telephone. The newspaper quoted the Board President as stating that the Commissioners wanted "to let people know what's going on in economic development." The Board President described the meeting as an "information-type" meeting, but also as an opportunity to listen to the public. All five Commissioners attended the session and advised the audience about the decision to dismantle the department and their strategy on economic development. "[T]hey allowed ... the invited audience to provide input and engage the commissioners in [a] dialogue about the direction of economic development policies and practices. ... This meeting was part of the deliberative process about the future of economic development activities of the county government."

The session was videotaped and the Commissioners announced that it would be aired on the County's cable access channel. Representatives of the media were in attendance. "However, the newspaper's concern is that the meeting was conducted purposefully to limit public participation." The location limited the number of people who could attend and a few members of the public who were not invited were turned away. The newspaper's concern is that allowing attendance by invitation only, "it suggests a deliberate effort to stifle the dialogue and public participation in the government process." Because members of the public were denied access, the newspaper expressed concern that the meeting violated the Open Meetings Act.

Ms. Brewer also focused on the May 21 session. She attempted to attend the meeting held at the College of Southern Maryland, but was blocked at the door and was told that the meeting was by invitation only. She was told that unless her name was on the list, she could not attend due to limited seating capacity. She was also told that the meeting would be taped and broadcasted on the local cable channel. The complaint pointed out that the county government building has an auditorium which is used for Commissioner meetings and public hearings. Ms. Brewer estimated the auditorium seats close to 200 people. In the complainant's view, "this meeting was, intentionally, held at a smaller venue to limit attendance and offer exclusivity of attendees."

Mr. Talcott focused on the May 21 meeting as well. Mr. Talcott alleged that the session was held without proper advance notice. According to the complaint, this "'special meeting' was scheduled to be held the following week at another location." The only public notice, to the complainant's knowledge, "was an entity [on a] document management website listing called 'BoardDocs,' under the menu heading of 'Meetings.'" This announcement was added on or after May 19. The complaint further indicated that there was no notice that all or part of the meeting was to be held in closed session. Noting that several people were denied entry, the complaint indicated several excuses were provided, reasons such as insufficient room to accommodate additional people and attendance was by invitation only. The complaint noted that the Commissioners never voted to close the meeting. The complainant indicated that, in an opening statement during the meeting, the Board President explained the reason for the short notice and small room. On May 19, the Commissioners were contacted by the College President who offered to host the meeting. The complainant referred to an e-mail from the College President to the complainant, however, in which the College President suggested his recollection of the conversation with the

Board President differed. The College President initiated the call in connection with an Economic Submit and the conversation then drifted to the meeting in question.

Roger Lee Fink, County Attorney for Charles County, submitted a timely response on behalf of the Board of County Commissioners.[6] As to the meeting held May 21, Mr. Fink indicated that he was not involved in the scheduling of this meeting, nor did he attend. Thus, his response was based on discussions with others who were involved, including the five Commissioners. According to the response, after adoption of the budget on May 13, which included the defunding, and thus elimination, of the County's Department of Economic Development and Tourism, the Board President received numerous inquiries from the local business community regarding how the County intended to continue the Department's functions. In order to respond, the Board President decided to schedule a coordinated meeting on May 21. Because the Board President intended the meeting to be a business informational meeting, he contacted the President of the College of Southern Maryland to reserve a meeting room in the College's Center for Business and Industry. Although the Board President anticipated a large room, due to a scheduling conflict, the only room available had a maximum capacity of 40 people. The Board President compiled a list of persons he considered interested parties from the business community, including the Chamber of Commerce and an editor and reporter from the *Maryland Independent*, and instructed the County's event coordinator to contact those on the list. On or about May 20 at approximately 9:00 a.m., the Clerk to the County Commissioners posted a notice of the meeting on the County's website and on a bulletin board outside the Commissioners' office where public notices are routinely posted. The *Maryland Independent* was also notified. And the Commissioners arranged for the session to be videotaped for later broadcast on the County's PEG channel.

According to the response,"[c]learly this meeting was intended to be a public meeting open to the public." At least six individuals whose names were not on the list arrived at the meeting without incident. However, when Ms. Brewer arrived and the room began to reach capacity, she approached the events coordinator and inquired whether she had to be on the list to participate in the meeting. The events coordinator asked the Board President and was instructed that, if her name was not on the list, she could not attend. Neither the two other Commissioners in the room nor the two remaining Commissioners who arrived late were aware this instruction was given. The response acknowledged that "[e]xcluding Ms. Brewer from the meeting was a mistake and it was wrong." In the response, the Commissioners offered their apologies to Ms. Brewer for the inconvenience caused.

As to the May 13 meeting, the Commissioners included a copy of the written statement prepared in closing the meeting, the minutes of the public session that date, and a copy of the sealed closed session minutes.[7]Given the Compliance Board's opinion addressing an analogous action, 6 *OMCB Opinions* 180 (2009), the Commissioners do not suggest that the session involved an administrative function. Nevertheless, Mr. Fink finds that decision troubling. According to the response, "[n]o subject of discussion and deliberation is more painful and difficult for a chief executive than the reorganization of government to reduce the workforce because of budgetary constraints. The mere hint of such a possibility sends a tem or a through the workplace, especially in a small enough organization that the employees likely to be affected can be readily personally identified." In governmental organizations where the chief executive is a single individual, these matters are routinely conducted in private prior to presentation to the legislative body. However, this obviously is not the case where the chief executive is a public body.

While the County Commissioners accept the premise that a discussion concerning elimination of a county department was not an administrative function, they urge that the Compliance Board find that those portions of the May 13 meeting concerning the decisionmaking process about identifiable individuals who would be personally affected by a reduction in force and the advice of counsel on the administrative legal process established to notify those employees in a "responsible, professional and dignified manner" were properly closed. The Commissioners posit that "to publicly notify those employees in an open meeting setting simultaneously broadcast to the public and County employees over the television would have been irresponsible, unprofessional and undignified."

The response also points out an "external structural incongruity between the [Open Meetings] Act and ... the Public Information Act." The Public information Act recognizes an executive privilege exception to disclosure of a written public record which is pre-decisional and deliberative in nature if the disclosure would be contrary to the public interest. ... There is no parallel exception in the Open Meetings Act. Consequently, the anomaly exists that pre-decisional deliberations expressed in writing ... between officials may ... be withheld ... whereas pre-decisional deliberations expressed orally by [members] of a public body must be conducted in public view."[8]

II

May 13, 2010

Given analogous situations previously addressed by the Compliance Board, the County Commissioners do not argue that their meeting on May13 involved an administrative function that would fall outside the scope of the Open Meetings Act. *See, e.g.,* 6 *OMCB Opinions* 180 (2009) (Worcester County Commissioners consideration of department consolidation not administrative function). However, the response notes that in those jurisdictions governed by a single executive officer, the type of matter considered by the Commissioners would routinely be held in closed sessions. The simple answer is that an individual chief executive is not a public body. Because Charles County is governed by a public body – the Board of County Commissioners – it is subject to the Open Meetings Act. *Cf*. 1 *OMCB Opinions* 104, 105 (1994) (While a municipal council is a "public body," an individual official such as a city administrator is not). The response also points out a perceived inconsistency between the protection of records reflecting pre-decisional deliberative documents under the Public information Act versus openness requirements under the Open Meetings Act. This argument is more appropriately addressed to the Legislature; by statute, our role is limited to the interpretation of the Open Meetings Act. *See, e.g.*, 6 *OMCB Opinions* 164, 69 (2009).

More significant, the Commissioners ask that we find those portions of the meeting concerning the decision-making process about identifiable individuals who would be affected by the Commissioners' decision and legal advice concerning the process of notifying employees of the decision to be permissible topics of discussion in a meeting closed under the Act. Clearly, a public body can meet in closed session to hear legal advice from its counsel on any legal question, including laws governing employment matters. §10-508(a)(7). Of course, like every exemption under the Act, this provision must be construed narrowly in favor of open meetings. §10-508(c); *see, e.g.*, 3 *OMCB Opinions* 16, 20-21 (2000). Thus, once legal advice has been given, the public body must return to open session to discuss policy implications of advice received. *Id.* The exception cannot be employed as a pretext to deliberate policy decisions behind closed doors.

As to the exception pertaining to personnel matters, §10-508(a)(1), we have repeatedly advised that it extends only to personnel discussions concerning specific identifiable individuals rather than an entire class of employees. *See, e.g.*, 3 *OMCB Opinions* 67, 68

[6] The Board of County Commissioners were granted a brief extension of time to respond.

[7] The Open Meetings Act requires the Compliance Board to maintain the confidentiality of the latter document unless the public body has chosen to make the document public. §10-502.5(c)(2)(iii).

[8] Ms. Brewer provided supplemental information taking issue with the Board President's explanation of how the location of the May 21 session was selected and information in the response relating to certain members of the Board's knowledge about her exclusion. We also note that on July 16, 2010, Board President Copper resigned his position on the Board. However, in evaluating a complaint under the Open Meetings Act, our review focuses on the action of the public body as an entity rather than any individual member. Thus, conflicting facts pertaining to any individual member do not alter our analysis.

(2000). The County Commissioners acknowledge that we have previously held that deliberations concerning departmental consolidations and similar actions involve policy matters governed by the Act. Although the decisions made almost always impact individual employees, such deliberations do not constitute personnel matters under which the deliberations can be closed under §10-508(a)(1). *See, e.g.*, 6 *OMCB Opinions* 180 (2009) (Worcester County action referenced above); 6 *OMCB Opinions* 104 (2009) (exploration of outsourcing municipal service). The fact that a governing body may be forced to publicly reveal that outsourcing is under consideration before the employees learn of the action does not alter the conclusion.

In the County Commissioners' response, we were asked to distinguish the policy decision to outsource the County's economic development efforts from discussions pertaining to individual employees and find that the latter discussions appropriately closed. In prior opinions, we have recognized this distinction. For example, in connection with a municipality's decision to consider outsoucing a particular service, we held that discussions about proposed severance benefits for those individuals affected and the preservation of individual's jobs qualified as personnel matters under the facts presented. 6 *OMCB Opinions* at 108. Based on our review of the minutes of the County Commissioners' closed meeting on May13,2010,it appears that the County Commissioners received recommendations from their staff. It is not entirely clear whether these recommendations pertained to proposed actions concerning the future employment of specific individuals or were more general, pertaining to the future of a class of individuals based on budgetary actions affecting a class. Thus, we can only offer a qualified response. To the extent the discussions fell within the former description, that portion of the discussions, and only that portion, could properly be considered in a closed session as involving personnel matters.

Although the complaint involving this session focused on the substantive discussions, we would be remiss if we failed to point out a procedural violation in the manner in which the May 13 meeting was closed. In closing a meeting, the Act requires that "the presiding officer shall ... make a written statement of the reason for closing the meeting, including a citation of the authority under [§10-508], and a listing of the topics to be discussed." §10-508(d)(2)(ii). The written statement prepared in closing the meeting failed to provide any information about the purpose of the session beyond parroting the statutory authority under which the session was reportedly closed. While the form completed by the Board President provided space to record the topics to be discussed and reason for closing, the Board President left these items blank. We have repeatedly held that failure to provide any level of insight into the purpose of the closed meeting which the public can compare to the cited authority is a violation of the Act. *See, e.g.*, 6 *OMCB Opinions* 77, 82-83 (2009); 5 *OMCB Opinions* 160, 163-64 (2007); 4 *OMCB Opinions* 142, 145-46 (2005). We find that the written statement prepared May 13 failed to satisfy the Act.

III

May 21 Session

While the May 21 meeting at the College was described as an "informational meeting," the purpose was not limited to the County Commissioners briefing representatives of the business community on matters on which the Commissioners had already acted. The goal clearly was to also offer an opportunity for the County Commissioners to solicit others' views as to the County's future economic development efforts. The response described the May 21 session as a "public meeting"; however, the exclusion of any member of the public based on lack of space due to the manner seating was reserved for those selected by the County was inconsistent with the rights of the public under the Open Meetings Act. The County Commissioners, in effect, admitted to such in their response and apology to Ms. Brewer.

Given the County Commissioners' acknowledgment, extensive discussion is not necessary. The meeting was not truly an open meeting in that attendance was restricted, but nor was it a "closed" session as contemplated by the Act. We decline to reach the issue whether the County Commissioners violated the Act is selecting a location that could not accommodate the number of people who might be expected to attend. The complainants and County Commissioners explanations appear to differ in this respect and we decline an attempt to resolve the Board's motive in selecting the meeting location. §10-502.5(f)(2); 3 *OMCB Opinions* 136 (2001) (Compliance Board lacks investigatory powers and cannot independently determine facts). However, we find that the notice of the meeting did satisfy minimum requirements of the Act.

IV

Conclusion

In summary, we find that the County Commissioners violated the Open Meetings Act on May 13 when they addressed the elimination of a County agency in closed session to the extent that discussions exceeded the provision of legal advice by counsel or personnel matters pertaining to specific, identifiable employees, matters distinct from the entire class of employees affected by the Commissioners' action. We also find that the Commissioners failed to properly document the closed session at the time the session was closed. Finally, we find that the exclusion of members of the public on May 21 based on the reservation of seats for those selected by the County violated the Act.

Open Meetings Compliance Board
Elizabeth A. Nilson, Esquire
Courtney J. McKeldin
Julio Morales, Esquire

[10-25-25]

The Judiciary

COURT OF APPEALS OF MARYLAND

ATTORNEY TO BE ADMITTED TO THE BAR

Annapolis, Maryland
November 16, 2010

The State Board of Law Examiners, by supplement to its Report to the Court of Appeals of Maryland dated November 5, 2010, has recommended that Laura Gayle Hoffman, 4907 9th Street, NW, Washington, DC 20011, be admitted to the Bar of Maryland. In addition to having received a passing grade on the Maryland Bar Examination, the applicant named in the supplemental report has received a favorable recommendation in accordance with Rule 5 (Character Review).

It is thereupon the 16th day of November 2010, by the Court of Appeals of Maryland ORDERED that the Board's recommendation be ratified subject to the conditions therein stated on the 16th day of December 2010, unless exceptions to the Board's recommendation of any applicant be filed on or before said date, provided a copy of this Order be published at least one time in the Maryland Register before such ratification.

ROBERT M. BELL
Chief Judge
Court of Appeals of Maryland

Filed: November 16, 2010

BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

Hoffman, Laura Gayle, 4907 9th Street, NW, Washington, DC 20011
[10-25-40]

Final Action on Regulations

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 07
DEPARTMENT OF HUMAN RESOURCES

Subtitle 02 SOCIAL SERVICES ADMINISTRATION

07.02.07 Child Protective Services — Investigation of Child Abuse and Neglect

Authority: Family Law Article, §5-701 et seq.; Human Services Article, §§1-202, 4-202, and 4-207; Annotated Code of Maryland
(Agency Note: 42 U.S.C. 5106a(b)(2)(A)(ii); 45 CFR §1340.20)

Notice of Final Action

[10-258-F]

On November 5, 2010, the Secretary of Human Resources adopted amendments to Regulations **.01** and **.02** and new Regulation **.23** under **COMAR 07.02.07 Child Protective Services — Investigation of Child Abuse and Neglect**. This action, which was proposed for adoption in 37:19 Md. R. 1286—1287 (September 10, 2010), has been adopted as proposed.

Effective Date: December 13, 2010.

BRENDA DONALD
Secretary of Human Resources

Title 09
DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 32 UNEMPLOYMENT INSURANCE

09.32.06 Board of Appeals — Appeals Procedure

Authority: Labor and Employment Article, *§8-5A-02*, Annotated Code of Maryland

Notice of Final Action

[10-271-F]

On November 4, 2010, the Board of Appeals adopted the repeal of existing Regulations **.01 — .10** and new Regulations **.01 — .11** under **COMAR 09.32.06 Board of Appeals — Appeals Procedure**. This action, which was proposed for adoption in 37:19 Md. R. 1289 — 1293 (September 10, 2010), has been adopted as proposed.

Effective Date: December 13, 2010.

DONNA WATTS-LAMONT
Chairman
Board of Appeals

Subtitle 32 UNEMPLOYMENT INSURANCE

09.32.11 Lower Appeals Division — Appeals Procedure

Authority: Labor and Employment Article, §8-504, Annotated Code of Maryland

Notice of Final Action

[10-270-F]

On November 4, 2010, the Secretary of Labor, Licensing, and Regulation adopted new Regulations **.01—.04** under a new chapter, **COMAR 09.32.11 Lower Appeals Division—Appeals Procedure**. This action, which was proposed for adoption in 37:19 Md. R. 1293—1297 (September 10, 2010), has been adopted as proposed.

Effective Date: December 13, 2010.

ALEXANDER M. SANCHEZ
Secretary of Labor, Licensing, and Regulation

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.06 Hospital Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Final Action

[10-235-F]

On November 12, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.04** and **.15-1** under **COMAR 10.09.06 Hospital Services**. This action, which was proposed for adoption in 37:17 Md. R. 1191—1192 (August 13, 2010), has been adopted as proposed.

Effective Date: December 13, 2010.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.20 Personal Care Services

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Final Action

[10-264-F]

On November 12, 2010, the Secretary of Health and Mental Hygiene adopted amendments to Regulation **.07** under **COMAR 10.09.20 Personal Care Services**. This action, which was proposed for adoption in 37:19 Md. R. 1297—1298 (September 10, 2010), has been adopted as proposed.

Effective Date: December 13, 2010.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Withdrawal of Regulations

Title 26
DEPARTMENT OF THE ENVIRONMENT

Subtitle 04 WATER POLLUTION

26.04.04 Well Construction

Authority: Environment Article, §*§9-510,* 9-1305*, and 10-301*, Annotated Code of Maryland

Notice of Withdrawal

[09-334-W]

The Secretary of the Environment withdraws the proposal to repeal existing Regulations **.01—.13** and adopt new Regulations **.01—.39** under **COMAR 26.04.04 Well Construction**, as published in 36:22 Md. R. 1765—1781 (October 23, 2009).

SHARI T. WILSON
Secretary of the Environment

Proposed Action on Regulations

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 05
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 04 SPECIAL LOAN PROGRAMS

05.04.06 Lead Hazard Reduction Grant and Loan Program

Authority: Housing and Community Development Article, Title 4, Subtitle 9, and §§4-704—4-706, Annotated Code of Maryland

Notice of Proposed Action

[10-339-P]

The Secretary of Housing and Community Development proposes to amend Regulations **.02**, **.06 — .11**, **.13 — .17**, and **.19** under **COMAR 05.04.06 Lead Hazard Reduction Grant and Loan Program**.

Statement of Purpose

The purpose of this action is to delete obsolete provisions, streamline the regulations, and recodify existing provisions of the chapter.

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 Tonna Phelps, Director of Single Family Housing, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21032, or call 410-514-7099, or email to phelps@mdhousing.org, or fax to 410-987-3231. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (9) (text unchanged)

(10) "Director" means the Director of **[**the Division of Development Finance**]** *Single Family Housing Programs* of the Department.

(11) — (14) (text unchanged)

(15) "Lead-affected household" means a household that includes a child or pregnant woman who has been exposed to hazardous levels of lead, as shown by elevated blood lead levels or other medical evidence acceptable to the Department*, or families at risk of lead poisoning*.

(16) — (26) (text unchanged)

(27) "Program Director" means the *Assistant* Director of Special Loan Programs in the Division of Development Finance of the Department.

(28) — (30) (text unchanged)

.06 Loan Terms and Requirements — General.

A. Interest Rate.

(1) The interest rate to be paid on each loan **[**shall be 7 percent or less**]** *may not be more than private lending rates for comparable loans*.

(2) (text unchanged)

B. Maximum Loan Amount.

[(1)**]** Except for deferred payment loans in Regulation .07 of this chapter, loans for residential buildings *and child care centers* may not exceed **[**the lesser of:

(a) $15,000 per residential dwelling unit; or

(b) An**]** *an* amount which, when added to any prior debts secured by the property, would equal 100 percent of the market value

of the building and property after rehabilitation, in the estimation of the Department or the local administrator, as applicable.

[(2) Except as provided for deferred payment loans described in Regulation .07 of this chapter, loans for child care centers may not exceed either:

(a) $15,000; or

(b) An amount which, when added to any prior debts secured by or related to the eligible building or property, would equal 100 percent of the market value of the building and property after rehabilitation, in the estimation of the Department or the local administrator, as applicable.**]**

C. Term. The term of a loan may not exceed **[**20**]** *30* years from the date of completion of the lead hazard reduction work and shall be based upon the amount of the loan, expected economic life of the rehabilitated building, and the borrower's ability to repay.

D. — E. (text unchanged)

F. Insurance.

(1) Hazard Insurance. The owner of the building shall maintain fire and extended coverage insurance at the owner's expense in an amount not less than the sum of the loan and any other indebtedness secured by the building, up to the value of the improvements. The hazard insurance policy shall:

(a) (text unchanged)

[(b) Be written by companies which are reputable and financially sound, as determined by the Department;**]**

[(c)**]** *(b)* — **[**(e)**]** *(d)* (text unchanged)

(2) (text unchanged)

G. Appraisals. At the discretion of the Program Director or the local administrator, a borrower may be required to obtain an appraisal in a form and manner acceptable to the Department from an acceptable independent fee appraiser showing the building's value before and after the proposed rehabilitation. **[**In the alternative, for a one-unit property, the staff of the Program or the local administrator may prepare an estimate of property value but may not charge a fee.**]**

H. (text unchanged)

I. Change of Ownership.

[(1) Except in the case of an owner-occupied building with four or fewer residential units, the borrower may not sell, cease to own, assign, transfer, mortgage, pledge, encumber, grant a security interest in, or dispose of all or any part of the building or the borrower's interest in the building, or lease the dwelling unit in which the owner-occupant resides, during the loan term, without the prior written consent of the Department.

(2) If the loan finances lead hazard reduction for an owner-occupied residential building with four or fewer units, the loan shall be due and payable in full upon the sale, encumbrance, or other transfer of the building or any interest in the building, including a lease of the owner's unit for more than 3 years, unless the transfer is made to a person who will occupy the owner's unit and the transfer is:

(a) Made by operation of law upon the death of a joint tenant;

(b) To a spouse upon separation or divorce;

(c) To a spouse or child;

(d) To a relative upon the death of the owner;

(e) To an inter vivos trust when the borrower is the beneficiary and owner of the property and provides assurances acceptable to the Department of any subsequent transfer; or

(f) A transfer for which the parties have received the prior written consent of the Department, in its sole discretion.**]** *A borrower may not sell, cease to own, assign, transfer, dispose of, or lease all or any part of the property during the loan term, without the prior written consent of the Department, except as permitted by federal law.*

J. (text unchanged)

.07 Loan Terms and Requirements — Deferred Payment Loans.

A. (text unchanged)

B. Eligibility for a Deferred Payment Loan.

[(1)**]** The applicant shall submit evidence satisfactory to the Program that the project requires terms of deferral under the Program underwriting criteria.

[(2) The property shall be located outside of the target areas as defined in Regulation .02B of this chapter.**]**

C. (text unchanged)

D. Maximum Loan Amount for a Deferred Payment Loan.

[(1) Loans for residential buildings may not exceed $15,000 per residential unit.

(2) Loans for child care centers that are not located in the operator's single-family residence may not exceed $15,000.

(3)**]** A sponsor may not receive commitments for more than $100,000 during a fiscal year for grants and deferred payment loans combined. This limit is reduced to **[**$15,000**]** *$30,000* for child care centers. The sponsor limit applies to the sponsor and all related corporations, partnerships, and other business entities.

[(4) The Director may, in the Director's discretion, approve increases in the maximum loan amount to cover related testing and relocation costs of a project in an amount determined by the Director to be reasonable.

(5) The Director may, in the Director's discretion, approve increases in the maximum loan amount to cover exceptional circumstances in an amount determined by the Director to be reasonable.**]**

E. (text unchanged)

.08 Loan Terms and Requirements for Secured Loans.

A. Security for Loans.

(1) — (3) (text unchanged)

(4) The lien of the mortgage or deed of trust:

(a) May be subordinate to other *liens or* recorded mortgage liens if superior mortgagees provide any consents required under the superior mortgage loan documents or by the Program; and

(b) May not be subordinate to a tax lien**[**, judgment lien, or any other kind of lien**]**.

B. (text unchanged)

C. Title Insurance. **[**For all loans in excess of $30,000, the**]** *The* Department, in its discretion, may require the borrower to provide a standard American Land Title Association (ALTA) Loan policy, with the Environmental Endorsement 8.1, or other form of title policy approved by the Department and the Office of the Attorney General for an amount equal to the maximum principal amount of the loan, insuring the Department, evidencing that title to the building on the date of closing is vested in the borrower, and containing only standard exceptions and encumbrances acceptable to the Department and the Office of the Attorney General.

.09 Grant Terms and Requirements.

A. (text unchanged)

(1) — (2) (text unchanged)

(3) A grantee shall provide evidence satisfactory to the Program to show that either:

(a) (text unchanged)

(b) The property does not have sufficient value to secure **[**non-Departmental**]** *other* financing.

B. Matching Funds Requirement.

(1) An owner-landlord shall demonstrate that 20 percent of the funds for the project come from **[**a**]** *another* source **[**other than the Department**]**.

(2) (text unchanged)

(3) An owner-occupant shall demonstrate that 10 percent of the funds for the project come from **[**a**]** *another* source **[**other than the

Department**]**, unless the owner's household is a family of limited income.

C. Maximum Grant Amount.

(1) A grant for a residential building may not exceed **[**$15,000**]** *$25,000* per dwelling unit.

(2) A grant for a child care center that is not located in the operator's single family residence may not exceed **[**$15,000**]** *$25,000*.

(3) (text unchanged)

[(4) The Director may, in the Director's discretion, approve increases in the maximum grant amount to cover related testing and relocation costs of a project in an amount determined by the Director to be reasonable.**]**

[(5)**]** *(4)* (text unchanged)

D. — E. (text unchanged)

F. Grant Agreement.

(1) The Department shall enter into a grant agreement with each grantee. **[**The grant agreement shall be signed by the Program Director on behalf of the Department.**]**

(2) (text unchanged)

.10 Loan and Grant Application Process.

A. — C. (text unchanged)

D. Documentation.

(1) (text unchanged)

(2) The applicant **[**shall**]** *may* submit supporting documentation specified in the checklist attached to the application, including but not limited to, the following:

(a) — (f) (text unchanged)

(3) — (4) (text unchanged)

.11 Loan and Grant Approval and Disapproval.

A. — B. (text unchanged)

C. Loan and Grant Approval.

(1) — (2) (text unchanged)

(3) Approval to make a loan, grant, or combination of loan and grant shall be as follows:

(a) (text unchanged)

(b) Program financing in an amount over $60,000 and **[**less than $100,000**]** *up to $250,000* may be approved by the Director;

(c) **[**For Program financing in an amount of $100,000 or more, the following procedures shall apply:

(i) The financing proposal shall be submitted to the Housing Finance Review Committee established under Housing and Community Development Article, §4-208, Annotated Code of Maryland,

(ii) If Program financing is in an amount greater than $100,000 but less than $250,000, the recommendation of the Housing Finance Review Committee constitutes approval unless the loan is specifically disapproved by the Secretary,

(iii) If Program financing is in an amount of $250,000 or more, the Secretary shall determine in writing whether the loan is approved and under what loan terms after receiving the recommendation of the Housing Finance Review Committee, and**]** *Program financing in amounts over $250,000 shall be submitted to the Housing Finance Review Committee in accordance with COMAR 05.01.07; and*

[(iv)**]** (d) (text unchanged)

(4) (text unchanged)

D. — F. (text unchanged)

G. Withdrawal of Application.

[(1)**]** An applicant may withdraw an application at any time before closing by delivering written notice to the Department or the local administrator originating the loan or grant. The applicant shall bear any costs incurred for items other than internal processing, including, but not limited to, title examinations, credit reports, and appraisals.

[(2) A withdrawn application may not be reinstated and a new application shall be required.**]**

H. (text unchanged)

.13 Contractor Requirements.

A. General Requirements. A contractor and subcontractor:

(1) — (5) (text unchanged)

(6) Shall agree in the contract to:

(a) — (e) (text unchanged)

(f) Complete all specifications of the proposal within the completion date, **[**which may not exceed 12 months from the date of the loan or grant closing unless a longer period is approved in writing by the Department**]** *as specified in the contract*;

(7) (text unchanged)

B. (text unchanged)

C. Identity of Interest.

(1) An owner-landlord may act as general contractor only with the prior written approval of the *Department or* local administrator. An application form shall be provided upon request and shall be submitted and approved before submission of the proposal. Approval shall be conditioned on an assurance of completion acceptable to the Department.

(2) (text unchanged)

D. — E. (text unchanged)

F. A contractor performing work financed by a Program loan or grant:

(1) May not be on the unacceptable risk determination list of the Department of Housing and Urban Development or the **[**Farmer's Home Administration**]***United States Department of Agriculture Rural Development*;

(2) — (3) (text unchanged)

.14 Construction Process.

A. — B. (text unchanged)

[C.**]** (proposed for repeal)

[D.**]** *C.* — **[**F.**]** *E.* (text unchanged)

.15 Loan and Grant Disbursements.

A. (text unchanged)

B. Payments Generally.

(1) — (2) (text unchanged)

(3) Payments may **[**not**]** be made for material delivered to the site but not yet installed in the project.

C. Loan Accounts.

(1) (text unchanged)

(a) – (b) (text unchanged)

(c) An escrow account or attorney's trust account held and managed by an escrow agent if the escrow agent meets the following minimum criteria to the satisfaction of the Department:

(i) (text unchanged)

(ii) The escrow agent shall provide the local administrator or the subcontractor, if any, and the Department with the **[**quarterly**]** statements required under §C(2) of this regulation**[**,**]***;* and

(iii) (text unchanged)

(d) (text unchanged)

(2) **[**The local administrator or the subcontractor shall provide the Department with quarterly statements of all loan funds in a loan account. The Department shall review these quarterly statements and shall reconcile the loan balances in the records of the local administrator or the subcontractor with the loan balances in the records of the Department.**]** *The Department may require the local administrator or the subcontractor to provide periodic statements to the Department of all loan funds in an account.* If the **[**quarterly**]**

statements do not correspond with the Department's records of loan funds in the account, the local administrator or subcontractor shall work with the Department to reconcile the differences.

(3) (text unchanged)

D. — F. (text unchanged)

G. Retainage in General.

(1) (text unchanged)

(2) The retainage shall be released at final payment upon confirmation that:

(a) All lead hazard reduction work is complete and acceptable to the local administrator; *and*

(b) The lead dust clearance test standard has been met**[**; and

(c) Verification has been made by a county health department, MDE, or other agency acceptable to the Program that the lead hazard reduction was successful**]**.

H. — J. (text unchanged)

.16 Certification of Local Governments as Local Administrators.

A. — C. (text unchanged)

D. Subcontracting Program Administration.

(1) (text unchanged)

(2) A political subdivision may not subcontract the holding and disbursement of loan funds described in Regulation .15B and J of this chapter, except to a subcontractor which meets the following criteria to the satisfaction of the Department:

(a) – (b) (text unchanged)

(c) The subcontractor provides the local administrator and the Department with **[**quarterly**]** statements of:

(i) – (ii) (text unchanged)

(d) – (e) (text unchanged)

(3) (text unchanged)

E. — H. (text unchanged)

.17 Program Fund Allocations; Reservation of Funds.

A. It is the intent of the Department that Program funds be distributed Statewide. Monies appropriated to the Program may be made available Statewide on a first-come, first-served basis, subject to §B of this regulation. If the number of applications in process **[**which quality for loans**]** is insufficient to commit all monies appropriated to the Program within 6 months of the date of the appropriation, the Department may reallocate remaining funds to other programs authorized under the Act.

B. — C. (text unchanged)

D. Reservation of Funds.

(1) The Department may provide forward commitments of funds to nonprofit sponsors *and local governments* to provide Program financing to eligible grantees or borrowers, in accordance with these regulations and on any additional terms set by the Department.

(2) (text unchanged)

.19 Books and Accounts.

A. — B. (text unchanged)

C. The books, accounts, and records of a **[**borrower**]** *local agency* shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationship between the borrower and the Department. The books, accounts, and records of the contractor and subcontractors shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationships between the contractor and subcontractors and the borrower.

RAYMOND A. SKINNER
Secretary of Housing and Community Development

Title 07
DEPARTMENT OF HUMAN RESOURCES

Subtitle 02 SOCIAL SERVICES ADMINISTRATION

07.02.15 Social Services to Adults

Authority: Human Services Article, §§4-205(a), 4-207, 5-205(a), and 5-207, Annotated Code of Maryland

Notice of Proposed Action

[10-331-P]

The Secretary of Human Resources proposes to amend Regulations **.03** under **COMAR 07.02.15 Social Services to Adults**.

Statement of Purpose

The purpose of this action is to clarify the types of assets considered to be within the definition of liquid assets applied in determining eligibility for adults receiving case management services.

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:

This program provides ongoing case management services to individuals with disabilities within their own homes and communities as part of a community support system.

Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Acting Regulations Coordinator, Maryland Department of Human Resources, OGCCA, 311 West Saratoga Street, Baltimore, MD 21201, or call 410-767-7193, or email to ashuck@dhr.state.md.us, or fax to 410-333-0637. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

.03 Eligibility.

A. — B. (text unchanged)

C. Liquid assets include*, but are not limited to*:

(1) — (7) (text unchanged)

(8) Individual retirement accounts *which can be drawn on without penalty*;

(9) — (10) (text unchanged)

(11) Annuity accounts; **[**and**]**

(12) Income from lottery prize winnings**[**.**]***; and*

(13) Mutual fund accounts.

D. (text unchanged)

BRIAN WILBON
Interim Secretary of Human Resources

Subtitle 02 SOCIAL SERVICES ADMINISTRATION

07.02.15 Social Services to Adults

Authority: Human Services Article §§4-205(a), 4-207, 5-205(a) and 5-207, Annotated Code of Maryland

Notice of Proposed Action

[10-341-P]

The Secretary of Human Resources proposes to repeal Regulation **.12** under **COMAR 07.02.15 Social Services to Adults**.

Statement of Purpose

The purpose of this action is to repeal COMAR 07.02.15.12, which became obsolete in 2008 when the language was included under COMAR 07.02.15.03.

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:

This program provides ongoing case management services to individuals with disabilities within their own homes and communities as part of a community support system.

Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Acting Regulations Coordinator, Maryland Department of Human Resources, OGCCA, 311 West Saratoga Street, Baltimore, MD 21201, or call 410-767-7193, or email to ashuck@dhr.state.md.us, or fax to 410-333-0637. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

BRIAN WILBON
Interim Secretary of Human Resources

Title 08 DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.03 Crabs

Authority: Natural Resources Article, §§4-215 and 4-803, Annotated Code of Maryland

Notice of Proposed Action

[10-333-P]

The Secretary of Natural Resources proposes to amend Regulation **.14** under **COMAR 08.02.03 Crabs**.

Statement of Purpose

The purpose of this action is to clarify text regarding transport of commercially harvested crabs. Regulation currently allows Virginia commercial crabbers to transport their harvest through Maryland waters. This action would allow Potomac River commercial crabbers to also transport their harvest through Maryland waters.

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 has an economic impact on the regulated industry.

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:		
Regulated Industry	(+)	Indeterminable
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. The proposed action may have a positive economic impact on Potomac River commercial crabbers since they will be able to transport their harvest through Maryland waters. This may cut down on fuel costs and travel time to get their catch to market.

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 Crab Regulation, Regulatory Staff, Maryland Department of Natural Resources, Fisheries Service, 580 Taylor Avenue, B2, Annapolis, MD 21401, or call 410-260-8260, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through January 3, 2011. A public hearing will be held on Tuesday, December 7, 2010, at 6 p.m., in the C-1 Conference Room at the Tawes State Office Building, 580 Taylor Avenue, Annapolis, MD 21401.

.14 General Prohibitions.

A. (text unchanged)

B. Commercial—General.

(1) — (10) (text unchanged)

(11) An individual may possess and transport crabs harvested from *the waters of the Potomac River or* Virginia **[**waters**]** if:

(a) The individual is not engaged in harvesting crabs in Maryland waters while the crabs harvested in *the waters of the Potomac River or* Virginia **[**waters**]** are on board the vessel; and

(b) The individual is in possession of a Virginia commercial crab harvester license *or Potomac River Fisheries Commission commercial license*.

C. — G. (text unchanged)

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 10 LABORATORIES

Notice of Proposed Action

[10-337-P]

The Secretary of Health and Mental Hygiene proposes to amend:

(1) Regulation **.03** under **COMAR 10.10.01 General**;

(2) Regulation **.02** under **COMAR 10.10.03 Medical Laboratories — Licenses**; and

(3) Regulation **.02** under **COMAR 10.10.06 Medical Laboratories — Quality Assurance**.

Statement of Purpose

The purpose of this action is to expand the list of those individuals authorized to order medical laboratory tests and to explicitly authorize a pharmacist licensed in Maryland to be eligible for a Letter of Exception, a less restrictive mechanism to license an individual to perform a particular list of "excepted" tests identified by the Secretary. This action will authorize:

(1) Pharmacists to order and perform excepted tests;

(2) Clinical staff of drug abuse programs to order toxicology tests on clients of the program; and

(3) A public health laboratory director to order infectious disease tests (e.g., hepatitis, rabies titers, etc.) to protect the health and safety of the laboratory employees.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. A pharmacist who chooses to perform excepted testing would be required to pay a $100 2-year letter of exception licensing fee (i.e., annualized $50 per year).

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:		
Pharmacists	(-)	Unquantifiable
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. The exact magnitude is unquantifiable because the number of pharmacists is unknown, a pharmacist who chooses to perform excepted testing would be required to pay a $100 2-year letter of exception licensing fee (i.e., annualized $50 per year).

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 410-767-6483. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

10.10.01 General

Authority: Courts and Judicial Proceedings Article, §10-1001; Health-General Article, §§17-201, 17-202, 17-214, and 17-501; Annotated Code of Maryland

.03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(52) (text unchanged)

(53) "Point-of-care laboratory (POCL)" means a laboratory operated as part of, or in association with, a medical care facility, such as a hospital, nursing home, community health center, health maintenance organization, **[**or**]** county or municipal health department, **[**where laboratory tests are performed only for patients who receive medical care within the facility**]** *or a pharmacy*.

(54)—(89) (text unchanged)

10.10.03 Medical Laboratories — Licenses

Authority: Health-General Article, §17-205, Annotated Code of Maryland

.02 Letters of Exception.

A. Eligibility.

(1) (text unchanged)

(2) An individual eligible for a letter of exception shall:

(a) Be qualified as a laboratory director as set forth in 42 CFR §493.1405, including:

(i) (text unchanged)

(ii) Holding an earned doctoral, master's, or bachelor's degree in a chemical, physical, biological, or clinical laboratory science**,** **[**or**]** medical technology*, or pharmacy* from an accredited institution; or

(b) Provide evidence of training in the performance and interpretation of excepted tests and be licensed in **[**the State**]** *Maryland* as a:

(i)—(iv) (text unchanged)

(v) Podiatrist; **[**or**]**

(vi) Dentist*; or*

(vii) Pharmacist.

(3) (text unchanged)
B.—C. (text unchanged)

10.10.06 Medical Laboratories — Quality Assurance

Authority: Health-General Article, §17-202, Annotated Code of Maryland

.02 Authorization to Request Laboratory Tests.

A. Primary Standard. A laboratory may not perform a laboratory test, except a cholesterol or HDL-C, without obtaining written or electronic authorization from:

(1)—(2) (text unchanged)

(3) Another person authorized to order laboratory tests under **[**the**]***:*

(a) The Annotated Code of Maryland*; or*

(b) COMAR.

B. Other Authorized Persons—*Laboratory Tests—General*. Other persons authorized to order laboratory tests include *a*:

(1) **[**A nurse**]** *Nurse* midwife certified by the Maryland State Board of Nursing under COMAR 10.27.05;

(2) **[**A nurse**]** *Nurse* practitioner certified by the Maryland State Board of Nursing under COMAR 10.27.07 **[**and authorized to order tests under a written agreement with a physician**]**;

(3) **[**A physician's**]** *Physician's* assistant, as authorized by the physician's assistant's supervising physician;

(4) **[**A chiropractor**]** *Chiropractor* requesting a test on blood or urine; **[**and**]**

[(5) An employer requesting a job-related test for alcohol or controlled dangerous substances.**]**

(5) Pharmacist licensed by the Maryland Board of Pharmacy pursuant to Health Occupations Article, §12-301, Annotated Code of Maryland, requesting excepted tests for the purposes of:

(a) Screening and monitoring disease risk factors; or

(b) Facilitating patient education for diabetes or heart disease; and

(6) Director of a public health laboratory located in the State and licensed by the Department requesting tests to protect the health and safety of a laboratory employee, including but not limited to:

(a) Viral antibody titers before and after immunization, including but not limited to:

(i) Hepatitis; and

(ii) Rabies;

(b) Base line serology or immunology tests for infectious diseases; and

(c) Tuberculosis testing.

C. Other Authorized Persons—Limited to Alcohol and Controlled Dangerous Substances Tests. Persons authorized to order tests for alcohol or controlled dangerous substances include:

(1) An employer requesting a job-related test for alcohol or controlled dangerous substances on an employee; and

(2) Clinical staff of a substance abuse treatment program ordering tests for controlled dangerous substances on patients enrolled in the substance abuse treatment program if the:

(a) Substance abuse treatment program is:

(i) Accredited as set forth in COMAR 10.47.04.03B(4); or

(ii) Certified by the OHCQ as set forth in COMAR 10.47.04.03A; and

(b) Clinical staff of the substance abuse treatment program meet the clinical staff qualifications set forth in COMAR 10.47.01.06D.

[C.**]** *D.* (text unchanged)

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Title 12
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 04 POLICE TRAINING COMMISSION

12.04.01 General Regulations

Authority: Public Safety Article, §3-208(a); Correctional Services Article, §2-109; Annotated Code of Maryland

Notice of Proposed Action

[10-336-P]

The Secretary of Public Safety and Correctional Services, in cooperation with the Police Training Commission, proposes to amend Regulation **.12** under **COMAR 12.04.01 — General Regulations**.

Statement of Purpose

The purpose of this action is to amend current regulatory language to include changes to Public Safety Article, §3-207(6), Annotated Code of Maryland, as amended by Chs. 107 and 108, Acts of 2010, concerning subject matter requirements for police officer annual in-service training. This action was considered and approved by the Police Training Commission during an open meeting on October 19, 2010.

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 Thomas C Smith, Director, Policy and Process Review, Maryland Police and Correctional Training Commissions, 6852 4th Street, Sykesville, MD 21784, or call 410-875-3605, or email to tcsmith@dpscs.state.md.us, or fax to 410-875-3584. Comments will be accepted through January 3, 2011. A public meeting was conducted on this proposal on October 19, 2010. There will be a public meeting (to be announced) before final action is filed.

.12 Police Officer Annual In-Service Training and Qualification.

A. Police Officer Annual In-Service Training Requirements.

(1) — (5) (text unchanged)

(6) Beginning in the year 2004 and every third year thereafter, **[**the Commission shall require that annual police officer in-service training contains at least 1 hour of training addressing the care and handling of a victim of rape and other sex offenses, including sexual abuse of children**]** *police officer annual in-service training curriculum and minimum courses of study shall include special training in, attention to, and study of the application and enforcement of:*

(a) The criminal laws concerning rape, sexual offenses, the sexual abuse and exploitation of children, and related evidentiary procedures;

(b) The contact with and treatment of victims of crimes and delinquent acts;

(c) The notices, services, support, and rights available to victims and victim's representatives under Maryland law; and

(d) The notification of victims of identity fraud and related crimes of their rights under federal law.

B. — H (text unchanged)

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

Subtitle 15 CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY

12.15.02 Criminal History Records Check of Individuals Who Care for or Supervise Children

Authority: *Correctional Services Article, §2-109;* Family Law Article, *§§*5-560—5-568**[**,**]***;* Annotated Code of Maryland

Notice of Proposed Action

[10-335-P]

The Secretary of Public Safety and Correctional Services proposes to amend Regulation **.02** and add new Regulation **.13** to **COMAR 12.15.02 Criminal History Records Check of Individuals Who Care for or Supervise Children**.

Statement of Purpose

The purpose of this action is to add two definitions to Regulation .02 and create Regulation .13 based on changes to Family Law Article, Annotated Code of Maryland, addressing emergency out-of-home placement of children. The action adds provisions authorizing State and designated law enforcement agencies to perform a federal name-based check in cases where a child is subject to emergency out-of-home placement pursuant to Family Law Article, §5-569, Annotated Code of Maryland.

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. The proposed action has cost neutral impact. Any additional operational costs are offset by the collection of the fees pursuant to Family Law Article §5-561(h), Annotated Code of Maryland.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	$57.25 per check requested
B. On other State agencies:	NONE	
C. On local governments:	NONE	
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(-)	$57.25 per check requested

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

A. and F. The system for performing criminal history records checks on individuals who care for or supervise children has been in place. Change to Family Law Article, Annotated Code of Maryland, adds another condition under which the criminal history records check is required. An individual offering to care for a child based on an emergency out-of-home placement is now subject to a criminal history records check and is responsible for payment of the $57.25 fee for the check.

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 Robyn Lyles, Director, Policy Management Unit, Information Technology and Communications Division, 6776 Reisterstown Road, Baltimore, MD 21215-2341, or call 410-585-3010. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (11) (text unchanged)

(12) "Emergency out-of-home placement" means a local department places a child in the home of a private individual, including a neighbor, friend, or relative, as a result of a sudden unavailability of the child's primary caretaker.

[(12)**]** *(13)* — **[**(13)**]** *(14)* (text unchanged)

(15) "Local Department" has the meaning stated in Family Law Article, §1-101(g)(1) and (2), Annotated Code of Maryland.

[(14)**]** *(16)* — **[**(20)**]** *(22)* (text unchanged)

.13 Emergency Out-of-Home Placement.

A. When a child is subject to an emergency out-of-home placement, a local department may request that a designated State or local law enforcement agency authorized under Regulation .05 of this chapter, or other agency approved by the Department, perform a federal name-based records check on an individual described in Family Law Article, §§5-561(c)(4), (5)(ii), and (6)(ii), Annotated Code of Maryland.

B. An agency performing a federal name-based records check under §A of this regulation may provide the results of the federal name-based records check to the local department making the request.

C. Within 15 calendar days after a local department receives the results of a federal name-based records check, a representative of the local department shall submit to the Department a complete a set of fingerprints for each individual subject to a federal name-based records check according to §A of this regulation.

D. When the Department receives a complete set of fingerprints for an individual subject to the federal name-based records check from a local department, the Department shall perform a criminal history records check authorized under Family Law Article, §5-564, Annotated Code of Maryland.

E. The Department shall perform a criminal history records check authorized under Family Law Article, §5-564, Annotated Code of Maryland, according to Regulation .06 of this chapter.

F. A local department shall immediately remove a child subject to an emergency out-of-home placement if an individual required to submit to a federal name-based records check does not comply with a requirement to submit to the federal name-based records check.

G. When a child's emergency out-of-home placement is denied as a result of a criminal history records check required under this regulation, the individual with the criminal history records check that is the basis for the denial may appeal the action as provided under Criminal Procedure Article, §10-227, Annotated Code of Maryland.

H. An individual required to submit to a criminal history records check under this regulation shall pay the fees established under Family Law Article, §5-561(h), Annotated Code of Maryland.

GARY D. MAYNARD
Secretary of Public Safety and Correctional Services

Title 14
INDEPENDENT AGENCIES

Subtitle 01 STATE LOTTERY AGENCY

Notice of Proposed Action

[10-334-P]

The Maryland State Lottery Agency proposes to:

(1) Amend Regulation **.01** under **COMAR 14.01.10 Video Lottery Terminals**; and

(2) Adopt new Regulations **.01—.04** under a new chapter, **COMAR 14.01.20 Unannounced Inspections**.

Also, the amendments to Regulation **.01** under **COMAR 14.01.10 Video Lottery Terminals** and Regulation **.02** under **COMAR 14.01.11 Video Lottery Facility Operation Licenses**, as proposed in 37:9 Md. R. 687—688 (April 23, 2010), are being withdrawn at this time.

This action was considered at the Maryland State Lottery Commission open meeting held on October 22, 2010, 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 update regulations to incorporate provisions required for the implementation and operation of the State's new Video Lottery Terminal program and for the five VLT facilities authorized by law which began opening with the Hollywood Casino Perryville on September 27, 2010.

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 Robert W. Howells, Regulations Coordinator, Maryland State Lottery Agency, 1800 Washington Boulevard, Suite 330, Baltimore, MD 21230, or call 410-230-8789, or email to rhowells@msla.state.md.us, or fax to 410-230-8727. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

14.01.10 Video Lottery Terminals

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.01 General.

A. This chapter applies to the State's Video Lottery Terminal Program.

B. Unless the context indicates otherwise, for purposes of the Video Lottery Terminal program, "Commission" may include staff of the Agency.

14.01.20 Unannounced Inspections

Authority: State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

.01 General.

This chapter establishes the manner and method by which the Commission may conduct an unannounced inspection of the premises, records, and equipment of a licensee and related entities in order to evaluate and verify a licensee's compliance with State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, and the regulations promulgated by the Commission for the Video Lottery Terminal Program.

.02 Definition.

The terms defined in State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, and in COMAR 14.01.10, 14.01.11, 14.01.12, 14.01.14, 14.01.15, and 14.01.18 have the same meanings in this chapter.

.03 Inspections.

A. A licensee is subject to unannounced inspections conducted by the Commission in order to evaluate and verify the licensee's compliance with State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, and the regulations promulgated by the Commission for the Video Lottery Terminal Program.

B. The Commission or a designee may conduct an unannounced inspection without a warrant and take any of the following actions:

(1) Conduct an inspection of premises in which:

(a) Video lottery operations are conducted;

(b) Authorized video lottery terminals, a central monitor and control system, or associated equipment and software are:

(i) Designed;
(ii) Built;
(iii) Constructed;
(iv) Assembled;
(v) Manufactured;
(vi) Sold;
(vii) Distributed; or
(viii) Serviced; or

(c) Records are prepared or maintained for activities referenced in §B(1)(a) or (b) of this regulation;

(2) Conduct an inspection of a video lottery terminal, central monitor control system, or associated equipment and software in, about, on, or around the premises specified in §B(1) of this regulation;

(3) From the premises specified in §B(1) of this regulation, summarily seize, remove, impound, or assume physical control of, for the purposes of examination and inspection:

(a) A video lottery terminal;

(b) A central monitor and control system; or

(c) Associated equipment and software;

(4) Inspect, examine, and audit books, records, and documents concerning a licensee's video lottery operations, including the financial records of a:

(a) Parent corporation;

(b) Subsidiary corporation; or

(c) Similar business entity; or

(5) Seize, impound, or assume physical control of:

(a) Books;

(b) Records;

(c) Ledgers;

(d) Cash boxes and their contents;

(e) A counting room or its equipment;

(f) Other physical objects relating to video lottery operations; or

(g) Any record or object that a licensee is required by law or license terms to maintain.

C. During an inspection, a licensee and its employees, agents and representatives:

(1) Shall:

(a) Make available for inspection, copying, or physical control a record that a licensee is required to maintain;

(b) Authorize any person having financial records relating to the licensee to provide those records to the Commission; and

(c) Otherwise cooperate with the activities of the Commission described in this chapter; and

(2) Shall not knowingly interfere with the authorized activity of the Commission during an unannounced inspection.

D. An unannounced inspection may be conducted:

(1) Any time during reasonable business hours; and

(2) Periodically, as determined by the Commission.

E. The refusal of a licensee or a licensee's employees or agents to provide the Commission with the access necessary to perform an unannounced inspection may be the basis for imposition of a civil penalty or sanction under COMAR 14.01.18.

.04 Records and Reports.

A. Within a reasonable time after the conclusion of the unannounced inspection, the Commission's inspectors shall submit a written report of the inspection to:

(1) The Commission;

(2) The Director; and

(3) The licensee who was the subject of the Commission's unannounced inspection.

B. A written report of an unannounced inspection shall be considered a public record to the extent allowable under State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

STEPHEN L. MARTINO
Director
State Lottery Agency

Subtitle 09 WORKERS' COMPENSATION COMMISSION

14.09.02 Governmental Group Self-Insurance

Authority: Labor and Employment Article, §§9-309, 9-402, and 9-404, Annotated Code of Maryland

Notice of Proposed Action

[10-332-P]

The Workers' Compensation Commission proposes to adopt new Regulation **.01**, recodify existing Regulation **.01** to be new Regulation **.01-1**, repeal existing Regulations **.05** and **.08**, and adopt new Regulations **.05** and **.08—.11**, and under **COMAR 14.09.02 Governmental Group Self-Insurance**. This action was considered at an open meeting held on October 14, 2010, notice of which was given by publication in the Maryland Register on September 14, 2010, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement H.B. 345/S.B. 625 (Ch. 42, Acts of 2007), which requires the Commission to adopt regulations to establish guidelines governing the investment of surplus monies in equities by a governmental self-insurance group.

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 E. Baltimore Street, Baltimore, MD 21202, or call 410-864-5300, or email to alackington@wcc.state.md.us, or fax to 410-864-5301. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

.01 Definitions.

A. For the purposes of this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Actuarially calculated ultimate loss liability" means the sum of open claim reserves plus an estimate of incurred but not reported losses on open and closed claims through the cutoff date for the estimate in accordance with generally accepted actuarial principles.

(2) "Adequate consideration" has the meaning set forth in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1108(17)(B).

(3) "Administrator" means a person or entity designated by the Board of Trustees for a purpose authorized by this regulation.

(4) "Board of Trustees" means the elected governing body of a governmental group self-insurance fund.

(5) "Elect" means either:

(a) Direct election by the members of the governmental group fund;

(b) Appointment by the Board of Directors of a governmental entity member organization; or

(c) Appointment by the Board of Directors of the governmental group or sponsoring organization.

(6) "Exchange traded fund" or "ETF" means an equity fund or bond fund designed to replicate the performance of a major broad market United States, international, or global index and publicly traded on an American Stock Exchange.

(7) "Fiduciary" means:

(a) An individual or group of individuals as defined in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1102(21)(A);

(b) A member of the Board of Trustees;

(c) A member of an investment committee of the Board of Trustees; and

(d) An administrator.

(8) "Fiscal agent" means the entity employed by the Board of Trustees to hold the monies of the Fund.

(9) "Fund" means the governmental self-insurance group fund established pursuant to Labor and Employment Article, §9-404, Annotated Code of Maryland, and this chapter.

(10) "Party in interest" means:

(a) An administrator;

(b) A fiduciary;

(c) A member of the Fund, any of whose employees are covered by the Fund;

(d) A service company;

(e) A trustee;

(f) A fiscal agent;

(g) A spouse, ancestor, lineal descendent, or spouse of a lineal descendent of a person set forth in §B(10)(a) — (f) of this regulation;

(h) A corporation, partnership, trust or estate of which 50 percent is owned directly or indirectly by a person set forth in §B(9)(a) — (f) of this regulation;

(i) An employee, officer, director or 10 percent or more shareholder of an entity or person set forth in §B(10)(a) — (f) of this regulation; and

(j) A 10 percent or more partner or joint venturer of an entity or person set forth in §B(10)(a) — (f) of this regulation.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Service company" means an organization, company, or person hired to perform a function of the Fund's day-to-day operations including, but not limited to:

(a) Adjusting claims;

(b) Performing safety engineering;

(c) Compiling statistics and preparing premium, loss, and tax reports;

(d) Preparing other required fund reports;

(e) Developing members' premiums and fees;

(f) Managing the investment of all or part of the Fund's assets; and

(g) Providing advisory services, including advice on investment objectives, asset allocation, manager search, and performance monitoring.

(13) "Sponsoring organization" means the governmental group that has been approved for joint self-insurance coverage under Labor and Employment Article, §9-404, Annotated Code of Maryland.

(14) "Surplus monies not needed to meet current obligations (surplus monies)" means monies not needed to pay current Fund:

(a) Expenses;

(b) Obligations;

(c) Open claim reserves; and

(d) Incurred, but not reported, claim reserves.

.05 Trustee Responsibilities.

A. Trustee Election.

(1) Trustees shall be elected or appointed for a stated term of office.

(2) A trustee may not be an owner, officer, or employee of a service company with which the Board of Trustees contracts for a purpose authorized by this chapter, except that a Trustee may be an employee of the governmental group or sponsoring organization.

B. Delegation of Authority to Administrator.

(1) Subject to final approval by the Commission, the Board of Trustees may delegate authority to perform specific functions to an Administrator including, but not limited to, the authority to:

(a) Contract with a service company and other providers;

(b) Determine the premium charged to and refunds payable to members subject to the restrictions of the Commission;

(c) Invest surplus monies subject to the restrictions set forth in this regulation; and

(d) Approve applications for membership.

(2) The Board of Trustees shall include in the written minutes of trustee meetings the specific authority delegated to an administrator pursuant to this section.

(3) The Board of Trustees shall submit a copy of the minutes under §B(2) of this regulation to the Commission for approval.

(4) An Administrator designated by the Board of Trustees:

(a) May not be an owner, officer, or employee of a service company with which the Board of Trustees has contracted for a purpose authorized by this chapter, except that the Administrator may be an employee of the governmental group or sponsoring organization; and

(b) Shall furnish a fidelity bond, with the Fund as obligee, in an amount, as determined by the Commission, sufficient to protect the Fund against misappropriation or misuse of any monies or securities.

C. Authority of Board of Trustees.

(1) The Board of Trustees may not:

(a) Extend credit to individual members for payment of premiums other than normal premium payment plans;

(b) Utilize any of the monies collected as premiums for any purpose unrelated to the Fund's workers' compensation program; or

(c) Borrow any monies from the Fund or in the name of the Fund:

(i) Without obtaining the prior approval of the Commission; or

(ii) For the purpose of engaging in an investment activity pursuant to this chapter.

(2) The Board of Trustees may:

(a) Direct the administration of the Fund;

(b) Approve applications for membership in the Fund;

(c) Invest surplus monies subject to the restrictions set forth in Labor and Employment Article, §9-404(a), Annotated Code of Maryland, and this chapter; and

(d) Contract with a service company or other provider for a purpose authorized by this chapter.

(3) The Board of Trustees shall:

(a) Retain control of monies collected or disbursed from the Fund;

(b) Establish a claims fund sufficient to cover payment of the entire aggregate loss fund as defined in any aggregate excess policy required by the Commission;

(c) Establish a trustee fund sufficient to pay the administrative costs of the Fund and from which all administrative costs and other disbursements shall be made;

(d) Establish a revolving fund, to be replenished from time to time from the claims fund, for use by the Fund's staff or an authorized service company;

(e) Arrange for the annual audit of the accounts and records of the Fund by an independent certified public accountant, copies of which shall be filed with the Commission no later than 5 months after the close of the Fund fiscal year; and

(f) Determine the premiums charged to and refunds payable to members.

D. Use of Service Company.

(1) The Board of Trustees may contract with a service company to perform any function not specifically reserved to the Board of Trustees.

(2) Prior to entering into a contract with a service company or other provider for a purpose authorized by this chapter, the Board of Trustees or Administrator shall provide to the Commission satisfactory proof that the service company or provider:

(a) Is covered by a fidelity bond, with the Fund as obligee, in an amount sufficient to protect monies over which the service company or provider exercises control;

(b) Maintains fiduciary liability insurance, and if not, how the Fund's interests are protected;

(c) Possesses experience and expertise relevant to the activity that the service company or provider has been contracted to provide;

(d) Holds the qualifications required by the state or federal agency responsible for regulating the activity that the service company or provider has been contracted to provide; and

(e) Is licensed, registered, or exempt from licensing or registration, with the state or federal agency responsible for regulating the activity that the service company or provider has been contracted to provide.

E. Prohibited Transactions.

(1) Except as provided in §E(3), a fiduciary with respect to the Fund may not cause the Fund to engage in a transaction, if the fiduciary knows or should know that such transaction constitutes direct or indirect:

(a) Sale, exchange, or leasing of property between the Fund and a party in interest;

(b) Lending of money or other extension of credit between the Fund and a party in interest;

(c) Furnishing of goods, services, or facilities between the Fund and a party in interest;

(d) Transfer to, or use by or for the benefit of, a party in interest, of an asset of the Fund; or

(e) Engaging in investment, or other activity not provided for in the approved annual investment plan, this chapter, or Labor and Employment Article, §9-404(a), Annotated Code of Maryland.

(2) Except as provided in §E(3) of this regulation, a fiduciary may not:

(a) Deal with Fund assets in the fiduciary's own interest or for the fiduciary's own account;

(b) Act in a transaction involving the Fund on behalf of a party whose interests are adverse to the interest of the Fund or its members; or

(c) Receive any consideration for the fiduciary's own personal account from a person dealing with the Fund in connection with a transaction involving the assets of the Fund.

(3) The prohibitions in §E(1) and (2) of this regulation do not apply to the following transactions:

(a) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the Fund and its workers' compensation insurance program, if not more than reasonable compensation is paid for those services; or

(b) Transactions described in §E(1) and (2) of this regulation between the Fund and a person that is a party in interest, other than a fiduciary, who has or exercises any discretionary authority or control with respect to the investment of the Fund assets involved in the transaction, or who renders investment advice, within the meaning of Regulation .01B(7)(a) of this chapter, with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider, but only if in connection with such transaction the Fund receives no less, or pays no more, than adequate consideration as defined in Regulation .01A(2) of this chapter.

(4) Upon application, the Commission may authorize other exemptions for fiduciaries or transactions.

.08 Investments Authorized.

A. Conditions to Investing.

(1) Prior to engaging in an investment activity under this chapter, the Board of Trustees shall:

(a) Fully fund the actuarially calculated ultimate loss liability of the Fund; and

(b) Submit to the Commission for approval an Annual Investment Plan that satisfies the requirements of this regulation.

(2) The Annual Investment Plan submitted to the Commission shall include:

(a) A statement of investment policy and current year objectives;

(b) A complete asset allocation study;

(c) Projected investment activity for the coming year by asset allocation group; and

(d) A signed acknowledgement from any fiduciary acknowledging his or her fiduciary responsibilities and the prohibited transactions set forth in Regulation .06E of this chapter.

B. Investing of Surplus Monies in Insured and Government Obligations.

(1) The Board of Trustees may invest all surplus monies not needed to meet current obligations in:

(a) Investments authorized by State Finance and Procurement Article, §6-222, Annotated Code of Maryland;

(b) United States Government Bonds or Treasury Notes;

(c) Investment shares accounts in any savings and loan association whose deposits are insured by a federal agency; and

(d) Certificates of deposit issued by a duly chartered commercial bank.

(2) Except as provided in §B(3) of this regulation, the Board of Trustees:

(a) Shall limit deposits in savings and loan associations and commercial banks to institutions in this State; and

(b) May not deposit more than the federally insured amount in any one account.

(3) Notwithstanding §B(2) of this regulation, the Board of Trustees may deposit more than the federally insured amount in any one account if the amount does not exceed:

(a) 5 percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in this State in the banking division annual report of the Financial Institution Bureau of the Department of Commerce (banking control); or

(b) $500,000 per institution.

C. Investing of Surplus Monies in Equities.

(1) The Board of Trustees may, subject to the requirements of this chapter, invest a maximum of 30 percent of surplus monies not needed to meet current obligations in equities.

(2) Of the monies that may be invested in equities pursuant to §C(1) of this regulation, the Board of Trustees may not invest more than:

(a) 33⅓ percent, at cost, or 50 percent at market value, in any single equity fund, bond fund, or ETF, including any single country, commodity, or sector fund; and

(b) 5 percent, at cost, or 8 percent at market value, in any single listed equity, right, depositary receipt, or convertible security.

(3) Notwithstanding the investment allocation restrictions in §C(2) of this regulation, in the case of an equity investment whose weighting is greater than 5 percent of the applicable benchmark index, the Board of Trustees may be permitted to equal-weight the equity investment at cost and hold a market value weighting not to exceed 1½ times the equity investment's index weighting.

(4) The Board of Trustees may invest in only the following equities:

(a) Preferred stock of a solvent institution that is:

(i) Not in default of dividend, principal, or interest payments on any preferred stock or debt instrument; and

(ii) Created or existing under the laws of the United States, Canada, a state, or a province of Canada;

(b) Common stock of a solvent corporation created or existing under the laws of the United States, Canada, a state, or a province of Canada that is:

(i) Not in default of dividend, principal, or interest payments on any preferred stock or debt instrument;

(ii) Publicly traded on an American stock exchange; and

(iii) Subject to the rules and regulation of the SEC;

(c) Common Stock Mutual Funds and Bond Mutual Funds created by investment managers that are formed and operated under the laws of the United States, Canada, a state, or a province of Canada that are:

(i) Publicly traded and readily marketable;

(ii) Offered for purchase and redemption to the public; and

(iii) Are subject to the rules and regulation of the SEC and the existing laws and regulations of a State, province, or nation in which they reside; and

(d) An ETF that is formed and operated under the laws of the United States, Canada, a state, or a province of Canada and that is:

(i) Readily marketable;

(ii) Offered for purchase and redemption to the public; and

(iii) Subject to the rules and regulation of the SEC and the existing laws and regulations of the state, province, or nation in which it resides.

.09 Reporting Requirements and Corrective Action Plans.

A. The Board of Trustees shall:

(1) Submit quarterly reports regarding the status or condition of investments made pursuant to this chapter, including quarterly investment statements; and

(2) Submit any additional information requested by the Commission under §B of this regulation.

B. The Commission may direct the Board of Trustees to submit to the Commission:

(1) A written explanation of its investment strategy and performance;

(2) A written proposed corrective action plan; and

(3) Any additional information concerning these investments that the Commission deems relevant.

C. The Commission may order the Board of Trustees to implement a corrective action plan, to convert its investments to the investments authorized in Regulation .07B of this chapter, and to take any other action the Commission deems necessary.

D. The Commission shall serve an order issued under §C of this regulation on the Board of Trustees by certified and regular mail.

E. If aggrieved by a decision of the Commission under this regulation, the Board of Trustees may request a hearing before the Commission in accordance with Regulation .10 of this chapter.

F. The Commission may terminate a fund from participation in the governmental group self-insurance program for failing to comply with an order of the Commission under this chapter.

.10 Request for Hearing Before the Commission.

A. A Board of Trustees aggrieved by a decision of the Commission under this chapter may request a hearing before the Commission within 15 days of the date the decision is mailed.

B. A hearing shall be set as soon as practicable but no sooner than 20 days after the request is received by the Commission.

C. The Board of Trustees may:

(1) Submit a written statement, 15 copies of which shall be served on the Commission at least 5 days before the hearing; and

(2) Appear and present oral argument and evidence on the issues contained in the hearing notice.

D. The Board of Trustees bears the burden of persuasion in a hearing held under §A(1) of this regulation.

E. The Commission shall issue a decision, which shall be served on the Board of Trustees by certified mail, return receipt requested.

.11 Appeals to Circuit Court.

The Board of Trustees may appeal an adverse decision pursuant to Labor and Employment Article, §9-409, Annotated Code of Maryland.

R. KARL AUMANN
Chairman
Workers' Compensation Commission

Title 26
DEPARTMENT OF THE ENVIRONMENT

Subtitle 04 WATER SUPPLY, SEWAGE DISPOSAL, AND SOLID WASTE

26.04.01 Quality of Drinking Water in Maryland

Authority: Environment Article, §9-404, Annotated Code of Maryland

Notice of Proposed Action

[10-328-P]

The Secretary of the Environment proposes to amend Regulations **.01-1**, **.05**, **.06-2**, **.11**, **.11-2**, **.11-3**, **.15-2**, **.17**, **.19**, **.20**, **.20-1**, **.20-2**, **.21**, and **.23** and adopt new Regulation **.05-5** under **COMAR 26.04.01 Quality of Drinking Water in Maryland**.

Statement of Purpose

The purpose of this action is to adopt federal regulations under the Safe Drinking Water Act Amendments of 1996, which will reduce the risk of viruses in ground water systems, update the unregulated contaminant list, enhance the implementation of existing rules to protect public water system customers from exposure to lead and copper in drinking water, and clarify the requirements of current State regulations to control disinfectants and disinfection byproducts and surface water treatment. These requirements were promulgated by the U.S. Environmental Protection Agency (EPA) under regulations commonly referred to as the Ground Water Rule (promulgated November 8, 2006), Unregulated Contaminant Monitoring Regulation (promulgated January 4, 2007), and the Lead and Copper Rule Short Term Revisions (promulgated October 10, 2006). In addition, this action includes minor changes to regulations for the Stage 2 Disinfectants and Disinfection Byproducts Rule in

response to EPA comments. These actions are taken to maintain primacy authority for the Safe Drinking Water Act in Maryland.

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. The proposed regulation changes will have a direct economic impact on the issuing agency, local governments and regulated industries, and an indirect economic impact on the public. These increased costs are for State implementation of its regulatory program, and for increased monitoring, reporting, and capital expenditures by public water suppliers, including local governments. The proposed regulation changes will result in economic and social benefits related to protecting public health because of improved water quality. Many of these benefits cannot be quantified.

This economic assessment addresses costs expected after the proposed State regulations are adopted from December 2010 through December 2020. These costs are associated primarily with revisions for the federal Ground Water Rule (GWR) and Lead and Copper Rule Short Term Revisions (LCRSTR.) Costs associated with the Unregulated Contaminant Monitoring Regulation (UCMR) were incurred during 2008 through 2010 prior to this action. No additional costs are expected as a result of the minor changes to the Stage 2 Disinfection and Disinfectants Byproducts Rule (Stage 2 DBR.)

The GWR targets public water systems (PWSs) that use ground water but are not regulated as ground water under the influence of surface water (Subpart H.) The GWR includes additional requirements for sanitary surveys, source water monitoring, compliance monitoring, and corrective actions. Sanitary surveys and enforcement determinations are primarily the responsibility of the Approving Authority, while the ground water system suppliers are responsible for the remaining requirements. In total, 3,443 PWSs in Maryland are impacted by the GWR requirements. The GWR's requirements for ground water system monitoring, corrective actions, and reporting began December 1, 2009. The compliance date for the completion of sanitary surveys for most community water systems (CWS) is December 31, 2012, and for non-community water systems (NCWS) is December 31, 2014. The largest GWR costs are expenses to the State for administering the rule.

The UCMR initiates the second cycle of an ongoing program that requires selected PWSs to monitor up to 25 chemicals as specified by the Environmental Protection Agency (EPA). All PWSs serving more than 10,000 people, and selected PWSs serving fewer than 10,000 are required to conduct monitoring for ten chemicals during a 12-month period between January 2008 and December 2010. Some PWSs are required to conduct a Screening Survey for an additional 15 contaminants during a 12-month period between January 2008 and December 2010. EPA provides the laboratory capacity for water systems that serve 10,000 or fewer people. The UCMR does not require any additional costs that were not already considered in previous rulemaking.

The LCRSTR clarify and add new requirements to the existing Lead and Copper Rule requirements. The revisions clarify the number and location of lead and copper samples, and the monitoring and compliance periods; require all suppliers to gain approval of the State for changes in treatment or source water; require all utilities to provide notification to owners and/or occupants of homes and buildings that are monitored of the tap water monitoring results; and change the content, delivery, and timeframe for public education messages about lead. The highest costs associated with the LCRSTR will be incurred by public water systems for compliance with public education requirements. The LCRSTR-related cost to the State is for the review and approval of changes to water sources and treatment, and revisions to monitoring schedules.

The minor revisions proposed to the Stage 2 DBPR do not require additional costs that were not already considered in previous rulemakings.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	$256,000/yr
B. On other State agencies:	(E+)	Not significant
C. On local governments:	(E-)	$64,000/yr
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
(1) Non-treatment cost	(-)	$163,600/yr
(2) Treatment technology and O&M costs	(-)	$63,300/yr
E. On other industries or trade groups:		
Engineering and laboratory activities	(+)	Not significant
F. Direct and indirect effects on public:	NONE	
(1) Indirect cost to the public	(-)	$226,900/yr
(2) Direct benefits to the public	(+)	Significant, but not quantifiable

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

A. The greatest cost to the State related to the proposed regulations is for the annual administration, including new recordkeeping and reporting requirements. The State will incur costs for reviewing and approving monitoring reports, corrective action plans, and changes in treatment or source water. Calculations of implementation costs for the State indicate the need for an additional 4 hours of State employee labor per system per year for the GWR and LCRSTR.

State costs for LCRSTR implementation include reviewing, approving and recordkeeping related to 1) advanced notification by the water suppliers of changes to water system treatment or water sources, and 2) water supplier compliance with consumer notice and public education requirements. Cost estimates include State consultation with systems about new public education activities.

LCRSTR requirements for the number of compliance samples, reduced monitoring criteria and reconsideration of lead service lines will not result in additional significant costs. No public water system in Maryland currently participates in the lead service line replacement program.

B. It is assumed that the Department of Health and Mental Hygiene (DHMH) Laboratory Administrations (LA) may perform some additional testing for E. coli particularly for the transient noncommunity water systems. Since the DHMH-LA does not have sufficient capacity for all testing required, water suppliers are

expected to contract with private State-certified laboratories. The magnitude of this cost is not expected to be significant.

C. The primary cost to local agencies is for monitoring and corrective actions for transient noncommunity (TNC) public water systems, and for changes to the sanitary surveys. These very small systems are at higher risk of viral and bacteriologic contamination which are the systems targeted by the new regulations. The average annual number of violations for positive bacteria for TNCs was determined from PDWIS data over the last ten years. This figure was used with EPA estimates for average costs of monitoring and corrective actions.

D(1). The largest collective cost for public water systems is associated with new public education requirements for lead. These requirements will affect all 986 PWSs that are required to monitor for lead and copper. Approximately 30 of these PWSs will incur additional expenses as a result of exceeding the lead action level over the next ten years. Costs will be incurred for providing information, targeting populations at higher risk, and documenting that requirements for public education about lead have been accomplished. Additional costs are associated with the LCRSTR requirement for notification to and approval from the State in advance of any change to treatment or source water (2% or approximately 20 suppliers affected) and notification to consumers of tap water monitoring results (all suppliers who monitor for lead or approximately 1,000 systems affected.)

Non-treatment costs associated with the GWR are for triggered monitoring in the case of positive bacteria samples (271 systems affected.) Administration and sanitary survey requirements have already been completed, or are not the primary responsibility of the water suppliers, respectively. EPA and the State will provide forms and technical assistance that will minimize the burden to the systems for complying with reporting requirements for GWR and LCRSTR.

D(2). The second largest cost generated by the proposed regulation changes is for potential corrective actions associated with GWR implementation. This calculation is based on EPA's cost analysis assumptions, and estimates that approximately 300 suppliers will use one of two common corrective actions: replacement of sanitary well seals or rehabilitation of existing wells. Since the average cost of these corrections is higher than some alternative actions, this estimate may be higher than the actual cost.

ANNUAL COSTS FOR PUBLIC WATER SYSTEMS[1]

Rule Requirement	Non-treatment Cost		Treatment Cost		Total Annual Cost
	Systems Affected	Annual Cost	Systems Affected	Annual Cost	
GWR					
1. Administration	3,443	$0			
2. Sanitary survey	3,443	0			
3. Triggered monitoring	271	9,900			$9,900
4. Corrective actions			271	$63,300	63,300
5. Compliance monitoring	5	Minimal			21,700
GWR Total	**3,443**	**$9,900**	**271**	**$63,300**	**$73,200**
LCRSTR					
1. Number of samples		$0			
2. Monitoring period		0			
3. Reduced monitoring criteria		0			
4. Advanced notification	71	36,300			$36,300
5. Consumer notice of lead	986	24,100			24,100
6. Public education	986	93,300			93,300
7. Lead service line		0			
LCRSTR Total	**986**	**$153,700**			**$153,700**
TOTAL	**3,486**[2]	**$163,600**	**271**	**$63,300**	**$226,900**

[1]Includes one time and multiple year costs incurred after the adoption of State regulations, from December 2010 through December 2020.

[2] All ground water systems (3,443 systems) plus surface water systems that are required to monitor lead (43 systems.)

E. Economic benefits to private laboratories are expected to be minimal. Additional water sample analyses required by the GWR will be conducted by water suppliers in-house or by State or private laboratories. Sample analysis for E. coli is relatively inexpensive (approximately $70 per sample.)

F(1). The cost of implementing the proposed regulations will be passed along to the public primarily through increased water rates. This indirect cost is estimated by adding the non-treatment and treatment costs for PWSs (D1 and D2 above.)

F(2). The proposed regulations will have direct, though difficult to quantify, benefits of reducing the health risks of viral and bacterial pathogens for approximately 4.3 million Marylanders who consume public water, and for the rest of the population that would be exposed.

There are substantial benefits attributable to the GWR that are not quantified as part of economic analyses because of data limitations. Non-quantified health-related benefits include reducing acute viral illnesses, endemic acute bacterial illnesses and deaths, and epidemic bacterial and viral acute illness and death associated with outbreaks, disinfection failures, and distribution system contamination. Chronic illnesses are also not quantified. The GWR will also result in many non-health benefits such as reduced costs for responding to outbreaks, and increased consumer confidence regarding drinking water safety.

The LCRSTR will increase the effectiveness of current regulations to protect public health through the reduction in lead exposure. Lead exposure can damage the brain and kidneys, cause infertility in both men and woman, increase blood pressure in adults, and harm the nervous system causing nerve disorders and muscle and joint pain. Life long exposure to lead above the Maximum Contaminant Level (MCL) may lead to strokes and kidney disease. EPA has determined that the MCL goal for lead should be zero, since there is no known safe level of lead in blood. Thus, any exposure to lead, at any concentration, is considered harmful. Populations at a higher risk of health problems and costs related to lead exposure are targeted by the LCRSTR, including pregnant women, infants and children.

The LCRSTR do not affect the action levels, treatment techniques such as corrosion control requirements, or other provisions in the existing rule that directly determine the degree to which the rule reduces risks from lead and copper. However, the increase in administrative activities that will result from the revisions will result in the generation of new information (e.g., more monitoring data, some of which may show exceedances), and may prompt some systems or individuals to respond to this new information by taking measures to abate lead and copper exposure and thus reduce the associated risk. The requirement that treatment changes be approved by the State prior to implementation will provide an additional opportunity to identify possible adverse impacts due to treatment changes, which may lower the risk to consumers. Because the precise

impact of these revisions on the behavior of individuals and systems is not known, the changes in health benefits associated with these revisions is not quantifiable.

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 Nancy Reilman, Division Chief, Maryland Department of the Environment, 1800 Washington Boulevard, or call 410-537-3729, or email to nreilman@mde.state.md.us, or fax to 410-537-3157. Comments will be accepted through January 3, 2011. A public hearing will be held on January 3, 2011, 1—3 p.m. at the Maryland Department of the Environment, Gwynns Falls Conference Room, 1800 Washington Boulevard, Baltimore, MD 21230.

.01-1 Incorporation by Reference.

A. (text unchanged)

B. Documents Incorporated. Code of Federal Regulations (CFR) - *40 CFR §§141 and 142 (2009):*

(1)—(4) (text unchanged)

(5) Lead and Copper Rule (40 CFR §§141.80—141.91) revised January 12, 2000 *and October 10, 2007*;

(6) Total Coliform Rule (40 CFR §141.21) October 23, 2002, **[**and**]** October 29, 2002, *and November 8, 2006* revisions;

(7)—(8) (text unchanged)

(9) Public Notification of Drinking Water Violations (40 CFR Part 141, Subpart Q; 40 CFR §§141.201—141.211, January 14, 2002, November 27, 2002, March 25, 2003, January 4, 2006, **[**and**]** January 5, 2006, *and November 8, 2006* revisions;

(10) Consumer Confidence Report (40 CFR Part 141, Subpart O), January 14, 2002, November 27, 2002, March 25, 2003, **[**and**]** January 4, 2006, *and November 8, 2006* revisions;

(11) Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors:

(a) (text unchanged)

(b) Stage 2 Disinfection Byproduct Rule (40 CFR Part 141, Subpart U**[**; 40 CFR**]** §§141.600—141.605, **[**and**]** Subpart V**[**; and 40 CFR**]** §§141.606—141.629), January 4, 2006, January 27, 2006, and June 29, 2009, revisions;

(12)—(13) (text unchanged)

(14) Definitions (40 CFR §141.2) January 14, 2002, January 4, 2006, and January 5, 2006 revisions; **[**and**]**

(15) Unregulated Contaminant Monitoring Regulation (40 CFR §141.40), March 12, 2002, **[**and**]** October 29, 2002, *and December 20, 2006* revisions**[**.**]** *; and*

(16) Ground Water Rule (40 CFR §§141.21, 141.28, 141.153, 141.202, 141.203, 141.400-141.405, 142.14-142.16)-November 8, 2006 and November 21, 2006 revisions.

.05 Design, Construction, and Modification of Public Water Supply Systems.

A.—E. (text unchanged)

F. Any supplier of water deemed to have optimized corrosion control in accordance with 40 CFR §141.81(a) shall provide notice to and obtain approval from the Approving Authority before the addition of a new source or the implementation of a long-term change in treatment as set forth in Regulation .19G(1)(f)(ii) of this chapter.

.05-5 Treatment Requirements for Ground Water Supplies.

A. Applicability. All public water suppliers that use ground water are subject to the requirements of 40 CFR §141 Subpart S except public water suppliers that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment under 40 CFR §141 Subpart H. For the purposes of this regulation, ''ground water system" is defined as any public water system subject to 40 CFR §141 Subpart S, including consecutive systems receiving finished ground water.

B. General Requirements. Ground water suppliers subject to 40 CFR §141 Subpart S shall comply with the following requirements:

(1) Sanitary survey information requirements for all ground water systems in accordance with Regulation .11-3D of this chapter.

(2) Microbial source water monitoring requirements for ground water suppliers that do not treat all of their ground water to at least 99.99 percent (4-log) treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer in accordance with Regulation .11-2.

(3) Treatment technique requirements, described in 40 CFR §141.403, that apply to ground water systems that have fecally contaminated source waters, as determined by source water monitoring conducted under 40 CFR §141.402, or that have significant deficiencies that are identified by the Approving Authority, or that are identified by EPA under the Safe Drinking Water Act section 1445. A ground water supplier with fecally contaminated source water or with significant deficiencies subject to the treatment technique requirements of 40 CFR §141 Subpart S shall implement one or more of the following corrective action options:

(a) Correct all significant deficiencies;

(b) Provide an alternate source of water;

(c) Eliminate the source of contamination; or

(d) Provide treatment that reliably achieves at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer.

(4) Ground water suppliers that provide at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer are required to conduct compliance monitoring to demonstrate treatment effectiveness, as described in Regulation .11D of this chapter.

(5) If requested by the Approving Authority, ground water suppliers shall provide the Approving Authority with any existing information that will enable the Approving Authority to perform a hydrogeologic sensitivity assessment. For the purpose of this regulation, "hydrogeologic sensitivity assessment" means a determination of whether groundwater suppliers obtain water from hydrogeologically sensitive settings.

C. Ground Water Suppliers with Significant Deficiencies Or Source Water Fecal Contamination.

(1) When a significant deficiency, such as an aspect of the system that may have potential to cause risks to public health, is identified by the Approving Authority, or when a ground water source sample collected under Regulation .11-2D of this chapter is fecal indicator-positive or as otherwise specified in this regulation, the ground water suppliers shall meet the treatment technique requirements of 40 CFR §141.403.

(2) If directed by the Approving Authority, a ground water supplier with a ground water source sample collected under Regulation .11-2D(2), D(4) or E of this chapter that is fecal indicator-positive shall comply with the treatment technique requirements of §C of this regulation.

(3) When a significant deficiency is identified by the Approving Authority at a Subpart H public water supplier that uses both ground water and surface water, the supplier shall comply with provisions of §C of this regulation except in cases where the Approving Authority determines that the significant deficiency is in a portion of the

distribution system that is served solely by surface water or ground water under the direct influence of surface water.

(4) Unless the Approving Authority directs the ground water supplier to implement a specific corrective action, the ground water supplier shall consult with the Approving Authority regarding the appropriate corrective action within 30 days of receiving written notice from the Approving Authority of a significant deficiency, written notice from a laboratory that a ground water source sample collected under Regulation .11-2D(3) of this chapter was found to be fecal indicator-positive, or direction from the Approving Authority that a fecal indicator-positive collected under Regulation .11-2D(2) or (4) or E of this chapter requires corrective action. For the purposes of 40 CFR §141 Subpart S, significant deficiencies include, but are not limited to, defects in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the Approving Authority determines to be causing, or have potential for causing, the introduction of contamination into the water delivered to consumers.

(5) Within 120 days (or earlier if directed by the Approving Authority) of receiving written notification from the Approving Authority of a significant deficiency, written notice from a laboratory that a ground water source sample collected under Regulation .11-2D(3) of this chapter was found to be fecal indicator-positive, or direction from the Approving Authority that a fecal indicator-positive sample collected under Regulation .11-2D(2) or (4) or E of this chapter requires corrective action, the ground water supplier shall either:

(a) Have completed corrective action in accordance with applicable Approving Authority plan review processes or other Approving Authority guidance or direction, if any, including Approving Authority-specified interim measures; or

(b) Be in compliance with an approved corrective action plan and schedule subject to the following conditions:

(i) Any subsequent modifications to an approved corrective action plan and schedule must also be approved by the Approving Authority; and

(ii) If the Approving Authority specifies interim measures for protection of the public health pending approval of the corrective action plan and schedule, or pending completion of the corrective action plan, the supplier shall comply with these interim measures as well as with any schedule specified by the Approving Authority.

(6) Corrective Action Alternatives. Ground water suppliers that meet the conditions of §C(1) or (2) of this regulation shall implement one or more of the following corrective action alternatives:

(a) Correct all significant deficiencies;

(b) Provide an alternate source of water;

(c) Eliminate the source of contamination; or

(d) Provide treatment that reliably achieves at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for the ground water source.

(7) Special Notice to the Public of Significant Deficiencies or Source Water Fecal Contamination.

(a) For ground water suppliers required to comply with 40 CFR §141 Subpart S, any supplier that receives notice from the Approving Authority of a significant deficiency, or notice from a laboratory of a fecal indicator-positive ground water source sample that is not invalidated by the Approving Authority under Regulation .11-2G of this chapter, shall comply with special public notice requirements of 40 CFR §141.153(h)(6) and Regulation .20B(3) of this chapter.

(b) In addition to the applicable public notice requirements of 40 CFR §141.202, community ground water suppliers shall comply with special public notification requirements set forth in Regulation .20B(3) of this chapter.

D. Treatment technique violations for ground water suppliers.

(1) A ground water supplier with a significant deficiency is in violation of the treatment technique requirement if, within 120 days (or earlier if directed by the Approving Authority) of receiving written notice from the Approving Authority of the significant deficiency, the supplier:

(a) Does not complete corrective action in accordance with any applicable plan review processes or other Approving Authority guidance and direction, including Approving Authority specified interim actions and measures; or

(b) Is not in compliance with an approved corrective action plan and schedule.

(2) Unless the Approving Authority invalidates a fecal indicator-positive ground water source sample under Regulation .11-2G of this chapter, a ground water system is in violation of the treatment technique requirement if, within 120 days, or earlier if directed by the Approving Authority, of meeting the conditions of §C(1) or (2) of this regulation, the supplier:

(a) Does not complete corrective action in accordance with any applicable plan review processes or other Approving Authority guidance and direction, including Approving Authority-specified interim measures, or

(b) Is not in compliance with an Approving Authority approved corrective action plan and schedule.

(3) A ground water supplier subject to the requirements of Regulation .11D(3) of this chapter that fails to maintain at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for a ground water source is in violation of the treatment technique requirement if the failure is not corrected within four hours of determining the supplier is not maintaining at least 4-log treatment of viruses before or at the first customer.

(4) Ground water suppliers shall give public notification under Regulation .20C(1)(f) of this chapter for the treatment technique violations specified in §D(1)-(3) of this regulation.

.06-2 Control of Lead and Copper.

A. Suppliers of water to a public water system shall comply with the requirements of 40 CFR §§141.80—141.91. These requirements, based on treatment technique requirements, require regular testing by suppliers of water for lead and copper, **[**and**]** establish procedures to reduce lead and copper at consumers' taps*, and specify public education actions.*

B. Additional Monitoring Requirements for Lead and Copper in Tap Water.

(1) (text unchanged)

(2) Monitoring Waivers for Small Water Systems.

(a)—(c) (text unchanged)

(d) Requirements Following Waiver Revocation. Under 40 CFR §141.86(g)(6), a system whose full or partial waiver has been revoked by the Approving Authority:

(i) (text unchanged)

(ii) If the system exceeds lead or copper action levels, or both, shall implement corrosion control treatment in accordance with the deadlines and requirements in 40 CFR §141.81(e); **[**and**]**

(iii) If the system meets both the lead and copper action levels, it shall monitor for lead and copper at the tap not less frequently than once every 3 years using the reduced number of sample sites set forth in 40 CFR §141.86(c)**[**.**]***; and*

(iv) If the supplier of water has fewer than five drinking water taps that can be used for human consumption, it must collect at least one sample from each tap that is available, and collect additional samples from those same taps on different days during the

monitoring period in order to have the minimum number of lead and copper samples specified in §B(2)(e).

(e) A minimum of five lead and copper samples is required for small water systems when performing routine or follow up monitoring.

C. Reporting Requirements. **[**Systems shall calculate**]** *Suppliers of water shall comply with reporting requirements specified in 40 CFR §§141.80—141.90 and 141.154 including the following:*

(1) Calculate the 90th percentile lead and copper concentrations as specified under 40 CFR §141.80(c)(3) during each monitoring period and report the values to the Approving Authority as described under 40 CFR §141.90(a) in the format determined by the Approving Authority**[.]***;*

(2) Notify and obtain approval from the Approving Authority as required by 40 CFR §141.90(a)(3) before adding a new source and before implementing long term changes in water treatment, and

(3) Certify compliance with public notice and education requirements under 40 CFR §141.85.

D. Water suppliers shall provide public education and supplemental sampling as set forth in Regulation .20-1 of this chapter.

.11 Microbiological Contaminant Sampling and Analytical Requirements for Total Coliform.

A.—C. (text unchanged)

D. Compliance Monitoring for Ground Water Supplies.

Suppliers of ground water subject to Regulation .05-5 of this chapter shall comply with the microbial monitoring requirements of 40 CFR §141.403(b). This does not include ground water sources that are under the direct influence of surface water.

(1) Existing Ground Water Sources. A ground water supplier that provides at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for any ground water source before December 1, 2009, shall notify the Approving Authority in writing that it provides at least 4-log treatment of viruses, and begin compliance monitoring in accordance with §D(3) of this regulation. Notification to the Approving Authority shall include engineering, operational, or other information that the Approving Authority requests to evaluate the submission. If the supplier subsequently discontinues 4-log treatment of viruses, the supplier shall conduct ground water source monitoring as required under Regulation .11-2 D-J of this chapter.

(2) New Ground Water Sources. A ground water supplier that places a ground water source in service after November 30, 2009, and that provides at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for the ground water source shall comply with the following requirements:

(a) The supplier shall notify the Approving Authority in writing that it provides at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for the ground water source. Notification to the Approving Authority shall include engineering, operational, or other information that the Approving Authority requests to evaluate the submission.

(b) The supplier shall conduct compliance monitoring as required under §D(3) of this regulation within 30 days of placing the source in service.

(c) The supplier shall conduct ground water source monitoring required under Regulation .11-2 D-J of this chapter if the supplier subsequently discontinues 4-log treatment of viruses.

(3) Monitoring requirements. A ground water supplier subject to the requirements of Regulation .05-5C of this chapter, or §D(1) or (2) of this regulation shall monitor the effectiveness and reliability of treatment for that ground water source before or at the first customer as follows:

(a) Chemical Disinfection.

(i) Ground Water Suppliers Serving Greater Than 3,300 People. A ground water supplier that serves greater than 3,300 people shall continuously monitor the residual disinfectant concentration using analytical methods specified in 40 CFR §141.74(a)(2) at a location approved by the Approving Authority and shall record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water supplier shall maintain the Approving Authority-determined residual disinfectant concentration every day the ground water supplier serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water supplier shall conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The supplier shall resume continuous residual disinfectant monitoring within 14 days.

(ii) Ground water suppliers serving 3,300 or fewer people. A ground water supplier that serves 3,300 or fewer people shall monitor the residual disinfectant concentration using analytical methods specified in 40 CFR §141.74(a)(2) at a location approved by the Approving Authority and record the residual disinfection concentration each day that water from the ground water source is served to the public. The ground water supplier shall maintain the approved residual disinfectant concentration every day the ground water supplier serves water from the ground water source to the public. The ground water supplier shall take a daily grab sample during the hour of peak flow or at another time specified by the Approving Authority. If any daily grab sample measurement falls below the minimum residual disinfectant concentration, the ground water supplier shall take follow-up samples every 4 hours until the residual disinfectant concentration is restored to the approved minimum level. Alternatively, a ground water supplier that serves 3,300 or fewer people may monitor continuously and meet the requirements of §D(3)(a)(i) of this regulation.

(b) Membrane Filtration. A ground water supplier that uses membrane filtration to meet the requirements of this regulation shall monitor the membrane filtration process and shall operate the membrane filtration in accordance with all Approving Authority-specified requirements. A ground water supplier that uses membrane filtration is in compliance with the requirement to achieve at least 4-log removal of viruses when the requirements of 40 CFR §141.403(b)(3)(ii)(A)—(C) are met.

(c) Alternative Treatment. A ground water supplier that uses an approved alternative treatment to meet the requirements of 40 CFR 141 Subpart S by providing at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer shall monitor and operate the alternative treatment in accordance with all Approving Authority-specified compliance requirements.

(4) Discontinuing Treatment. A ground water supplier may discontinue 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for a ground water source if the Approving Authority determines and documents in writing that 4-log treatment of viruses is no longer necessary for that ground water source. A supplier that discontinues 4-log treatment of viruses is subject to the source water monitoring and analytical method requirements of Regulation .11-2D—J of this chapter.

(5) Failure to meet the monitoring requirements of this regulation is a monitoring violation and requires the ground water supplier to provide public notification under Regulation .20D(1)(a) of this chapter.

.11-2 Frequency of Repeat Sampling and Sample Invalidation for Total Coliform, and Triggered Source Water Monitoring.

A. Frequency of Repeat Sampling for Total Coliform.

(1)—(6) (text unchanged)

(7) A supplier of water using a ground water source subject to Regulation .05-5 of this chapter, shall perform triggered source water monitoring in accordance with Regulation .11-2D—J of this chapter if conditions described in Regulation .11-2D(1) of this chapter exist.

B.—C. (text unchanged)

D. Triggered Source Water Monitoring for Ground Water Supplies.

(1) General Requirements. A ground water supplier subject to Regulation .05-5 of this chapter shall conduct triggered source water monitoring pursuant to 40 CFR §141.402(a) if the following conditions exist:

(a) The supplier does not provide at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority, before or at the first customer for each ground water source; and

(b) The supplier is notified that a sample collected under Regulation .11A of this chapter is total coliform-positive and the sample is not invalidated under Regulation .11-2C of this chapter.

(2) Sampling Requirements. A groundwater supplier shall collect, within 24 hours of notification of the routine total coliform-positive sample, at least one ground water source sample from each ground water source in use at the time the total coliform-positive sample was collected under Regulation .11 of this chapter, except as provided in §D(2)(b) of this regulation.

(a) The Approving Authority may extend the 24-hour time limit on a case-by-case basis if the supplier cannot collect the ground water source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Approving Authority must specify how much time the supplier has to collect the sample.

(b) If approved by the Approving Authority, suppliers with more than one ground water source may meet the requirements of §D(2) of this regulation by sampling a representative ground water source or sources. If directed by the Approving Authority, suppliers shall submit for approval a triggered source water monitoring plan. The plan shall include a sampling siting plan developed in accordance with Regulation .11A(5) of this chapter, and shall identify one or more ground water sources that are representative of each monitoring site in the supplier's sample siting plan and that the supplier intends to use for representative sampling under §D(2) of this regulation.

(c) A ground water supplier serving 1,000 people or fewer may use a repeat sample collected from a ground water source to meet the requirements of §A of this regulation and to satisfy the monitoring requirements of §D(2) of this regulation for that ground water source. If the repeat sample collected from the ground water source is E. coli positive, the supplier shall comply with §D(3) of this regulation.

(3) Additional Requirements. If the Approving Authority does not require corrective action under Regulation .05-5C of this chapter for a fecal indicator-positive source water sample collected under §D of this regulation that is not invalidated under §G of this regulation, the supplier shall collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator-positive sample.

(4) Consecutive and Wholesale Systems.

(a) In addition to the other requirements of §D of this regulation, a consecutive ground water supplier that has a total coliform-positive sample collected under Regulation .11 of this chapter shall notify the wholesale supplier or suppliers within 24 hours of being notified of the total coliform positive sample.

(b) In addition to the other requirements of §D of this regulation, a wholesale ground water supplier shall comply with the following:

(i) A wholesale ground water supplier that receives notice from a consecutive supplier it serves that a sample collected under Regulation .11 of this chapter is total coliform positive shall, within 24 hours of being notified, collect a sample from its ground water source(s) under §D(2) of this regulation and analyze it for a fecal indicator under §F of this regulation.

(ii) If the sample collected under §D(4)(b)(i) of this regulation is fecal indicator-positive, the wholesale ground water supplier shall notify all consecutive suppliers served by that ground water source of the fecal indicator source water positive within 24 hours of being notified of the ground water source sample monitoring result and shall meet the requirements of this §D(3) of this regulation.

(5) Exceptions to the Triggered Source Water Monitoring Requirements. A ground water supplier is not required to comply with the source water monitoring requirements of §D of this regulation if either of the following conditions exists:

(a) The Approving Authority determines, and documents in writing, that the total coliform-positive sample collected under Regulation .11 of this chapter is caused by a distribution system deficiency; or

(b) The total coliform-positive sample collected under Regulation .11 of this chapter had been collected at a distribution system location or under conditions that the Approving Authority had determined is unrelated to the raw water quality, or that the total coliform-positive sample had been invalidated.

E. Assessment Source Water Monitoring. If directed by the Approving Authority, ground water suppliers shall conduct assessment source water monitoring. A ground water supplier conducting assessment source water monitoring may use a triggered source water sample collected under §D(1) of this regulation to meet the assessment source water monitoring. If assessment source water monitoring is required by the Approving Authority, the monitoring shall include:

(1) Collection of a total of 12 ground water source samples that represent each month the supplier provides ground water to the public;

(2) Collection of samples from each well unless the supplier obtains written approval from the Approving Authority to conduct monitoring at one or more wells within the ground water system that are representative of multiple wells used by that supplier and that draw water from the same hydrogeologic setting;

(3) Collection of a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used;

(4) Analysis of all ground water source samples using one of the analytical methods listed in 40 CFR §141.402(c)(2) for the presence of E. coli, enterococci, or coliphage;

(5) Collection of ground water source samples at a location prior to any treatment of the ground water source unless the Approving Authority approves a sampling location after treatment; and

(6) Collection of ground water source samples at the well itself unless the system's configuration does not allow for sampling at the well itself and the Approving Authority approves an alternate

sampling location that is representative of the water quality of that well.

F. Analytical Methods.

(1) A ground water supplier subject to the source water monitoring requirements of §D of this regulation shall collect a standard sample volume of at least 100 mL for fecal indicator analysis regardless of the fecal indicator or analytical method used.

(2) A ground water supplier shall analyze all ground water source samples collected under §D of this regulation using one of the analytical methods listed in the table in 40 CFR §141.402(c)(2) for the presence of E. coli, enterococci, or coliphage.

G. Invalidation of a Fecal Indicator Positive Ground Water Source Sample.

(1) A ground water supplier may obtain invalidation from the Approving Authority for a fecal indicator-positive ground water source sample collected under §D of this regulation only under the following conditions:

(a) The supplier provides the Approving Authority with written notice from the laboratory that improper sample analysis occurred; or

(b) The Approving Authority determines and documents in writing that there is substantial evidence that a fecal indicator-positive ground water source sample is not related to source water quality.

(2) If the Approving Authority invalidates a fecal indicator-positive ground water source sample, the ground water supplier shall collect another source water sample under §D of this regulation within 24 hours of being notified by the Approving Authority of its invalidation decision and shall have it analyzed for the same fecal indicator using the analytical methods in §F of this regulation. The Approving Authority may extend the 24-hour time limit on a case-by-case basis if the supplier cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Approving Authority shall specify how much time the supplier has to collect the sample.

H. Sampling location.

(1) Any ground water source sample required under §D of this regulation shall be collected at a location prior to any treatment of the ground water source unless the Approving Authority approves a sampling location after treatment.

(2) If the system's configuration does not allow for sampling at the well itself, the supplier may collect a sample at a location approved by the Approving Authority to meet the requirements of §D of this regulation if the sample is representative of the water quality of that well.

I. New Sources. If directed by the Approving Authority, a ground water supplier that places a new ground water source into service after November 30, 2009, shall conduct assessment source water monitoring under §E of this regulation. If directed by the Approving Authority, the supplier shall begin monitoring before the ground water source is used to provide water to the public.

J. Public Notification.

(1) A ground water supplier with a ground water source sample collected under §D or E of this regulation that is fecal indicator-positive and that is not invalidated under §G of this regulation, including consecutive suppliers served by the ground water source, shall conduct public notification under Regulation .20B of this chapter.

(2) Monitoring Violations. Failure to meet the requirements of §§D—I of this regulation is a monitoring violation and requires the ground water supplier to provide public notification under Regulation .20D of this chapter.

.11-3 Sanitary Survey Requirements for Community and Noncommunity Water Supply Systems.

A.—C. (text unchanged)

D. Sanitary surveys of ground water systems shall be conducted in accordance with the requirements of 40 CFR §§141.21 and 141.401.

(1) Ground water suppliers shall provide the Approving Authority, at the request of the Approving Authority, any existing information that will enable the Approving Authority to conduct a sanitary survey.

(2) Sanitary surveys, as conducted by the Approving Authority, shall include, but not be limited to, an onsite review of the water source or sources (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water supplier to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(3) The sanitary survey must include an evaluation of the applicable components that follow:

(a) Source;

(b) Treatment;

(c) Distribution system;

(d) Finished water storage;

(e) Pumps, pump facilities, and controls;

(f) Monitoring, reporting, and data verification;

(g) System management and operation; and

(h) Operator compliance with requirements of the Approving Authority.

.15-2 Disinfection Byproducts Sampling and Analytical Requirements.

A. (text unchanged)

B. Monitoring Frequency.

(1)—(3) (text unchanged)

(4) Subpart H Systems Serving 10,000 or More Individuals.

(a) (text unchanged)

(b) Reduced Monitoring. Systems shall collect and analyze one sample per quarter per treatment plant during normal operating conditions after completing 1 year of monitoring and if the following conditions are met:

(i) (text unchanged)

(ii) The requirements of **[**§B(4)(b)**]** *§B(3)* of this regulation are satisfied.

(5) Subpart H System Serving 500 to 9,999 Individuals or Ground Water System, Not GWUDI, Serving 10,000 or More Individuals and Using a Chemical Disinfectant.

(a) (text unchanged)

(b) Reduced Monitoring. Systems shall collect and analyze one water sample per year per treatment plant during normal operating conditions after completing one year of monitoring if the following conditions are met:

(i) (text unchanged)

(ii) The requirements of **[**§B(4)(b)**]** *§B(3)* of this regulation are satisfied.

(6)—(8) (text unchanged)

C.—H. (text unchanged)

I. Stage 2 Disinfectant Byproducts Requirements.

(1)—(2) (text unchanged)

(3) Monitoring and Compliance.

(a)—(e) (text unchanged)

(f) Reduced Monitoring. Systems may reduce monitoring to the level specified in the table in this paragraph pursuant to 40 CFR §141.623(a)—(d) when the following conditions are met:

(i) (text unchanged)

(ii) Source water annual average TOC level, before any treatment, is less than or equal to 4.0 milligrams per liter at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under **[**§B(4)**]** *§B(3)* of this regulation *and in compliance with 40 CFR §141.132(d).*

(iii) (text unchanged)

[(g) Additional Requirements for Consecutive Systems. Consecutive systems that do not add a disinfectant but deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, shall comply with analytical and monitoring requirements for chlorine and chloramines set forth in 40 CFR §§141.131—141.133 and shall report monitoring results pursuant to 40 CFR §141.134(c) beginning in April 2009.**]**

[(h)**]** *(g)* Increased Monitoring.

(i) A supplier of water shall increase monitoring to include dual sample sets once per quarter at all locations if a TTHM sample is greater than 0.080 milligram per liter or an HAA5 sample is greater than 0.060 milligram per liter at any location. *There shall be at least 90 days between the quarterly samples.*

(ii)—(iii) (text unchanged)

[(i)**]** *(h)* (text unchanged).

(4)—(5) (text unchanged)

J. Requirements for Consecutive Systems. Consecutive systems that do not add a disinfectant but deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, shall comply with the analytical and monitoring requirements for chlorine and chloramines set forth in 40 CFR §§141.131—141.133 and shall report monitoring results pursuant to 40 CFR §141.134(c).

.17 Approved Laboratories.

A. For the purpose of determining compliance with **[**Regulations .11—.15-3, .29, and .31 of**]** this chapter, samples may be considered only if they have been analyzed by a laboratory approved by the Approving Authority, except that measurements for *alkalinity, calcium, conductivity, orthophosphate, silica,* turbidity, temperature, pH, and **[**free chlorine**]** *disinfectant* residual may be performed by any person acceptable to the Approving Authority.

B. (text unchanged)

.19 Reporting Requirements.

A.—C. (text unchanged)

D. Reporting Requirements for Total and Fecal Coliform.

(1)—(3) (text unchanged)

(4) In addition to the requirements of 40 CFR §141.31, a ground water supplier regulated under 40 CFR §141 Subpart S shall provide the following information to the Approving Authority:

(a) A ground water supplier conducting compliance monitoring under Regulation .11D of this chapter shall notify the Approving Authority any time the system fails to meet any requirements specified by the Approving Authority including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or membrane integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. The ground water supplier shall notify the Approving Authority as soon as possible, but in no case later than the end of the next business day.

(b) After completing any corrective action under Regulation .05-5C of this chapter, a ground water supplier shall notify the Approving Authority within 30 days of completion of the corrective action.

(c) If a ground water supplier subject to the requirements of Regulation .11-2D of this chapter does not conduct source water monitoring under Regulation .11-2D(5)(b) of this chapter, the supplier shall provide documentation to the Approving Authority within 30 days of the total coliform positive sample that the sample is not representative of the water in the distribution system and that the sample is subject to invalidation by the Approving Authority.

E.—F. (text unchanged)

G. Reporting Requirements for Lead and Copper.

(1) Suppliers of water that monitor for lead shall comply with the reporting requirements set forth in 40 CFR §141.90, including the following:

(a) Source water monitoring reporting requirements pursuant to 40 CFR §141.88,

(b) Corrosion control treatment reporting requirements pursuant to 40 CFR §§141.81—141.82,

(c) Source water treatment reporting requirements pursuant to 40 CFR §141.83,

(d) Public education program reporting requirements pursuant to 40 CFR §141.85, and

(e) Reporting of additional monitoring data associated with 40 CFR §§141.86, 141.87 and 141.88, and

(f) Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring required by 40 CFR §§141.81, 141.86 and 141.87.

(i) Water suppliers shall report the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with 40 CFR §141.80(c)(3)), except if the Approving Authority provides those calculations in accordance with 40 CFR §141.90(h), and the system has provided the information required by 40 CFR §141.90(h)(2) by the date set forth in 40 CFR §141.90(h)(1).

(ii) Prior to the addition of a new source or any long-term change in water treatment, water suppliers deemed to have optimized corrosion control under 40 CFR §141.81(b)(3), water suppliers subject to reduced monitoring pursuant to 40 CFR §141.86(d)(4), or water suppliers subject to a monitoring waiver pursuant to 40 CFR §141.86(g), shall submit documentation describing the change(s) proposed in accordance with 40 CFR §141.90 (a) for review and approval by the Approving Authority.

(2) If a system exceeds the lead action level, the water supplier shall submit written documentation of material evaluation that identifies the initial number of lead service lines in the distribution system at the time the action level is exceeded. This documentation shall be provided to the Approving Authority within 12 months after the end of the monitoring period in which the exceedance occurred.

.20 Public Notification of Variances, Exemptions, and Noncompliance with Standards.

A. (text unchanged)

B. Tier 1 Public Notices.

(1) The violation categories requiring Tier 1 notices are specified in 40 CFR §141.202 and include:

(a)—(f) (text unchanged)

(g) Occurrence of a water-borne disease outbreak or other water-borne emergency such as:

(i)—(ii) (text unchanged)

(iii) A chemical spill that increases the potential for drinking water contamination; **[**and**]**

(h) Detection of E. coli, enterococci, or coliphage in source water samples for ground water systems under Regulation .11-2D or E;

(i) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the Approving Authority.

(2) (text unchanged)

(3) Noncommunity ground water systems.

(a) In addition to the applicable public notification requirements of 40 CFR §141.202, a non-community ground water

supplier that receives notice from the Approving Authority of a significant deficiency shall inform the public served by the water supplier, in a manner approved by the Approving Authority, of any significant deficiency that has not been corrected within 12 months of being notified by the Approving Authority, or earlier, if directed by the Approving Authority. The supplier shall continue to inform the public annually until the significant deficiency is corrected. The information must include:

(i) The nature of the significant deficiency and the date the significant deficiency was identified by the Approving Authority;

(ii) The plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed, as approved by the Approving Authority; and

(iii) For systems with a large proportion of non-English speaking consumers, as determined by the Approving Authority, information in the appropriate language(s) regarding the importance of the notice or a telephone number or address where consumers may contact the supplier to obtain a translated copy of the notice or assistance in the appropriate language.

(b) If directed by the Approving Authority, a noncommunity water supplier with significant deficiencies that have been corrected shall inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction.

C. Tier 2 Public Notice.

(1) The violation categories requiring Tier 2 notices are specified in Table 1 of 40 CFR §141.203 and 141.211, and include:

(a)—(b) (text unchanged)

(c) Failure to comply with the terms and conditions of any variance or exemption in place; **[**and**]**

(d) Repeated failure to conduct monitoring of the source water for Cryptosporidium and for failure to determine bin classification or mean Cryptosporidium level**[.]***;*

(e) Failure to take corrective action or failure to maintain at least 4-log treatment of viruses, using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the Approving Authority before or at the first customer under Regulation .05-5C of this chapter; and

(f) Treatment technique violations specified in Regulation .05-5D(1)-(3) for ground water suppliers subject to that regulation.

(2)—(5) (text unchanged)

D. Tier 3 Public Notice.

(1) The violation categories and other situations requiring Tier 3 notices are specified in 40 CFR §**[§]**141.204 **[**and 141.211**]** and include:

(a)—(e) (text unchanged)

(2) (text unchanged)

E. Public Notice Content.

(1)—(4) (text unchanged)

(5) A supplier of water shall notify individuals served by the system of the availability of unregulated contaminant monitoring results under 40 CFR §141.40 not later than 12 months after the monitoring results are known. The notice shall:

(a) As to form and manner, follow the requirements for a Tier 3 notice in **[**§E**]***§D* of this regulation; and

(b) (text unchanged)

(6) A supplier of water to a community water system shall notify individuals served by the system of fluoride levels that exceed the secondary maximum contaminant level of 2 milligrams per liter as determined by the last single sample taken in accordance with Regulation .14 of this chapter, but does not exceed the maximum contaminant level for fluoride. The public notice shall:

(a)—(c) (text unchanged)

(d) Follow the requirements for a Tier 3 public notice in **[**§E**]** *§D* of this regulation.

(7)—(8) (text unchanged)

(9) A supplier of water that is required to monitor source water under 40 CFR §141.701 shall notify persons served by the system that monitoring has not been completed as specified not later than 30 days after the system failed to collect any 3 months of monitoring, and, if applicable, a supplier of water shall notify persons served by the system that the bin determination has not been made as required. The form and manner of notification shall meet the requirements of a Tier 2 notice as specified in **[**§E**]***§C* of this regulation and the requirements of 40 CFR §141.211.

.20-1 Public Education for Lead [Action Level Exceedance].

A. All suppliers of water of each community water system and each nontransient noncommunitiy water system shall provide public education about lead as specified by 40 CFR §§141.85 and 141.154, including consumer notice of lead tap water monitoring results to persons served at the sites that are tested.

B. A supplier of water of each community water system and each nontransient noncommunity water system *that exceeds the lead action level* shall issue notice to persons served by the system that may be affected by lead contamination of their drinking water, *sample the tap water of any customer who requests it, and provide other public education in accordance with §A of this regulation.* **[**This notice is the public education information required under 40 CFR §141.85. for exceeding the lead 90th percentile action level.**]**

C. Community water suppliers that exceed the lead action level and are not already repeating public education tasks shall deliver public education materials to persons served by the system within 60 days after the end of the monitoring period in which the exceedance occurred.

(1) Suppliers shall submit a press release to newspaper, television and radio stations twice every 12 months on a schedule agreed upon with the State.

(2) The Approving Authority may extend the activities §C of this regulation beyond the 60 day requirement if the extension is approved in writing by the State in advance of the 60 day deadline. This extension is only appropriate if the system has initiated public education activities prior to the end of the 60 day deadline.

D. Nontransient noncommunity water suppliers that exceed the lead action level and are not already repeating public education tasks must deliver public education materials to persons served by the system in accordance with 40 CFR §141.85 within 60 days after the end of the monitoring period in which the exceedance occurred.

(1) Suppliers must repeat public education tasks in §D of this regulation twice every 12 months on a schedule agreed upon with the Approving Authority.

(2) Activities in §D of this regulation may be extended beyond the 60 day requirement by the Approving Authority if the extension is approved in writing by the Approving Authority in advance of the 60 day deadline, and only if the system has initiated public education activities prior to the end of the 60 day deadline.

.20-2 Consumer Confidence Reports.

A. A supplier of water to a community water system shall deliver an annual consumer confidence report to their customers as required by 40 CFR §§141.151—141.155: Subpart O—Consumer Confidence Report. This report shall contain information on the quality of the water delivered by the supplier and characterize the risks from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

B.—D. (text unchanged)

E. Content of the Report.

(1) An annual report issued under this regulation shall provide a report that contains the information specified in 40 CFR §§141.153, 141.154, and 141.211. *The report does not replace the function of the Public Notice requirements under Regulation .20 of this chapter.*

This information includes, but is not limited to, the requirements in §E(2)—**[**(8)**]***(9)* of this regulation.

(2) Required Language and Information.

(a)—(c) (text unchanged)

(d) **[**Systems which exceed the lead action level in greater than 5 percent of homes sampled**]** *Suppliers of water that monitor for lead* shall include **[**the required language**]** *language as specified* in 40 CFR §141.154.

(3)—(8) (text unchanged)

(9) Special Public Notice for Ground Water Suppliers. Community ground water suppliers shall inform the public served by the water supplier about a fecal indicator-positive source sample that is not invalidated under Regulation .11-2G of this chapter, or any significant deficiency that has not been corrected, in accordance with the requirements of 40 CFR §§141.153(h)(6) and 141.403(a). The supplier shall continue to inform the public annually until the Approving Authority determines that the particular significant deficiency is corrected or the fecal contamination in the ground water source is addressed in accordance with Regulation .05-5C of this chapter.

F.—G. (text unchanged)

H. The requirement of §G*(1), (5) and (6)* of this regulation for a supplier of water to a community water system serving less than 10,000 persons has been waived. These systems shall:

(1)—(3) (text unchanged)

I. (text unchanged)

.21 Record Maintenance.

A. (text unchanged)

B. A supplier of water shall keep records of **[**his**]** *the* action to correct violations of this regulation for at least 3 years from the date of the **[**latest action. Copies of public notices for violations, variances, or exemptions that are issued and certifications shall be kept for 3 years after issuance.**]** *last action taken with respect to the particular violation involved.*

C.—D. (text unchanged)

[E. The Approving Authority may keep the records for the time requirements established in this regulation for a supplier of water if requested in writing by the supplier.**]**

E. Copies of public notices issued pursuant to Regulation .20 of this chapter and certifications made to the Approving Authority shall be kept for 3 years after issuance.

F. (text unchanged)

G. The Approving Authority may keep the records for the time requirements established in this regulation for a supplier of water if requested in writing by the supplier.

H. In addition to the previous requirements of this regulation, a ground water supplier subject to 40 CFR §141 Subpart S shall maintain information in its records, including the following:

(1) Documentation of corrective actions. Documentation shall be kept for a period of not less than 10 years.

(2) Documentation of notice to the public as required under Regulation .20-2E(9). Documentation shall be kept for a period of not less than 3 years.

(3) Records of decisions under Regulation .11-2D(5)(b) of this chapter and records of invalidation of fecal indicator-positive ground water source samples under Regulation .11-2G of this chapter. Documentation shall be kept for a period of not less than 5 years.

(4) For consecutive systems, documentation of notification to the wholesale system(s) of total-coliform positive samples that are not invalidated under 40 CFR §141.21(c). Documentation shall be kept for a period of not less than 5 years.

(5) For systems, including wholesale systems that are required to perform compliance monitoring under Regulation .11D of this chapter:

(a) Records of the minimum disinfectant residual specified by the Approving Authority for 4-log virus inactivation. Documentation shall be kept for a period of not less than 10 years.

(b) Records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the minimum residual disinfectant concentration for a period of more than four hours. Documentation shall be kept for a period of not less than 5 years.

(c) Records of specified compliance requirements for membrane filtration and of parameters specified by the Approving Authority for alternative treatment, and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours. Documentation shall be kept for a period of not less than 5 years.

.23 Disinfection.

A.—B. (text unchanged)

C. *Sampling and Analysis of Residual Disinfectant Concentrations.*

(1) Sampling and analysis of residual disinfectant concentrations shall be conducted as set forth in 40 CFR §141.74(a)(2) or 141.131(c) or with DPD colorimetric test kits using protocol approved by the Approving Authority.

(2) Consecutive systems that do not add a disinfectant but deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light, shall comply with the following requirements:

(a) Analytical and monitoring requirements for chlorine and chloramines in 40 CFR §§141.131(c) and 141.132(c)(1),

(b) Compliance requirements in 40 CFR §141.133(c)(1), unless required earlier by the State, and

(c) Reporting requirements for monitoring results in accordance with 40 CFR §141.134(c).

D.—F. (text unchanged)

SHARI T. WILSON
Secretary of the Environment

Title 31
MARYLAND INSURANCE ADMINISTRATION

Subtitle 10 HEALTH INSURANCE — GENERAL

31.10.40 Child Only Policies

Authority: Insurance Article, §§2-109(a)(1), 12-203(g), 12-209(4), and 15-137, Annotated Code of Maryland

Notice of Proposed Action

[10-338-P]

The Acting Insurance Commissioner proposes to adopt new Regulations **.01—.07** under a new chapter, **COMAR 31.10.40 Child Only Policies**.

Statement of Purpose

The purpose of this action is to establish open enrollment periods for child only policies.

The Department of Health and Human Services (HHS) issued regulations prohibiting insurers from denying coverage to children under the age of 19 because of a pre-existing medical condition for policies issued on or after September 23, 2010. Families buying coverage on their own will now be assured that the policy will provide coverage for their children. However, because of a fear of adverse selection, insurers are no longer offering child only policies because they believe families with children with medical conditions will purchase child only policies at a greater rate than families with children without medical conditions.

There are five general reasons why a family purchases a child only policy: (1) the family cannot afford the premium for a family policy but can afford the premium for a child only policy; (2) the parents are medically uninsurable and the children are not; (3) the parents have group health insurance available but elect to enroll the child in a child only policy because it is cheaper; (4) the parents are divorced and the noncustodial parent is ordered by the court to purchase and pay for a health insurance policy for the child; and (5) the parents have group health insurance that does not permit coverage for children.

The new chapter establishes two annual common open enrollment periods in January and July. During the open enrollment periods, the insurer may only decline a child only policy if the parent has group health insurance available that provides coverage for dependents. Outside the open enrollment periods, the insurer may decline all children except those for whom a court has ordered the parent(s) to purchase and pay for health insurance for the child. If the health insurer charges a premium that exceeds that charged by the Maryland Health Insurance Plan (MHIP), the child could elect to purchase the health insurance policy or enroll in MHIP.

Once promulgated, both CareFirst and Kaiser have agreed to offer a child only policy and to do so beginning with the common open enrollment period January 1st.

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 Alexis E. Gibson, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore MD 21202, or call (410) 468-2011, or email to agibson@mdinsurance.state.md.us, or fax to (410) 468-2020. Comments will be accepted through January 3, 2011. A public hearing has not been scheduled.

.01 Scope.

This chapter is applicable to child only policies issued on or after September 23, 2010.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Applicant" means a child or an individual on behalf of a child who submits an application for a child only policy.

(2) "Carrier" means an insurer, a nonprofit health service plan, or a health maintenance organization.

(3) "Child" means an individual under the age of 19.

(4) "Child only policy" means an individual health benefit plan issued or delivered to a child in this State.

(5) "Commissioner" means the Maryland Insurance Commissioner.

(6) Health Benefit Plan.

(a) "Health benefit plan" means a health insurance contract, a nonprofit health service plan contract, or health maintenance organization contract that includes benefits for medical care.

(b) "Health benefit plan" does not include one or more of the following:

(i) Coverage only for accident, or disability income insurance;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in federal regulations issued pursuant to P.L. 104-191.

(c) "Health benefit plan" does not include the following benefits if they are provided under a separate contract of insurance:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these benefits; and

(iii) Similar, limited benefits as are specified in federal regulations issued pursuant to P.L. 104-191.

(d) "Health benefit plan" does not include the following benefits if offered as independent, noncoordinated benefits:

(i) Coverage only for a specified disease or illness; and

(ii) Hospital indemnity or other fixed indemnity insurance.

(e) "Health benefit plan" does not include the following benefits if offered as a separate insurance policy:

(i) Medicare supplemental health insurance, as defined under §1882(g)(1) of the Social Security Act;

(ii) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(iii) Similar supplemental coverage provided to coverage under an employer sponsored plan.

(7) "Individual health benefit plan" means a health benefit plan issued or delivered to an individual, including:

(a) A certificate issued or delivered to an individual in Maryland that evidences coverage under a policy or contract issued to a trust or association or other similar group of individuals, regardless of the situs of the delivery of the policy or contract, if the individual pays the premium and is not being covered under the policy or contract under either federal or State continuation of benefits provisions; and

(b) Short-term limited duration insurance.

(8) "Maryland Health Insurance Plan" means the plan for the medically uninsurable established under Insurance Article, Title 14, Subtitle 5, Annotated Code of Maryland.

(9) Substantially similar coverage.

(a) "Substantially similar coverage" means coverage under any:

(i) Group health benefit plan; or

(ii) Employer-sponsored plan that provides health benefits to the employees of the employer.

(b) "Substantially similar coverage" does not mean a policy or contract issued to a trust or association or other similar group of individuals that is an individual health benefit plan.

.03 Child Only Policy.

Carriers shall issue or deliver a child only policy in this State in accordance with the requirements of this chapter.

.04 Open Enrollment Periods.

A. A carrier issuing or delivering child only policies in this State shall accept applications for coverage during the open enrollment periods outlined in this regulation.

B. Each carrier issuing child only policies shall hold open enrollment periods twice a year from:

(1) January 1 through January 31 of each year; and

(2) July 1 through July 31 of each year.

C. During the open enrollment periods, any applicant for a child only policy shall be offered coverage on a guaranteed issue basis, without any limitations or riders based on medical condition or health status.

D. Notice of the open enrollment period and instructions on how to apply during the open enrollment period shall be displayed prominently on the carrier's web site for the duration of the open enrollment period.

E. During open enrollment, a carrier may request from an applicant information to determine whether the proposed insured has substantially similar coverage available and may obtain an attestation from an applicant that the proposed insured does not have substantially similar coverage available.

F. Applications for coverage during the open enrollment period under §B(1) of this regulation that are received:

(1) On or before January 15 shall become effective on the first day of February of the same year; and

(2) After January 15 shall become effective no later than February 16 of the same year.

G. Applications for coverage during the open enrollment period under §B(2) of this regulation that are received:

(1) On or before July 15 shall become effective on the first day of August of the same year; and

(2) After July 15 shall become effective no later than August 16 of the same year.

H. Notwithstanding the provisions of §A of this regulation, a carrier may reject an application during the open enrollment period if the child has other substantially similar coverage available.

.05 Applications Received Outside Open Enrollment Periods.

A. If a carrier receives an application for a child only policy outside the open enrollment periods, the carrier shall accept the application if the applicant meets the criteria set forth in Regulation .06 of this chapter.

B. Except as provided in §A of this regulation, if a carrier receives an application for a child only policy outside the open enrollment period, the carrier may deny the application and notify the applicant of the next open enrollment period and how to apply for coverage during the open enrollment period.

C. If a carrier accepts an application outside the open enrollment period, the carrier shall offer coverage on a guaranteed issue basis, without any limitations or riders based on medical condition or health status.

.06 Court Ordered Coverage.

A. Carriers issuing child only policies shall accept an application for a child only policy outside of the open enrollment periods described in Regulation .04 of this chapter if a court has ordered health benefits be provided to the child.

B. A carrier may request a copy of a valid court order mandating health benefits for the child.

.07 Underwriting.

A. A carrier may not deny issuance of a child only policy due to medical underwriting.

B. A carrier may conduct medical underwriting to determine the appropriate premium rate for a child only policy.

.08 Referral to Maryland Health Insurance Plan.

A. If a carrier determines that the rate for a child only policy exceeds the Maryland Health Insurance Plan premium rate, the carrier shall provide the applicant with a notice regarding eligibility for the Maryland Health Insurance Plan.

B. If a carrier determines that child has a medical or health condition listed in 31.17.02.02B(2), the carrier shall provide the applicant with a notice regarding the child's eligibility for the Maryland Health Insurance Plan.

ELIZABETH SAMMIS
Acting Insurance Commissioner

Errata

COMAR 07.01.10

At 37:22 Md. R. 1553 (October 22, 2010), col. 1, line 15 from the top:

For: for adoption in 37:16 Md. R. 1162 (July 30, 2010), has been adopted

Read: for adoption in 37:16 Md. R. 1062 (July 30, 2010), has been adopted

COMAR 07.02.04

At 37:23 Md. R. 1609 (November 5, 2010), col. 1, line 16 from the top:

For: Md. R. 1218—1222 (August 27, 2010), has been adopted as

Read: Md. R. 1218 (August 27, 2010), has been adopted as

[10-25-36]

COMAR 10.37.01

At 37:23 Md. R 1610 (November 5, 2010), column 2, line 3 from the bottom:

For: DONALD A. YOUNG

Read: FREDERICK W. PUDDESTER

COMAR 10.37.10

At 37:23 Md. R. 1611 (November 5, 2010), column 1, line 15 from the top:

For: DONALD A. YOUNG, M.D.

Read: FREDERICK W. PUDDESTER

[10-25-45]

Special Documents

DEPARTMENT OF THE ENVIRONMENT

Proposed Calendar Year 2011 Standard Permit Application Turnaround Times

As required by Environment Article, §1-607(a)(2), Annotated Code of Maryland, the Maryland Department of the Environment (MDE) is seeking comment on the proposed standard turnaround times for all types of permit applications. For further information, please contact Andrew Gosden in MDE's MDEStat Office at 410-537-4158.

Details about the proposed changes and the full list of proposed turnaround times are available on MDE's web site, www.mde.state.md.us.

MDE reviews and adjusts these turnaround times annually to give permit applicants current information regarding the processing time.

Please note the following important points about these standard times:

(1) These standards refer to the time between MDE's receipt of a complete permit application and MDE's issuance or denial of the permit, excluding delays caused by factors beyond MDE's control. Many applications are incomplete when they first arrive at MDE. The appropriate MDE permit writer can provide guidance on how to ensure that an application is complete when submitted.

(2) In most permitting programs, each application has unique characteristics that influence its processing time. For each program listed, the standard time represents the time in which 90% of applications can be processed. Many applications will require less time; a few will require more time due to unusual circumstances.

Paper copies of the proposed times are available on request. Requests, comments, and questions can be directed to Mr. Andrew Gosden at agosden@mde.state.md.us; by phone at 410-537-4158; via postal mail to MDE/OS, 1800 Washington Boulevard, Suite 745, Baltimore, MD 21230-1720; or by fax to 410-537-4477. Comments will be accepted until December 31, 2010.

[10-25-47]

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE**:** October 1, 2010, through October 31, 2010.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR §806.22(e) and 18 CFR §806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR §806.22(e):

Hydro Recovery, LP, Pad ID: Treatment Facility, ABR-201010061, Blossburg Borough, Tioga County, Pa.; Consumptive Use of up to 0.100 mgd; Approval Date: October 21, 2010.

Approvals By Rule Issued Under 18 CFR §806.22(f):

XTO Energy Incorporated, Pad ID: Levan 8526H, ABR-201010001, Pine Township, Columbia County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 1, 2010.

East Resources Management, LLC, Pad ID: Kindon 374, ABR-201010002, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 4, 2010.

Chesapeake Appalachia, LLC, Pad ID: Lemoreview Farms, ABR-201010003, Leroy Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 4, 2010.

Chesapeake Appalachia, LLC, Pad ID: Hopson, ABR-201010004, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 4, 2010.

Chesapeake Appalachia, LLC, Pad ID: Scrivener, ABR-201010005, Rome Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 4, 2010.

East Resources Management, LLC, Pad ID: Red Run Mountain Inc 739, ABR-201010006, McIntyre Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 5, 2010.

Ultra Resources, Inc., Pad ID: State 814, ABR-201010007, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 6, 2010, including a partial waiver of 18 CFR §806.15.

Talisman Energy USA Inc., Pad ID: 05 056 Miller, ABR-201010008, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 6, 2010.

Chesapeake Appalachia, LLC, Pad ID: Craige, ABR-201010009, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 7, 2010.

East Resources Management, LLC, Pad ID: Heuer 701, ABR-201010010, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2010.

East Resources Management, LLC, Pad ID: Heath 418, ABR-201010011, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2010.

Talisman Energy USA Inc., Pad ID: 05 064 Manchester K, ABR-201010012, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 7, 2010.

East Resources Management, LLC, Pad ID: Redl 600, ABR-201010013, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2010.

East Resources Management, LLC, Pad ID: East Point Fish & Game Club 726, ABR-201010014, Liberty Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 8, 2010.

Chesapeake Appalachia, LLC, Pad ID: Yvonne, ABR-201010015, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 8, 2010.

Chesapeake Appalachia, LLC, Pad ID: Goll, ABR-201010016, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 12, 2010.

Williams Production Appalachia LLC, Pad ID: Hollenbeck ABR, ABR-201010017, Franklin Township, Susquehanna County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 12, 2010.

Southwestern Energy Production Company, Pad ID: Daniels Pad, ABR-201010018, Gibson Township, Susquehanna County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 12, 2010.

Chesapeake Appalachia, LLC, Pad ID: Landmesser, ABR-201010019, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 12, 2010.

Chesapeake Appalachia, LLC, Pad ID: Field, ABR-201010020, Cherry Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 12, 2010.

Talisman Energy USA Inc., Pad ID: 05 040 Cook, ABR-201010021, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 13, 2010.

Chesapeake Appalachia, LLC, Pad ID: Millville, ABR-201010022, Fox Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 13, 2010.

East Resources Management, LLC, Pad ID: Signor 578, ABR-201010023, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2010.

Talisman Energy USA Inc., Pad ID: 05 070 Corbin T, ABR-201010024, Orwell Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 13, 2010.

Chesapeake Appalachia, LLC, Pad ID: Sidonio, ABR-201010025, Ulster Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 14, 2010.

Talisman Energy USA Inc., Pad ID: 05 022 DeCristo, ABR-201010026, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 14, 2010.

Talisman Energy USA Inc., Pad ID: 05 029 Neville, ABR-201010027, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 14, 2010.

East Resources Management, LLC, Pad ID: Harman 565, ABR-201010028, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 15, 2010.

East Resources Management, LLC, Pad ID: Hudson 575, ABR-201010029, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 15, 2010.

East Resources Management, LLC, Pad ID: Dietz 490, ABR-201010030, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 15, 2010.

Southwestern Energy Production Company, Pad ID: Behrend Pad, ABR-201010031, Herrick Township, Bradford County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 18, 2010.

Talisman Energy USA Inc., Pad ID: 05 129 Upham R, ABR-201010032, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 18, 2010.

Talisman Energy USA Inc., Pad ID: 05 118 Allyn A, ABR-201010033, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 18, 2010.

Talisman Energy USA Inc., Pad ID: 05 034 Jones, ABR-201010034, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 18, 2010.

Ultra Resources, Inc., Pad ID: State 841, ABR-201010035, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

Ultra Resources, Inc., Pad ID: State 827, ABR-201010036, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

Ultra Resources, Inc., Pad ID: State 820, ABR-201010037, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

Ultra Resources, Inc., Pad ID: State 818, ABR-201010038, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

Ultra Resources, Inc., Pad ID: State 816, ABR-201010039, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

East Resources Management, LLC, Pad ID: Westbrook 487, ABR-201010040, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

East Resources Management, LLC, Pad ID: Berguson 622, ABR-201010041, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

East Resources Management, LLC, Pad ID: Zimmer 586, ABR-201010042, Covington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

East Resources Management, LLC, Pad ID: Stevens 413, ABR-201010043, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

Chesapeake Appalachia, LLC, Pad ID: Folta, ABR-201010044, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 19, 2010.

Talisman Energy USA Inc., Pad ID: 05 097 Hartnett, ABR-201010045, Warren Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 19, 2010.

Talisman Energy USA Inc., Pad ID: 05 015 Warner, ABR-201010046, Stevens Township and Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 19, 2010.

Ultra Resources, Inc., Pad ID: State 842, ABR-201010047, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

Ultra Resources, Inc., Pad ID: State 843, ABR-201010048, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: October 19, 2010, including a partial waiver of 18 CFR §806.15.

Chesapeake Appalachia, LLC, Pad ID: Gemm, ABR-201010049, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 19, 2010.

Chesapeake Appalachia, LLC, Pad ID: Phillips, ABR-201010050, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 19, 2010.

Chesapeake Appalachia, LLC, Pad ID: Grant, ABR-201010051, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2010.

East Resources Management, LLC, Pad ID: Schimmel 828, ABR-201010052, Farmington Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

East Resources Management, LLC, Pad ID: Parsons 613, ABR-201010053, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

East Resources Management, LLC, Pad ID: Signor 566, ABR-201010054, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2010.

East Resources Management, LLC, Pad ID: Smithgall 293, ABR-201010055, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 20, 2010.

Chesapeake Appalachia, LLC, Pad ID: Tall Maples, ABR-201010056, Elkland Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2010.

Chesapeake Appalachia, LLC, Pad ID: Tama, ABR-201010057, North Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2010.

EQT Production Co., Pad ID: Phoenix H, ABR-201010058, Morris Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 20, 2010.

Williams Production Appalachia LLC, Pad ID: Resource Recovery Well Pad 1, ABR-201010059, Snow Shoe Township, Centre County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 21, 2010.

Williams Production Appalachia LLC, Pad ID: Resource Recovery Well Pad 3, ABR-201010060, Snow Shoe Township, Centre County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 21, 2010.

Chesapeake Appalachia, LLC, Pad ID: Abel, ABR-201010062, Shrewsbury Township, Sullivan County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 25, 2010.

Talisman Energy USA Inc., Pad ID: 05 031 Smolko, ABR-201010063, Pike Township, Bradford County, Pa.; Consumptive Use of up to 6.000 mgd; Approval Date: October 27, 2010.

Chesapeake Appalachia, LLC, Pad ID: Shores, ABR-201010064, Sheshequin Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 27, 2010.

Chesapeake Appalachia, LLC, Pad ID: Juser, ABR-201010065, Rush Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 29, 2010.

Chesapeake Appalachia, LLC, Pad ID: Drake, ABR-201010066, Litchfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 28, 2010.

Chief Oil & Gas LLC, Pad ID: Smith Drilling Pad #1, ABR-201010067, Franklin Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 29, 2010.

Chief Oil & Gas LLC, Pad ID: B & B Investment Group Drilling Pad #1, ABR-201010068, Asylum Township, Bradford County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 29, 2010.

Chief Oil & Gas LLC, Pad ID: Boileau Drilling Pad #1, ABR-201010069, Goshen Township, Clearfield County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 29, 2010.

XTO Energy Incorporated, Pad ID: PA Tract 8546H, ABR-201010070, Chapman Township, Clinton County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 29, 2010.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: November 10, 2010.

STEPHANIE L. RICHARDSON
Secretary to the Commission.

[10-25-37]

MARYLAND HEALTH CARE COMMISSION

Number of Chronic Hospital Beds and Patient Days and Percent Occupancy, by Facility: Maryland, 2009

Jurisdiction/Facility	Number of Beds	Number of Days	Occupancy (%)
Baltimore City			
James Lawrence Kernan Hospital[1]	40	14,736	100.93%
Johns Hopkins Bayview Medical Center[2]	76	26,715	96.30%
Levindale Hebrew Geriatric Center and Hospital	100	37,518	102.79%
University Specialty Hospital	180	49,328	75.08%
Prince George's County			
Gladys Spellman Specialty Hospital and Nursing Center	52	15,103	79.57%
SUBTOTAL: Private Chronic Hospitals	448	143,400	87.70%
Washington County			
Western Maryland Hospital Center[3]	60	5,981	27.31%
Wicomico County			
Deer's Head Hospital Center[4]	66	5,141	21.34%
SUBTOTAL: State-Operated Chronic Hospitals[5]	126	11,122	24.18%
STATEWIDE TOTAL[6]	574	154,522	73.75%

Sources: Maryland Health Care Commission. The number of licensed chronic hospital beds maintained in the Commission's inventory is based on the Commission's Certificate of Need files and licensing information provided by the Office of Health Care Quality. The number of FY 2009 patient days for the private chronic hospitals is obtained from the Financial Data Base, as reported by private chronic hospitals to the Health Services Cost Review Commission (HSCRC), as of October 19, 2010. The number of FY 2009 patient days for the two state-operated chronic hospitals is obtained from the Hospital Management Information System (HMIS), as maintained by the Maryland Department of Health and Mental Hygiene.

Notes: The number of beds reflects the number of licensed chronic hospital beds at each facility as of June 30, 2009 (the end of the 2009 fiscal year reporting period). Occupancy is calculated based on licensed beds. For the two facilities with over 100 percent chronic hospital occupancy, patient days reflect that chronic hospital patients may be placed in other types of licensed beds within their facilities.

[10-25-44]

[1] Kernan Hospital's 40 chronic hospital beds include 16 dually licensed chronic/rehabilitation beds.

[2] Johns Hopkins Bayview Medical Center's 26,715 patient days is the combined number of patient days for the separately licensed 76 chronic hospital beds and nine comprehensive inpatient rehabilitation (CIR) beds.

[3] Western Maryland Hospital Center's occupancy, based on its 34 *budgeted* chronic hospital beds, would be 48.20 percent.

[4] Deer's Head Center's chronic hospital occupancy, based on its 16 *budgeted* chronic hospital beds, would be 88.03 percent.

[5] The occupancy for the two State-operated chronic hospitals, based on the total 50 *budgeted* chronic hospital beds, would be 60.94 percent.

[6] The statewide chronic hospital occupancy based on the 448 *licensed* beds at the five *private* facilities plus the 50 *budgeted* beds at the two *state-operated* facilities would be 85.01 percent.

General Notices

Notice of 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.

STATE ANATOMY BOARD

Subject: Public Meeting
Date and Time: December 22, 2010, 2 — 4:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patrick Pannella (410) 230-6271
[10-25-46]

BOARD OF ARCHITECTS

Subject: Public Meeting
Date and Time: December 15, 2010, 10 a.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263
[10-25-15]

ATHLETIC COMMISSION

Subject: Public Meeting
Date and Time: December 16, 2010, 2 — 4:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Patrick Pannella (410) 230-6223
[10-25-22]

BOARD OF CHIROPRACTIC AND MASSAGE THERAPY EXAMINERS

Subject: Public Meeting
Date and Time: December 9, 2010, 10 a.m. — 1 p.m.
Place: Dept. of Health and Mental Hygiene, 4201 Patterson Ave., Rm. 528, Baltimore, MD
Contact: Maria Ware (410) 764-5902
[10-25-48]

BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS

Subject: Public Meeting
Date and Time: December 17, 2010, 11 a.m. — 3:30 p.m.
Place: 4201 Patterson Ave., Baltimore, MD
Contact: Janice Isaac (410) 764-4732
[10-25-08]

GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

Subject: Public Meeting
Date and Time: January 10, 2011, 3 — 5 p.m.
Place: Baltimore County, Loch Raven Library, Baltimore, MD
Contact: Jessica Winpigler (410) 821-2829
[10-25-02]

GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

Subject: Public Meeting
Date and Time: March 14, 2011, 3 — 5 p.m.
Place: Baltimore County, Loch Raven Library, Baltimore, MD
Contact: Jessica Winpigler (410) 821-2829
[10-25-03]

CRIMINAL JUSTICE INFORMATION ADVISORY BOARD

Subject: Public Hearing
Date and Time: December 13, 2010, 1 — 3 p.m.
Place: Judiciary Training Center, 2009-D Commerce Park Dr., Rm. 5, Annapolis, MD
Contact: Robyn Lyles (410) 585-3185
[10-25-17]

JOINT CHAIRS OF THE DESIGN BOARDS

Subject: Public Meeting
Date and Time: December 15, 2010, 1:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263
[10-25-14]

CONTINUING PROFESSIONAL COMPETENCY COMMITTEE OF THE BOARD FOR PROFESSIONAL ENGINEERS

Subject: Public Meeting
Date and Time: December 13, 2010, 2:30 p.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263
[10-25-16]

DEPARTMENT OF THE ENVIRONMENT

Subject: Public Hearing on Regulations
Date and Time: January 6, 2011, 1 — 3 p.m.
Place: Maryland Dept. of the Environment, 1800 Washington Blvd., Baltimore, MD
Add'l. Info: COMAR 26.04.01.01-.1, .05, .05-5, .06-2, .11, .11-2, .11-3, .15-2, .17, .19, .20, .20-1, .20-2, .21, and .23 under Quality of Drinking Water in Maryland.
Contact: Saied Kasraei (410) 537-3702
[10-25-38]

BOARD OF ENVIRONMENTAL SANITARIANS

Subject: Public Meeting
Date and Time: January 6, 2011, 9 a.m. — 3:30 p.m.
Place: Howard Co. Board of Utilities, 8250 Old Montgomery Rd., Columbia, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Pat Kratochvil (410) 537-3167
[10-25-10]

HALL OF RECORDS COMMISSION

Subject: Public Meeting
Date and Time: December 9, 2010, 12 — 2 p.m.
Place: Hall of Records Bldg., 350 Rowe Blvd., Annapolis, MD
Contact: Leslie Frazer (410) 260-6401
[10-25-31]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subject: Call for Pharmacist Nominations to the Drug Utilization Review (DUR) Board
Add'l Info: The Maryland Department of Health and Mental Hygiene Drug Utilization Review (DUR) Board is currently recruiting for a pharmacist to serve on the Maryland DUR Board beginning in March 2011.

The implementation of the Omnibus Budget Reconciliation Act of 1990 requires that the Maryland Department of Health and Mental Hygiene establish a DUR

Board. The DUR Board is comprised of both physicians and pharmacists and has been in operation since November 1992. The activities of the DUR Board include:

- Overseeing retrospective and prospective DUR within the Maryland Medicaid Program.
- Approving DUR criteria and standards.
- Making recommendations concerning education and other types of interventions based on prospective and retrospective DUR findings.
- Preparing an annual report for submission to the Centers for Medicare and Medicaid (CMS) describing the nature and scope of the DUR program, summarizing educational/interventional strategies used, and estimating cost savings generated.
- Reviewing individual recipient profiles and make recommendations to restrict patients who might be abusing Medicaid prescription drugs.

The DUR Board has quarterly 3-hour meetings in the Baltimore area. Meetings are normally scheduled on a Thursday morning during the months of March, June, September, and December.

The membership of the Maryland DUR Board includes health care professionals who have recognized knowledge and expertise in one of the following areas:

- The clinically appropriate prescribing of outpatient drugs.
- The clinically appropriate dispensing and monitoring of outpatient drugs.
- Drug use review, evaluation, and intervention.
- Medical quality assurance.

Health Information Designs, Inc. is providing administrative and technical support to the Department of Health and Mental Hygiene with regard to the DUR Board. For an application packet, please contact Joseph Paradis, PharmD, at Health Information Designs at 443-690-1997 or via e-mail at joe.paradis@hidinc.com.

The application deadline is December 31, 2010.

Contact: Alex Taylor (410) 767-5878

[10-25-18]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MARYLAND BOARD OF PHYSICIANS

Subject: Public Meeting
Date and Time: December 15, 2010, 9 — 10 a.m.; Open Meeting will be held at 9 a.m. and 3 p.m.
Place: 4201 Patterson Ave., Rms. 108/109, Baltimore, MD
Add'l. Info: Appropriate auxiliary aids and services provided for qualified individuals upon request. Call Ellen D. Smith at (410) 764-2477.
Contact: Tammy Austin (410) 764-4769

[10-25-04]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MEDICAID PHARMACY AND THERAPEUTICS COMMITTEE

Subject: Call For Physician Nominations
Add'l. Info: The Maryland Department of Health and Mental Hygiene is currently recruiting a physician to serve on the Maryland Medicaid Program's Pharmacy and Therapeutics (P&T) Committee beginning in March 2011.

The Committee shall be composed of no fewer than twelve (12) members, appointed by the Secretary.

At least five (5) members shall be physicians, licensed in Maryland, one (1) being a psychiatrist; five (5) members shall be pharmacists, licensed in Maryland, one (1) having expertise with mental health drugs; and two (2) members shall be consumer representatives.

Duties and Powers of Committee

Rules: The Committee shall operate under Standard Operating Procedures and comply with rules adopted by DHMH, including notice of any meeting of the Committee pursuant to the requirements of the Administrative Procedures Act.

Regular Meetings: The Committee shall meet at least once semiannually, and may meet at other times at the discretion of DHMH, the Chairperson, and the members of the Committee. To the extent feasible, the Committee shall review all drug classes included in the Preferred Drug List at least every twelve (12) months. Executive sessions shall be closed to the public.

Attendance: Members of the Committee may be removed if they miss two consecutive Committee meetings

Conflict of Interest: Members are required to disclose all types of remunerations from, and investments in, the drug industry.

Preferred Drug List Development: The Committee reviews classes of medications and recommends to DHMH which medications should be included in the Preferred Drug List for prescribing to Medicaid recipients. The Preferred Drug List is comprised of cost-effective medically appropriate drug therapies for Medicaid recipients. The Committee shall develop its Preferred Drug List recommendations by considering the clinical efficacy, safety, and cost-effectiveness of drug products. Analyses shall be based upon reviews of relevant clinical information, including but not limited to, FDA-approved labeling, supporting studies, published head-to-head comparisons, and peer-reviewed medical journal articles.

Prior Authorization: The Committee may also make recommendations to DHMH regarding the prior authorization of any prescribed drug covered by Medicaid.

Provider Synergies is currently providing administrative and technical support to the Department of Health and Mental Hygiene with regard to the P&T Committee. For an application packet, please email Megan Shook at shookm@dhmh.state.md.us. Application deadline is Monday, January 31, 2011.

For further information, contact Megan Shook, Department of Mental Health and Hygiene (DHMH), Office of Systems, Operations and Pharmacy (OOEP), 201 W. Preston Street, Room 408E, Baltimore, MD 21201-2323, (410) 767-6896, shookm@dhmh.state.md.us
Contact: Megan Shook (410) 767-6896

[10-25-43]

DEPARTMENT OF LABOR, LICENSING, AND REGULATION/DIVISION OF LABOR AND INDUSTRY/MARYLAND APPRENTICESHIP AND TRAINING COUNCIL

Subject: Public Meeting
Date and Time: December 14, 2010, 9 a.m. — 12 p.m.
Place: Dept. of Labor, Licensing and Regulation, 1100 N. Eutaw St., Lower Level Training Rm., Baltimore, MD
Add'l. Info: The Maryland Apprenticeship and Training Council will meet to develop an application for continued recognition as a State Apprenticeship Registration Agency by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, including a preliminary draft of proposed revised apprenticeship and training regulations.
Contact: Jeff Beeson (410) 767-2246

[10-25-34]

DEPARTMENT OF LABOR, LICENSING, AND REGULATION/DIVISION OF LABOR AND INDUSTRY/MARYLAND APPRENTICESHIP AND TRAINING COUNCIL

Subject: Public Notice
Add'l. Info: Effective October 21, 2010, the Maryland Apprenticeship and Training Council of the Department of Labor,

Licensing, and Regulation deregistered the defunct apprenticeship program of Optimum Fire Protection Service Company.
Contact: Jeff Beeson (410) 767-2246
[10-25-35]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting
Date and Time: December 16, 2010, 1 p.m.
Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD
Add'l. Info: Individuals requiring special accommodations are requested to contact Valerie Wooding at (410) 764-3460, or the Department of Health and Mental Hygiene TTY at (410) 383-7755, not later than 20 working days before the meeting to make arrangements.
Contact: Valerie Wooding (410) 764-3460
[10-25-07]

MARYLAND HEALTH CARE COMMISSION

Subject: Public Meeting
Date and Time: January 20, 2011, 1 p.m.
Place: Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD
Add'l. Info: Individuals requiring special accommodations are requested to contact Valerie Wooding at (410) 764-3460, or the Department of Health and Mental Hygiene TTY at (410) 383-7755, not later than 20 working days before the meeting to make arrangements.
Contact: Valerie Wooding (410) 764-3460
[10-25-12]

MARYLAND HEALTH CARE COMMISSION

Subject: Annual Health IT Report
Add'l. Info: The Annual Health IT Report is posted on the MHCC website (mhcc.maryland.gov) for review.
Written comments should be submitted to Maryland Health Care Commission, Attention: Cindy Friend, 4160 Patterson Ave., Baltimore, Maryland 21215.
The Commission will only accept written comments through Thursday, December 16, 2010, at 4:00 p.m.
Contact: Cindy Friend (410) 764-3839
[10-25-32]

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

Subject: Public Meeting
Date and Time: December 15, 2010, 8:30 a.m. — 5 p.m.
Place: Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Drive, Harry Hughes Stes. 1 and 2, Hanover, MD
Contact: Pam Gregory (410) 865-1253
[10-25-33]

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Subject: Public Meeting
Date and Time: December 8, 2010, 9:30 a.m.
Place: 4201 Patterson Ave., Rm. 110, Baltimore, MD
Contact: Patricia A. Hannigan (410) 764-4750
[10-25-01]

BOARD OF PLUMBING

Subject: Public Meeting
Date and Time: December 16, 2010, 10:30 a.m. — 12:30 p.m.
Place: 500 N. Calvert St., Rm. 302, Baltimore, MD
Contact: Brenda Clark (410) 230-6164
[10-25-06]

RACING COMMISSION

Subject: Public Meeting
Date and Time: December 21, 2010, 12 — 1 p.m.
Place: Laurerl Park, Laurel, MD
Contact: J. Michael Hopkins (410) 296-9682
[10-25-42]

COMMISSION OF REAL ESTATE APPRAISERS AND HOME INSPECTORS

Subject: Public Meeting
Date and Time: December 14, 2010, 10:30 a.m. — 12 p.m.
Place: 500 N. Calvert St., Baltimore, MD
Contact: Patti Schott (410) 230-6165
[10-25-05]

BOARD OF SOCIAL WORK EXAMINERS

Subject: Public Meeting
Date and Time: December 10, 2010, 12 — 3 p.m.
Place: 4201 Patterson Ave., Rm. 108, Baltimore, MD
Add'l. Info: The Board may discuss/vote on proposed regulations.
Contact: James T. Merrow (410) 764-4788
[10-25-19]

SUSQUEHANNA RIVER BASIN COMMISSION

Subject: Public Hearing
Date and Time: December 16, 2010, 8:30 a.m. — 1 p.m.
Place: Hilton Garden Inn Aberdeen, 1050 Beards Hill Rd., Aberdeen, MD
Add'l. Info: Public Hearing and Commission Meeting
Contact: Richard Cairo (717) 238-0423 ext. 306
[10-25-39]

MARYLAND INDIVIDUAL TAX PREPARATION BOARD

Subject: Public Meeting
Date and Time: December 20, 2010, 1:30 — 3 p.m.
Place: 500 N. Calvert St., Baltimore, MD
Contact: Jay Hutchins (410) 230-6262
[10-25-11]

MARYLAND BUSINESS TAX REFORM COMMISSION

Subject: Public Meeting
Date and Time: December 13, 2010, 2 p.m.
Place: Louis L. Goldstein Treasury Bldg., 80 Calvert St., Assembly Rm., Annapolis, MD
Contact: Linda I. Vasbinder (410) 260-7450
[10-25-13]

MARYLAND TRANSPORTATION AUTHORITY

Subject: Public Meeting
Date and Time: December 22, 2010, 9 — 11 a.m.
Place: Maryland Transportation Authority, Point Breeze Complex, 2310 Broening Hwy., Ste. 160, Baltimore, MD
Add'l. Info: A portion of this meeting may be held in closed session.
Contact: Cindy Taylor (410) 537-1002
[10-25-09]

STATE OF MARYLAND
EXECUTIVE DEPARTMENT

OFFICE OF THE SECRETARY OF STATE
DIVISION OF STATE DOCUMENTS

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

JOHN P. MCDONOUGH
Secretary of State

GAIL S. KLAKRING
Acting Administrator

Maryland Register

Code of Maryland Regulations (COMAR)

September, 2010

Dear COMAR Subscriber,

COMAR is getting a new look! We are happy to announce that the Division of State Documents is redesigning the look and the usefulness of the printed COMAR. After more than 35 years of publishing COMAR in its current format, we are starting the process of providing our customers with a new and improved COMAR.

Our new format will make better use of paper costs, printing costs, and bookshelf space. Its format will be a more standard 8.5" × 11" size, and will be able to fit in a slimmer space on your bookshelf. Photocopies will be easier to make and our "greener" approach will save money, as well as paper. There will be a new page numbering system which will be easier to follow and allow for the COMAR binders to be easier to maintain.

Here is how it is going to work:

- In the coming months, you will receive, one-time only, an electronic version of the entire title(s) to which you subscribe free of charge. This electronic version will be a searchable pdf. You can elect to receive a print version at an additional cost.
- You can either save the files on your computer, or print them out to be placed in a standard 3-ring binder. You can use a binder of your own, or you can purchase a new COMAR binder from us at an additional charge.
- Thereafter, you will have the option of subscribing to updates to COMAR which will be sent to you electronically. These updates will be sent on a monthly basis, or whenever changes to your particular title(s) have been adopted. This allows you to always have the most current pages in your binder.
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- In keeping with the "green" approach, you will receive an electronic invoice. You must notify us if you wish to receive a paper invoice.

We look forward to the successful launch and final completion of COMAR's transformation!

Sincerely,

Gail S. Klakring
Acting Administrator
Division of State Documents

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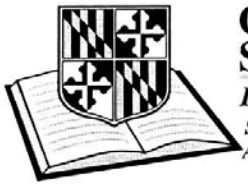

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