



Maryland Register

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Volume 38 • Issue 4 • Pages 241—306

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Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before January 24, 2011, 5 p.m.

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, I hereby certify that this issue contains all documents required to be codified as of January 24, 2011.

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
- Courts of Appeal Hearing Calendars
- 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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CLOSING DATES and ISSUE DATES through JULY 29, 2011

Issue Date	Emergency and Proposed Regulations* 5:00 p.m.	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
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March 25	March 7	March 16	March 14
April 8	March 21	March 30	March 28
April 22	April 4	April 13	April 11
May 6	April 18	April 27	April 25
May 20	May 2	May 11	May 9
June 3**	May 16	May 24	May 20
June 17**	May 26	June 8	June 6
July 1	June 13	June 22	June 20
July 15	June 27	July 6	July 1
July 29**	July 11	July 20	July 18

* 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.

09.12.01.01D(2)(c)(iii)

Title		Chapter		Section		Paragraph		Subparagraph
Subtitle	Regulation	Subsection	Subparagraph					

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.

Table of Pending Proposals

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 A list of adopted proposals appears in the Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed.

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The Attorney General

OPINIONS

October 13, 2010

The Honorable John J. McCarthy
State's Attorney for Montgomery County

You requested our opinion whether Montgomery County is precluded from adopting a county-wide truancy law that would allow the police to arrest and detain students under the age of 16 who are truant from school. Your inquiry raises the question whether the State has preempted local legislation relating to truancy.

In our opinion, a local law providing for the arrest or detention of a student on the basis of truancy alone would be preempted by State law.

I Truancy

A Definition

Under Maryland law, all children who are five years of age or older and less than 16 years old must attend school. *See* Annotated Code of Maryland, Education Article (“ED”), §7-301;¹ COMAR §13A.08.01.01A. A person who has legal custody or care and control of a child is responsible for ensuring that the child attends school. ED §7-301(c). Certain school officials may excuse students from the compulsory attendance requirement for “lawful absences.” ED §7-301(b).

Regulations of the Maryland State Department of Education (“MSDE”) elaborate the concept of truancy in relation to the compulsory attendance law. A student is “truant” if the student is absent from school (for all or part of the day) for an “unlawful” reason. COMAR 13A.08.01.04B. The MSDE regulations specify when a child’s absence from school is “lawful.” COMAR 13A.08.01.03. Among the lawful reasons for absence are illness of the student, death in the student’s immediate family, hazardous weather conditions, emergencies, religious holidays, and other specified circumstances. *Id.* Absences for any other reason are presumed to be “unlawful.” COMAR 13A.08.01.04A. Local school systems are authorized to adopt additional criteria for unlawful absences in their attendance policies. *Id.*

A truant student is classified as “habitually truant” when the student is unlawfully absent from school for more than 20 per cent of the school days (or portions of days) in any marking period, semester, or year. COMAR 13A.08.01.04C. A local school system may define habitual truancy in a “more but not less stringent manner” than the MSDE definition. *Id.*

B. Investigation and Reporting

In order to remedy the causes of truancy, the principal of a school is to report to the county superintendent or other designated school official the names of any students who have been absent or had irregular attendance. ED §7-302(a). The local school system is to investigate the cause of a student’s habitual truancy. ED §7-302(b)(1). It may provide counseling and may notify the Department of Juvenile Services (“DJS”) of the student’s habitual truancy. ED §7-302(b)(2)-(3).

If a habitually truant student has previously been adjudicated a “child in need of assistance” and committed to the custody of the local department of social services, the school system is to notify that department of the child’s habitual truancy. ED §7-302(b)(3)(ii). If the student has previously been adjudicated a “child in need of supervision” and committed to the custody of DJS, the school system is to notify DJS of the habitual truancy. ED §7-302(b)(3)(iii).

C. Remedies, Penalties, and Other Consequences

State law attempts to combat truancy in a number of ways. The various provisions are designed to treat the causes of a child’s failure to attend school and to provide incentives and support to improve attendance. However, State law specifically precludes suspension or expulsion of a child from school solely for attendance-related reasons. ED §7-305(b).² Nor does it provide for criminal prosecution of a truant child.

1. Juvenile Causes

Truancy may be at least part of the basis for a juvenile court to find that a child is a “child in need of assistance.” *See* CJ §3-801 *et seq.*; *see also In re Ann M.*, 309 Md. 564, 525 A.2d 1054 (1987). If a court makes such a finding it may commit the child to the custody of the local department of social services, the Department of Health and Mental Hygiene, or certain individuals, and may order various types of treatment. *See, e.g.*, CJ §3-819, §3-824.

By definition, a habitually truant child “who requires guidance, treatment, and rehabilitation” is a “child in need of supervision” (“CINS”). CJ §3-8A-01(e). An allegation that a student is habitually truant and a CINS is to be directed to a DJS intake officer. The intake officer conducts a review of the allegation and either: 1) authorizes the filing of a petition with the juvenile court to have the student adjudicated a CINS; 2) proposes an informal resolution of the case; or 3) does not authorize the filing of a CINS petition. CJ §3-8A-10(c)(3). If the intake officer authorizes the filing of a CINS petition, the juvenile court then holds a hearing and determines the validity of the allegations and an appropriate disposition. CJ §3-8A-18, 3-8A-19. If the juvenile court finds that a habitually truant student is a CINS, possible dispositions include placing the student on probation, transferring custody or guardianship of the student, placing the student in DJS custody, or adopting a plan for the student to receive treatment services. CJ §3-8A-19(d).

2. Behavior Modification Programs

If a school’s truancy rate exceeds a specified percentage of its student body, the school must establish or expand a Positive Behavioral Interventions and Support Program or similar program in the school in collaboration with MSDE. ED §7-304.1(c); *see also* COMAR 13A.08.06.03. That Program is a “research-based, systems approach method [designed] to build capacity among school staff to adopt and sustain the use of positive, effective practices to create [a good learning environment].” ED §7-304.1(a).

3. Truancy Reduction Pilot Programs

The General Assembly has authorized the Judiciary to establish Truancy Reduction Pilot Programs in the juvenile courts of several counties.³ CJ §3-8C-02. Under such a program, truancy is defined as a “Code violation and ... a civil offense.” CJ §3-8C-03(a) - (b).⁴ An authorized school official may initiate a proceeding by filing a petition with the juvenile court alleging a violation. CJ §3-8C-04. The law sets forth the procedures that must be followed to petition the

¹ The statute literally requires attendance at a *public* school unless the child is “otherwise receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age.” ED §7-301(a)(1). There are certain exemptions applicable to 5-year olds and children attending alternatives to kindergarten. ED §7-301(a)(2)-(3), (f); COMAR 13A.08.01.02-2.

² A student may be subject to an “in school” suspension for attendance-related offenses. ED §7-305(b)(2).

³ The counties are Dorchester, Harford, Prince George’s, Somerset, Wicomico, and Worcester.

⁴ The statute specifically states that the Code violation is not a criminal conviction for any purpose. CJ §3-8C-03(c).

juvenile court to adjudicate the student in violation of the Code. CJ §3-8C-04-06.⁵ If the student is found in violation, the penalties that can be imposed are designed to rehabilitate the student. Specifically, the court can order the child to attend school, and participate in various types of programs, including counseling, substance abuse evaluation and treatment, and mental health evaluation and treatment. CJ §3-8C-06(d). The court can also order the child to perform community service and abide by a curfew set by the court. *Id.*

4. Other Consequences

The General Assembly has also included a disincentive for truant behavior in the State Motor Vehicle Law. In particular, a student under the age of 16 may not obtain a learner's permit for driving if the student has more than 10 unexcused absences in the semester prior to applying for the permit. Annotated Code of Maryland, Transportation Article ("TR"), §16-105(a)(3).⁶ A certified copy of the applicant's attendance record must accompany a student's application for a permit. *Id.*

5. Criminal Prosecution

Parents and guardians who fail in their legal responsibility to ensure that their child attends school are guilty of a misdemeanor and may be fined or imprisoned, or both. ED §7-301(e)(2). In addition, any person who induces or attempts to induce a child to be truant or who employs or harbors a truant child is guilty of a misdemeanor and subject to fine and imprisonment. ED §7-103(e)(1). The truant child is not subject to criminal prosecution. *Cf. In re Ann M.*, 309 Md. 564, 525 A.2d 1054 (1987) (reversing criminal contempt conviction of child who violated court order to attend school on the ground that it was an abuse of discretion to employ contempt power when court could have treated child as a CINS).

D. Authority to Arrest Truant Student

State law does not authorize the police to arrest a child for truancy alone. A police officer may arrest a child pursuant to a court order or an arrest warrant issued with respect to an offense, or without a warrant if the officer has probable cause to believe the child has committed certain offenses. *See* CJ §§3-8A-14(a)(1)-(2); Annotated Code of Maryland, Criminal Procedure Article, §2-201 *et seq.* In addition, an officer (or other person authorized by a court) may take a child into custody if there are reasonable grounds to believe that the child is a runaway or that the child is in immediate danger from the child's surroundings and that removal is necessary for the child's protection. CJ §§3-8A-14(a)(3)-(4). While some truant students may also fall into one of these categories – *e.g.*, a truant who commits an arrestable offense while absent from school – truancy alone is not a basis for an arrest.

II Preemption Analysis

Under the doctrine of field preemption, the General Assembly may reserve to itself lawmaking authority over an entire field. *See Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 324, 513 A.2d 893 (1986). Sometimes, the General Assembly expressly prohibits local legislation on a subject, but frequently preemption is implied.⁷ *See*

⁵ A petition may be filed against a child under the age of 12 only if an attempt was made to prosecute criminally the person with legal custody and care of the child and the prosecution was dismissed or steted on the basis that the adult had made reasonable and substantial efforts to have the child in school. CJ §3-8C-04(b); ED §7-301(e-1).

⁶ A minor may ordinarily obtain a learner's permit at the age of 15 years and nine months. TR §16-103(c)(1).

⁷ The implied preemption doctrine safeguards the General Assembly's decision "to occupy a specific field of regulation" *Mayor and City Council of Baltimore v. Sitnick*, 254 Md. 303, 323, 255 A.2d 376 (1969). The doctrine prevents "future local government trespass in [an] area of exclusive legislative

Allied Vending Inc. v. City of Bowie, 332 Md. 279, 297-98, 631 A.2d 77 (1993). The operation of field preemption is simple – local legislative bodies may not legislate on the preempted subject. But determining whether the General Assembly has exercised its authority and discerning the boundaries of the preempted field can be less straightforward.

With respect to implied preemption, the Court of Appeals has stated that "[t]he primary indicia of legislative purpose to pre-empt an entire field of law is the comprehensiveness with which the General Assembly has legislated [in] the field." *Allied Vending Inc.*, 332 Md. at 299 (1993) (internal quotation marks and citations omitted). One example of comprehensive State legislation is the State education law. In *McCarthy v. Board of Education*, 280 Md. 634, 651, 374 A.2d 1135 (1977), the Court of Appeals reviewed the State laws concerning education and concluded that State legislation in the field of education "demonstrates the occupation of that field by the State." Therefore, a county "was without power to legislate in this field." *Id.*

The boundaries of the preempted field were not drawn by the Court in *McCarthy* with precision. *See* 68 *Opinions of the Attorney General* 236, 237 (1983) ("[i]t is by no means entirely clear whether the Court ... intended to hold that local authority had been wholly preempted in every matter relating to education"). However, in a variety of contexts, this Office has opined that State law occupies the field of public education and preempts most local legislation in the education area. *See, e.g., id.* (education budgeting); 92 *Opinions of the Attorney General* 117(2007) (school attendance); 91 *Opinions of the Attorney General* 145(2006) (audits); 85 *Opinions of the Attorney General* 167 (2000) (school budget conditions).

A key component of State education policy is the mandate that children attend a public school – or an approved substitute – until they attain a certain age. Truancy, by definition, is simply a child's failure to comply with that mandate. It may be the case that truant children often engage in undesirable activities or commit delinquent acts while absent from school. But a child engaged in completely wholesome and productive activities is still a truant if absent from school without a lawful excuse. A law that addresses truancy is simply a law that enforces the mandatory schooling policy of the State education law. It is thus part of a field that has been preempted by the General Assembly.

As described above, the General Assembly has adopted various strategies to combat truancy and enforce the State's mandatory schooling policy. In some instances those strategies are targeted at particular localities; others apply State-wide. In our view, unless the Legislature specifically delegates to local governments the authority to adopt measures to enforce the mandatory attendance policy, a local law that criminalizes, or otherwise attempts to regulate, truancy is preempted by State law.

III Conclusion

In summary, it is our opinion that a local law attempting to regulate truancy by providing for the arrest or detention of a student on the basis of truancy alone would be preempted by State law.

Douglas F. Gansler, Attorney General
Elizabeth M. Kameen, Assistant Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice
[11-04-15]

authority..." *County Council for Montgomery County v. Montgomery Ass'n, Inc.*, 274 Md. 52, 60 n. 5, 333 A.2d 596 (1975). Local "trespass" occurs if a local government purports to create enforceable rights or obligations within the preempted field – in other words, attempts to regulate within the field. *See, e.g., Howard County v. Potomac Elec. Power Co.*, 319 Md. 511, 573 A.2d 821 (1990).

OPINIONS

November 23, 2010

Emanuel Demedis
County Attorney

On behalf of the County Commissioners of Calvert County, you have requested our opinion as to whether certain special taxing districts established by the Commissioners pursuant to a public local law qualify to receive highway user revenues directly from the State for the maintenance of private community roads. In compliance with our policy concerning opinion requests from local governments, you provided your own legal analysis of the question. You stated that you believe that these particular districts do not qualify for direct funding, reasoning that a special taxing district must be a “body politic” to qualify for direct funding.

As explained below, we reach a similar conclusion, but for a different reason. In our opinion, the General Assembly did not contemplate an allocation of highway user revenues to a special taxing district unless the roads in the district are dedicated or otherwise entrusted to a public body or government agency.

I Background

A. Highway User Revenues

Highway user revenues derive from an account within the State Transportation Trust Fund known as the Gasoline and Motor Vehicle Revenue Account. TR §§3-216, 8-402(a). It is the repository for funds from a variety of sources, including the motor vehicle fuel tax and certain revenue collected through the vehicle titling tax, vehicle registration fees, the corporate income tax, and the sales and use tax on short-term vehicle rentals. *See* TR §8-402(b).

The State has long shared revenues credited to that account with localities. Under various statutory formulas, portions of the revenues are allocated to Baltimore City, the counties, and various other local entities. TR §§8-403, 8-404, 8-405. The State Highway Administration (“SHA”) is responsible for determining the appropriate amount to be distributed to each local entity under those formulas.

With respect to the counties, one-half of the available funds is allocated on the basis of county road mileage and the other half is allocated on the basis of vehicle registrations. TR §§8-403, 8-404.⁸ For purposes of these computations, a “county road” is defined as “any public highway ... title to which or the easement for the use of which, is vested in a public body or governmental agency; and [t]hat is not a State highway or located in Baltimore City.” TR §8-101(g). A separate formula allocates funds to Baltimore City. *See* TR §8-403.

Another formula allocates funds to each “eligible municipality” – defined as “any municipal corporation, special taxing district, or other political subdivision of this State other than a county or Baltimore City” that is “authorized by law to construct or maintain streets or roads.” TR §8-401(c-1), (e). Thus, the phrase “eligible municipality” includes some local entities that are not municipal corporations. An eligible municipality is to request its share of highway user revenues from SHA in writing at least six months

before the start of the fiscal year for which the money is desired. TR §8-405(a). As with the counties, the available funds are allocated on the basis of “county road” mileage and vehicle registrations in the municipality. TR §8-405.⁹

Under the current funding formula, approximately 9% of the revenues go to local entities.¹⁰ In particular, Baltimore City is to receive 7.9% of the Account in Fiscal Year 2011 and 7.5% in subsequent fiscal years. TR §8-403. The total share distributed to the counties is 0.5% in Fiscal Years 2011 and 2012 and 1.4% in subsequent fiscal years. *Id.* Municipalities are to receive 0.1% in Fiscal Years 2011 and 2012 and then 0.3% in subsequent fiscal years. *Id.* We understand that 148 “municipalities” received highway user revenues directly from the State during Fiscal Year 2010, including three special taxing districts located in Montgomery County.¹¹

B. Special Taxing Districts in Calvert County

The General Assembly has authorized the Board of County Commissioners of Calvert County to establish special taxing districts by local ordinance. Code of Public Local Laws of Calvert County (“PLL”) §4-101 *et seq.*¹² Under that law, the County Commissioners may establish a special taxing district upon petition by a homeowners association, as defined in the Maryland Homeowners Association Act.¹³ PLL §4-101(b)(1). The boundaries of the district are limited to the land within the County over which the homeowners association has authority pursuant to a declaration filed under the Homeowners Association Act. PLL §4-101(c).¹⁴ When a special taxing district is established, the County Commissioners “may levy and collect special taxes or assessments, on property in [the] district[] receiving special

⁹ The mileage formula is the ratio of the mileage of county roads in the municipality to the total mileage of county roads located in eligible municipalities throughout the State. TR §8-405(c)(1). The vehicle registration formula is the ratio of the number of motor vehicles registered to owners with addresses in the municipality to the total number of motor vehicles registered to owners with addresses in all eligible municipalities throughout the State. TR §8-405(c)(2).

¹⁰ Prior to Fiscal Year 2010, 30% of the Account was allocated to Baltimore City, counties and municipalities. TR §8-403 (2008 Repl. Vol.). In the wake of the State’s recent fiscal difficulties, the local share of highway user revenues was significantly reduced for Fiscal Years 2010 and 2011. The most recent adjustments were made as part of the Budget Reconciliation and Financing Act of 2010. *See* Chapter 484, §§9, 10, and 34, Laws of Maryland 2010. Under the current formula, in Fiscal Years 2011 and 2012, 23.0 % and 20.4 %, respectively, of the Account is to be distributed to the State’s general fund; 68.5 % and 71.5 %, respectively, is to be used for the purposes for which Transportation Trust Fund monies can be used. The balance is distributed to local entities. In subsequent years, 19.3% is to be distributed to the State’s general fund and 71.5% used for the purposes for which Transportation Trust Fund monies can be used, resulting in a balance of 9.2 % to be distributed to local governments. The General Assembly also expressed its intent that a working group formed to review transportation funding or local aid provide recommendations on the distribution of local highway user revenues beginning in Fiscal Year 2013. *See* Chapter 484, §35, Laws of Maryland 2010.

¹¹ Those districts were the Village of Drummond, the Village of Friendship Heights, and the Town of Oakmont. *See* 3 Montgomery County Code, chs. 65, 66, and 70. Each of these districts was established by the General Assembly before Montgomery County adopted charter home rule.

¹² A public general law – Annotated Code of Maryland, Article 24, §9-1301 – also authorizes certain counties, including Calvert County, to establish special taxing districts for certain purposes. We understand that the County relied solely on its authority under PLL §4-101 *et seq.* in establishing the districts in question.

¹³ Annotated Code of Maryland, Real Property Article (“RP”), §11B-101 *et seq.*

¹⁴ Under the Homeowners Association Act, a declaration is an instrument recorded in the land records that authorizes the association to impose mandatory fees on lots, or owners and occupants of lots, in connection with the provision of services or some other benefit. RP §11B-101(d).

⁸ The mileage formula is the ratio of a county’s total mileage of county roads, excluding the mileage of county roads in eligible municipalities, to the total mileage of county roads in all of the counties, again excluding county roads within eligible municipalities. TR §8-404(b)(1). The vehicle registration formula is the ratio of the number of motor vehicles registered to owners with addresses in the county to the total number of motor vehicles registered to owners in all counties, again excluding addresses within eligible municipalities from both parts of the ratio. TR §8-404(b)(2).

benefits” in order to pay, among other things, “the cost of furnishing, providing, and maintaining ... “[c]ommunity roads and streets ...” PLL §4-101(a)(2)(i).¹⁵

You stated that two homeowners associations successfully petitioned for the creation of special taxing districts under this law.¹⁶ According to your letter, most of the funds collected for these districts have been applied to providing and maintaining private community roads. You indicated that the community roads in the special taxing districts have been included in the County’s road inventory for purposes of SHA’s computation of the County’s allocation of highway user revenues and that the County has shared a portion of those revenues with the homeowners associations.

II Analysis

The question has now arisen whether a homeowners association in Calvert County may apply directly to SHA for a share of the State highway user revenues with respect to its special taxing district. In our view, the answer to this question turns on whether the special taxing district is an “eligible municipality” for purposes of the law governing highway user revenues and whether its roads qualify as “county roads” under that law.

A. Whether a Special Taxing District is an “Eligible Municipality”

As noted above, an “eligible municipality” is “a municipality authorized by law to construct or maintain streets or roads.” TR §8-401(c-1). There appears to be no question that the special taxing districts in Calvert County are authorized by PLL §4-101 to maintain local roads. You question whether they qualify as “municipalities.”

The term “municipality” is defined for purposes of the statute as “any municipal corporation, special taxing district, or other political subdivision of this State other than a county or Baltimore City.” TR §8-401(e) (emphasis added).¹⁷ While the phrase “special taxing district” is not defined in the highway user law, the reference to “any” such district indicates that the General Assembly intended that the definition be broadly inclusive.

The legislative history of the definition of “municipality” also indicates that the phrase should be construed liberally. Even before enactment of the highway user revenue statute, the General Assembly had authorized the allocation of gasoline tax revenues to support roads in special taxing areas, both by general legislation as well as by legislation applicable to specific counties. See Article 89B, §§ 9(b) and 9A(2) (1939 and 1943 Supp.). The General Assembly had also provided for direct allocations to individual municipalities. *Id.*, §14A (Town of Midland).

In 1947, the Legislature first enacted a definition of “municipality” for purposes of the highway user revenue law. The statute provided:

¹⁵ The enabling legislation also addresses the documentation that must accompany the petition from the homeowners association, the procedures for adoption of an ordinance establishing a special taxing district, the collection of taxes levied in the district, the transfer of funds to the homeowners association, and the use and monitoring of funds transferred to a homeowners association. PLL §§4-101 through 4-104. The General Assembly recently amended the law to address the disposition of funds remaining in a special taxing district when it is terminated. Chapter 729, Laws of Maryland 2010, adding PLL §4-103(d).

¹⁶ The two homeowners associations established as special taxing districts identified in your letter are Drum Point and Chesapeake Ranch Estates. See Code of Calvert County §136-24 *et seq.* (as amended by Ordinance 24-09) and §136-42 *et seq.*, respectively.

¹⁷ Somewhat redundantly, the term “political subdivision” also encompasses special taxing districts. It is defined to include: “(1) [a]ny county or municipal corporation; and (2) [u]nless the context requires otherwise, any special taxing district.” TR §1-101(k) (emphasis added).

[t]he word “municipality” shall mean any municipality, special taxing area, district, or other political subdivision of this State other than a county or Baltimore City.

Chapter 560, §14, Laws of Maryland 1947, *codified at* Annotated Code of Maryland, Article 89B, §9(g) (emphasis added). Thus, as originally enacted, the definition encompassed a “special taxing area” as well as a “special taxing district.”¹⁸ The Legislature has used the phrases “special taxing area” and similar terms sometimes to refer solely to public entities and sometimes to encompass geographical areas not associated with a particular entity. See 89 *Opinions of the Attorney General* 107, 109 n.4 (2004). The reference in the definition to “any” special taxing district or area indicates that the General Assembly was using the phrase in this context without any special limitation. Moreover, when the Legislature has intended to limit the universe of special taxing districts to which a law applies, it has often done so explicitly. See, e.g., Annotated Code of Maryland, Article 26, §1(b) (defining “governmental entity” as a special taxing district with specified characteristics).

After its initial enactment, the definition of “municipality” was reworded solely for stylistic purposes when it was recodified as part of the new Transportation Article in 1977. Chapter 13, §2, Laws of Maryland 1977. There was no evident purpose to narrow the definition. It has not subsequently been amended.

The special taxing districts formed in Calvert County pursuant to PLL §4-101 *et seq.* thus appear to fall within the definition of “eligible municipality” under the highway user revenue law. However, whether or not these special taxing districts qualify as “eligible municipalities” under TR §8-401, there is a more fundamental barrier to the direct allocation of highway user revenues to them.

B. Whether the Roads in the Special Taxing Districts are “County Roads”

You indicated that the roads in question are private community roads. This raises the question whether a special taxing district, even if it qualifies as an “eligible municipality,” may obtain highway user revenues if it has only private roads.

This question is distinct from whether it is appropriate to finance such roads locally through a special taxing district. Private community roads qualify for inclusion in a special taxing district under PLL §4-101 because a homeowners association has authority over them. Accordingly, they are appropriately financed through special local taxes or assessments levied in the district coincident with the homeowners association. PLL §4-101(a)(2)(i) and (c). But

¹⁸ At that time, constitutional home rule for municipal corporations was not yet available, the option of code home rule for counties was unheard of, and no county had yet adopted charter home rule. As a result, the General Assembly would routinely enact and amend the charters for individual municipalities and public locals laws for every county. The General Assembly also established special taxing districts by public local law – entities that provided some municipal services, but that apparently stopped short of general purpose governments and that were sometimes referred to as “quasi-municipal corporation[s].” See *Barlow v. Friendship Heights Citizens’ Comm.*, 276 Md. 89, 92, 344 A.2d 415 (1975).

Several of these special districts continue to operate under local legislation enacted by the General Assembly. It is noteworthy that when the General Assembly amended the Express Powers Act applicable to charter counties and granted authority to create or modify special districts for any of the purposes enumerated in Article 25A of the Code, it excluded, subject to specific exceptions, authority to legislate for special districts governed by a citizen’s committee or commission elected or appointed independently of the county council. Article 25A, §5(O). Thus, the General Assembly has retained for itself authority to legislate for such districts. See *Barlow v. Friendship Heights Citizens’ Comm.*, 276 Md. at 90 n.1.

that does not resolve the eligibility of those roads for a subsidy from State highway user revenues.

Under TR §8-408(c), a municipality is authorized to spend highway user revenues for the “construction, reconstruction, or maintenance of roads and streets.” The terms “road” and “street” are both defined to mean “highway.” TR §8-101(o), (s). The term “highway” in turn is defined by the statute at some length, but without a clear indication whether it refers to public roads. TR §8-101(i).¹⁹

Other portions of the statute indicate that highway user funds are intended generally to finance public roads. The statutory allocation formulas for the distribution of funds to counties and municipalities do not take into account private community roads. Rather, they are based in part on the mileage of “county roads” within a county or municipality. TR §§8-404(b)(1), 8-405(c)(1). As noted earlier, a “county road” is a “public highway ... title to which or the easement for the use of which, is vested in a public body or government agency ...” TR §8-101(g). Thus, it is clear that the term does not extend to private community roads, even if such roads are accessible to the public. This suggests that State highway user funds distributed to municipalities are intended for public roads.

A review of the statute’s legislative history confirms this conclusion. When the predecessor of the current statute was first enacted in 1947, a municipality’s share of highway user revenues was based solely on the mileage of county roads in the municipality. Chapter 560, §14, Laws of Maryland 1947, then codified at Annotated Code of Maryland, Article 89B, §13(b). In other words, a municipality shared in highway user revenues only to the extent that it had “county roads.” A special taxing district or other municipality without any county roads would receive no funds. Then, as now, the definition of “county road” clearly referred to public roads of a local government entity. See Chapter 560, §12, Laws of Maryland 1947, then codified at Article 89B, §1A(d) (“The term ‘county roads’ means any public roads, excluding State roads, and including hard-surfaced or paved streets of municipalities (except Baltimore City), title to which, or the easement for the use of which, is vested in a public body or governmental agency by grant, condemnation, or dedication. ...”) (emphasis added).²⁰ The basis for this restriction is self-evident – absent a dedication or an appropriate easement, there could be no assurance that the roads would continue to be operated as public roads.

In 1968, the allocation formula for the local distribution of highway user revenues was modified to take account of motor vehicle registrations in each jurisdiction. Chapter 447, §3, Laws of Maryland 1968, now codified at TR §§8-404(b)(2), 8-405(c)(2). In our view, this change was not intended to allow highway user revenues to be used to subsidize private roads in municipalities. Rather, it appears more likely that the number of motor vehicle registrations was added to the existing formula as a proxy for the relative use that the roads

received – use that would necessitate the maintenance and reconstruction that the highway user funds were intended to finance.

It is also notable that the motor vehicle registration factor was simultaneously added to the formulas for both counties and municipalities. Yet, when the Legislature decided in 1979 to authorize a county to use the funds to maintain private roadways, it did so by separate specific legislation. See Chapter 195, Laws of Maryland 1979, codified at TR §8-408(b)(2)(ii) (authorizing use of highway user revenues for maintenance of private roads in Talbot County). Even then, the use of highway user revenues for that purpose was justified on the basis that the particular roads had been used by the public for 20 years or more. See Letter of Albert K. Wood, Talbot County Manager to Delegate William S. Horne (October 23, 1978).

Thus, in our view, only municipalities with “county roads” – that is, roadways for which the title or an easement is vested in a public body or governmental agency – may directly apply for an allocation of State highway user revenues.²¹

We understand that this interpretation is consistent with SHA’s administration of the statutes governing the distribution of highway user revenues to local governments. An agency’s interpretation of a statute it administers, though not binding on a court, ordinarily is entitled to considerable weight. See, e.g., *Crofton Convalescent Center, Inc. v. Dep’t of Health and Mental Hygiene*, 413 Md. 201, 215, 991 A.2d 1257 (2010). Although there are a number of instances in which a community that has retained title and responsibility for maintenance of its roads, but has received highway user revenues through its county, it is our understanding that SHA has required such communities to grant some form of easement to the county government in order to qualify for such funding.²²

III Conclusion

In summary, it is our opinion that the special taxing districts identified in your requests are not entitled to a direct allocation of highway user revenues. Unless the roads in those districts are dedicated or otherwise entrusted to a public body or government agency, they do not qualify for highway user revenue funding.

Douglas F. Gansler, Attorney General
William R. Varga, Assistant Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice
[11-04-16]

OPINIONS

December 13, 2010

The Honorable Martin O’Malley
Governor of Maryland

You have asked for our opinion concerning the issuance of a commission for a position on the Orphans’ Court for Baltimore City.

²¹ In 2007, the General Assembly also considered legislation which, among other things, would have expressed the intent of the Legislature that Calvert County accept an easement for public travel on highways in all special taxing districts and that such highways be included in the County’s road inventory for purposes of calculating highway user revenues. See Fiscal and Policy Note on House Bill 1077 (2007). However, this legislation did not pass.

²² We understand that, in determining allocations, SHA either omits community roads from a county’s inventory or classifies them as “other public roads” that are open to unrestricted travel, but not included as part of any county, municipal, or other publicly owned road system. In order for a road to qualify for highway user revenue funding, SHA requires an easement granting public access.

¹⁹ “Highway” includes:

- (1) Rights-of-way, roadway surfaces, roadway upgrades, shoulders, median dividers, drainage facilities and structures, related stormwater management facilities and structures, roadway cuts, roadway fills, guardrails, bridges, highway grade separation structures, railroad grade separations, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, and other structures forming an integral part of a street, road, or highway, including bicycle and walking paths; and
- (2) Any other property acquired for the construction, operation, or use of the highway.

TR §8-101(i)

²⁰ The definition was incorporated in the new Transportation Article without substantive change in 1977 and has remained so to this day. Chapter 13, §2, Laws of Maryland 1977.

At the election this past November, the voters approved a constitutional amendment that requires judges of the Orphans' Court for Baltimore City to be members of the Maryland bar. At the same election a candidate not admitted to practice law in Maryland received a sufficient number of votes to be elected to the Orphans' Court for Baltimore City. You ask whether the State Constitution permits the issuance of a commission to that individual under these circumstances.

In our opinion, the issuance of a commission in these circumstances would be at odds with the Maryland Constitution. Accordingly, the commission should not be issued.¹

I Background

A. *Constitutional Qualifications for Orphans' Court Judges*

Until recently, the only constitutional qualifications to be a judge of an Orphans' Court in 21 counties and Baltimore City were citizenship and residence in the jurisdiction for at least one year preceding the election.² Maryland Constitution, Article IV, §40. The Constitution did not require that Orphans' Court judges be members of the bar. *Kadan v. Board of Supervisors of Elections*, 273 Md. 406, 329 A.2d 702 (1974). However, during its most recent session, the General Assembly enacted a constitutional amendment adding bar membership as a qualification for Orphans' Court judges in Baltimore City. Chapter 481, Laws of Maryland 2010. The relevant provision now reads:

The qualified voters of the City of Baltimore shall elect three judges of the Orphans' Court for Baltimore City who shall be citizens of the State and residents, for the twelve months preceding, in Baltimore City and who have been admitted to practice law in this State and are members in good standing of the Maryland Bar.

Maryland Constitution, Article IV, §40(b). The voters ratified the amendment at the November 2010 election and, in accordance with Article XIV, §1, of the Constitution, the Governor proclaimed it effective on December 1, 2010.

B. *2010 Election for Baltimore City Orphans' Court*

At the November 2010 general election – the same election at which voters ratified the constitutional amendment concerning qualifications of Orphans' Court judges – the voters of Baltimore City elected three individuals as judges of the Orphans' Court. Two of the successful candidates were incumbent judges who are members of the Maryland bar. The third successful candidate, Ramona Moore Baker, is not admitted to practice law in Maryland.³

The Board of State Canvassers has certified the results of the election and the question is now presented as to whether a commission may issue to Ms. Baker in light of the constitutional amendment.

II Analysis

We address first the question whether the constitutional amendment precludes an individual from serving as a judge on the Orphans' Court for Baltimore City when the amendment was not effective at the time the individual ran for election. Second, we consider how the answer to that question affects the issuance of a commission to a successful candidate.

A. *Whether Bar Membership is a Continuing Qualification*

As outlined above, an individual must now be a member of the Maryland bar in order to be eligible to serve as an Orphans' Court judge in Baltimore City. The general rule is that eligibility for an office is a continuing requirement. It has been stated as follows:

Eligibility to public office is of a continuing nature and must exist at the commencement of the term of office and during the occupancy of the office. *The fact that a candidate may have been qualified at the time of his or her election is not sufficient to entitle him or her to hold the office, if at the time of the commencement of the term or during the continuance of the incumbency he or she ceases to be qualified.*

63C Am.Jur.2d *Public Officers and Employees* §56 (2009) (emphasis added). See also 67 C.J.S. *Officers and Public Employees* §25 (“One who is not eligible is not regarded as elected to office, although having received the highest number of votes cast ...”). Although there are no Maryland cases directly on point, the Court of Appeals has employed the same reasoning to hold that the appointment of a person as a justice of the peace who failed to satisfy the constitutional requirements for the position was a “nullity.” *Kimble v. Bender*, 173 Md. 608, 622-23, 196 A. 409 (1938).⁴

It might be argued that the language of the particular constitutional provision concerning qualifications of Orphans' Court judges limits its application to the time of election. In particular, in describing the qualifications of an Orphans' Court judge, Article IV, §40 states that “[t]he qualified voters ... shall elect” an individual with the specified qualifications.⁵ Even when a qualification for office is stated with respect to an election, it is usually deemed to be continuing in nature. *Dorf v. Skolnik*, 280 Md. 101, 115-16, 371 A.2d 1094 (1977); 80 *Opinions of the Attorney General* 269 (1995); see also *State ex rel. Fugina v. Pierce*, 209 N.W. 693 (1926) (membership in bar a continuing qualification for elected county judge, even though provision referred to qualifications “at the time of election”).

The legislative history of the bill confirms that it was designed to codify the practice of having lawyers serve as Orphans' Court judges in Baltimore City. Proponents of the bill included the Maryland Association of the Judges of the Orphans' Courts, the Estate and

⁴ In *Kimble*, the Court held that, until the individual was found to be ineligible, his official acts would remain valid under the “*de facto* officer” doctrine. 173 Md. at 622-23.

⁵ The Constitution uses a variety of phrasings to describe the qualifications for various constitutional offices. Some constitutional provisions speak directly in terms of eligibility. See Article II, §5 (“A person to be eligible for the office [of Governor or Lieutenant Governor]...”), Article III, §9 (“A person is eligible to serve [as a legislator]...”), Article V, §10 (“No person shall be eligible to [be State’s Attorney]...”). Other provisions simply state qualifications as mandates. See Article IV, §2 (“The Judges of all of the said Courts shall be ...”). The specification of qualifications for sheriff is phrased in language somewhat similar to that for Orphans' Court judges: “There shall be elected in each county ... one person, resident in said county..., above the age of twenty-five years, and for at least five years preceding his election a citizen of the State ...” Article IV, §44.

¹ We thus agree with the conclusion previously reached by Assistant Attorney General David K. Hayes on this question. See Letter of Assistant Attorney General David K. Hayes to Judge Joyce M. Baylor-Thompson (July 8, 2010).

² In Montgomery and Harford counties, the circuit court performs the functions of an Orphans' Court. Maryland Constitution, Article IV, §20(b).

³ We understand that Ms. Baker has not contended that she is a member of the Maryland bar. In any event, her lack of bar membership is readily determinable from the Court of Appeals website. See <http://mdcourts.gov/cpf/attylist.html> (last visited on December 10, 2010).

Trust Law Section of the Maryland State Bar Association, and the Baltimore City delegation. Testimony in support of the bill noted that, for many years, the judges in Baltimore City had all been members of the bar and that the nature of the cases before that court required legal knowledge and analysis. *See* Letter to House Judiciary Committee from Maryland Association of the Judges of the Orphans' Courts concerning House Bill 417 (February 17, 2010). At a hearing on the Senate version of the bill, proponents explained that it was designed to ensure that future judges would have similar legal training and to foreclose service by a lay person. Recording of hearing before Senate Judicial Proceedings Committee on Senate Bill 770 (March 9, 2010).

It would thus be consistent with both the usual construction of qualifications for office and with the purpose of the constitutional amendment to treat bar membership as a continuing qualification for Orphans' Court judges in Baltimore City.

B. Whether a Commission Should Issue

Once the results of an election are certified, the Governor issues commissions to the successful candidates and the candidates then take the oath of office. Maryland Constitution, Article IV, §11; *Magruder v. Tuck*, 25 Md. 217 (1866). The issuance of a commission by the Governor is a largely ministerial act. *Magruder v. Swann*, 25 Md. 173, 208-9. For example, if there is a contest over the results of an election of a judge, the Governor is to issue the commission and refer the contest to the House of Delegates. Maryland Constitution, Article IV, §12; *Ijams v. Duvall*, 85 Md. 252, 36 A. 819 (1897).

In this instance, however, there is no contest over the election. There is no dispute that Ms. Baker garnered the requisite number of votes to win one of the three Orphans' Court seats at issue in the election. There is also no dispute that she lacks one of the constitutional qualifications for the position. Accordingly, as indicated above, she cannot serve as an Orphans' Court judge in Baltimore City. In these circumstances, the issuance of a commission to her, although a ministerial act, would be at odds with the State Constitution.

The Florida Supreme Court considered whether a commission should issue in a case involving very similar facts. *In re Advisory Opinion to the Governor*, 192 So.2d 757 (1966). In that case, an individual was elected a circuit judge at the same election at which the voters ratified an amendment to the state constitution that rendered him ineligible for the position. (The amendment required that a judge have been a member of the state bar for at least five years; the candidate had been a member of the state bar for only four years). The court held that, given that the candidate no longer possessed the qualifications for the office, the Florida governor was not authorized to sign a commission for the candidate. *Id.* at 759. In our view the Maryland Constitution requires the same result.

**III
Conclusion**

For the reasons stated above, it is our opinion that a commission should not be issued to a successful candidate who indisputably lacks a continuing qualification for Orphans' Court judge in Baltimore City.

Douglas F. Gansler, Attorney General
Robert N. McDonald, Chief Counsel, Opinions and Advice
[11-04-17]

The Judiciary

COURT OF APPEALS OF MARYLAND

SCHEDULE

Thursday, March 3, 2011
Bar Admissions

- AG 40 Attorney Grievance Commission of Maryland v. (2009 T.) John Joseph Zodrow
No. 54 Olusegun Ogundipe v. State of Maryland
No. 91 State of Maryland v. Helen L. Holton
No. 87 Troy A. Jones, Jr. v. State of Maryland
No. 88 Robert Lee Thomas v. State of Maryland

Friday, March 4, 2011

- AG 15 Attorney Grievance Commission of Maryland v. Gary Francis Stern
No. 90 Andre Devon Arthur v. State of Maryland
No. 85 Altadis U.S.A., Inc., et al. v. Prince George's County, Maryland, et al.
No. 93 Steven Hill, Terri Alston, Charles Yates & Jason Hernandez v. State of Maryland

Monday, March 7, 2011

- AG 3 Attorney Grievance Commission of Maryland v. Jagjot Singh Khandpur
No. 84 Montgomery County, Maryland, et al. v. Edward Shropshire, et al.
No. 97 Tonya Walker v. Department of Housing and Community Development
No. 95 James Doe v. Mary Roe

Tuesday, March 8, 2011

- No. 142 East Oliver Street Limited Partnership v. (2009 T.) Mayor & City Council of Baltimore
No. 92 Waymon Anderson v. State of Maryland
No. 89 600 North Frederick Road, LLC v. Burlington Coat Factory of Maryland, LLC
No. 94 Policarpio Espinoza Perez & Adan Canela v. State of Maryland

On the day of argument, counsel are instructed to register in the Clerk's Office no later than 9:30 a.m. unless otherwise notified.

After March 8, 2011, the Court will recess until April 7, 2011.

BESSIE M. DECKER
Clerk

[11-04-39]

COURT OF SPECIAL APPEALS

SCHEDULE FOR MARCH 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 2011

Tuesday, March 1, 2011
Courtroom No. 1

- No. 02028/09 Maryland Automobile Insurance Fund vs. Charles John et al.
No. 00052/10 David Goodenough vs. Lisa Mandes Smith
No. 02086/09 Donald J. Spargo et al. vs. RAMS, LLC.
No. 02824/09 U.K. Construction & Management, LLC vs. Patricia Gore
No. 02811/09 Joseph Joyner vs. Shaun E. O'Toole, Administrator of the Estate of Norman Payne
No. 02189/09 Peggy E. Smith et vir vs. Sang Ho Kim

Courtroom No. 2 — University of Baltimore School of Law

- No. 02214/09 Freddie Jackson vs. State of Maryland
No. 00429/10 Richard Carlos Sanchez vs. State of Maryland
No. 02719/09 Jennifer Nelson vs. Emmanuel Nelson
No. 01788/09** Rachel Leiman Weinfeld vs. Kenneth J. Loewinger et al.
No. 00181/10** Rachel Leiman Weinfeld vs. Kenneth J. Loewinger et al.
No. 00008/10 Thurman B. Jones, Jr. et al. vs. County Council of Prince George's County, Maryland, Sitting as the District Council, et al.
No. 02915/09 David Turner etc. et al. vs. University of Maryland Medical System Corp.

**Consolidated Cases

Wednesday, March 2, 2011
Courtroom No. 1

- No. 01672/09 Daymar Lydell Wimbish vs. State of Maryland
No. 02770/09 Mary Katherine Daughton vs. Maryland Automobile Insurance Fund
No. 02504/09 Steven Darryl Green vs. Cheryl Keen Green
No. 02293/09 Kevin Antoine Mitchell vs. Housing Authority of Baltimore City
No. 02213/09 Aaron Roberts vs. State of Maryland

Courtroom No. 2

- No. 02552/09 Charles W. Long, Jr. et al. vs. Dan R. Mastromarco et ux.
No. 00206/10 Joanie S. Bradford vs. State of Maryland
No. 00046/10** Freeland Legacy Alliance et al. vs. Baltimore County, Maryland et al.
No. 00047/10** Freeland Legacy Alliance et al. vs. Shelley Middletown Road Holdings, LLC et al.
No. 00347/10 Kevin Titus Garnett, Jr. vs. State of Maryland
No. 01917/09 Alton Anthony Banks vs. State of Maryland

**Consolidated Cases

Thursday, March 3, 2011Courtroom No. 1

No. 02344/09 Linda Ann Senez vs. Ann Collins et vir
 No. 02707/09 Ocean Pines Association, Inc. vs. Mid-Delmarva
 Family Y.M.C.A., Inc.

No. 01723/09 Michael Greene vs. State of Maryland
 No. 00987/10 Steven Darryl Green vs. Cheryl Keen Green

Courtroom No. 2

No. 00048/10 Joseph Floria et ux. vs. Twin Lakes Community
 Association, Inc. vs.

No. 01724/10* In Re: Adoption/Guardianship of Michael S.
 No. 02561/09 Zee Corporation et al. vs. Terri Lynn Kulp
 No. 00156/10 Michael Neal Weiss vs. State of Maryland
 No. 00888/10 Eric Espinosa vs. State of Maryland

*8-207(a)

Friday, March 4, 2011Courtroom No. 1

No. 02934/09 Shailendra Kumar, M.D., P.A. vs. Anand M.
 Dhanda

No. 01818/10 John C. Davies vs. State of Maryland
 No. 02914/09 Jose G. Centeno vs. Dean Portney et al.
 No. 00133/10 Justin Gimble vs. State of Maryland
 No. 00191/10 Nathaniel Smith vs. State of Maryland

Courtroom No. 2

No. 00026/10 William S. Dize vs. Association of Maryland Pilots
 No. 00049/10 Robert V. DeSantis et al. vs. First National Wealth
 Management, Trustee of the John W. Giepe and
 Louise Geipe Revocable Trust, et al.

No. 02478/09 Brittany Leineigh Barkley vs. State of Maryland
 No. 02446/09 Randall Fergus Hutton vs. State of Maryland
 No. 01609/10* In Re: Adoption/Guardianship of Daphane M.

*8-207(a)

Monday, March 7, 2011Courtroom No. 1

No. 02861/09 Russell Rosen, Individually, etc. et al. vs. BJ's
 Wholesale Club, Inc.

No. 00057/10 Jules G. Korner, IV vs. Hallie Stone
 No. 00418/10 Keisha Johnson vs. State of Maryland
 No. 02450/09 Superior Home Works, Inc. et al. vs. Zurich
 American Insurance Company ex rel. James
 Pinkney

No. 02305/09 Allen P. Shurkin vs. Lois A. Shurkin

Courtroom No. 2

No. 02795/09 Melvin Rawles vs. Board of Education of Prince
 George's County

No. 02867/09 Caton Realty Company vs. Manekin, LLC
 No. 00394/10* Tiffany Hall vs. Roberto Alvarez
 No. 00042/10 Carole L. Cuppett vs. Timothy W. McGibney et al.
 No. 00003/10 Tasheara Brogdon et al. vs. Walter I. Weber et al.

*8-207(a)

Tuesday, March 8, 2011Courtroom No. 1

No. 00054/10 Joseph Voltolina vs. Property Homes, LLC
 No. 00060/10 Arthur W. Lambert et al. vs. Mayor and City
 Council of Baltimore et al.

No. 00006/10 Wetlands Aberdeen, LLC vs. Karen R. Heavey
 et al.

No. 02506/09 Donna Barnes-Duncan vs. Lane Potkin, Substitute
 Trustee

No. 02791/09 Kathy Mesbahi et al. vs. Maryland State Board of
 Physicians

Courtroom No. 2

No. 00071/10 Anne Arundel County, Maryland vs. John L.
 Vogel, Jr.

No. 02864/09 Richard Dimont vs. Montgomery County,
 Maryland

No. 02837/09 Manganaro Midatlantic, LLC etc. vs. Management
 Recruiters of Sioux Falls, LLP

No. 02792/09 State Department of Assessments and Taxation vs.
 Baltimore Gas & Electric Company

Wednesday, March 9, 2011Courtroom No. 1

No. 00065/10 Charles N. Nwangewo vs. Baltimore City
 Department of Social Services

No. 02044/10* In Re: Gabriel G., Tatayna B. and Jaheim B.
 No. 02794/09* Virginia Mae House vs. David Alvin Tichinel
 No. 00045/10 Charlotte Vargas vs. Constar Plastics et al.
 No. 01671/09 Victor Jan Morrison vs. State of Maryland

*8-207(a)

Courtroom No. 2

No. 00138/10 Christopher Lawson a/k/a Charles Owens vs. State
 of Maryland

No. 00220/10 Qi Lui vs. The Maryland-National Capital Park and
 Planning Commission et al.

No. 02925/09 Fahim Mohammad Rafiq vs. Extra Space Storage,
 Inc. et al.

No. 02274/09** Wendy Dawn Swan vs. State of Maryland

No. 02992/09** Wendy Dawn Swan vs. State of Maryland

No. 01127/09 Michael Wallace vs. State of Maryland

**Consolidated Cases

Thursday, March 10, 2011Courtroom No. 1

No. 01931/09 Damian Joseph Alexander vs. State of Maryland
 No. 02835/09 Peter Swyka et ux. vs. The Conservation Fund et al.

No. 02862/09 Uduak J. Ubom et al. vs. SunTrust Bank

No. 02765/09 Alex Myers vs. Baltimore County Department of
 Social Services et al.

No. 00994/10 PNC Bank, National Association vs. Steven F.
 Schwat

Courtroom No. 2

No. 00059/10 Genesis International Holdings, Ltd. et al. vs.
 Northrop Grumman Systems Corporation et al.

No. 02683/09 Kelvin Cousar vs. State of Maryland

No. 02315/09 Marc S. Moskowitz vs. Fran R. Moskowitz

No. 02382/09 Marcus Anderson vs. State of Maryland

No. 00040/10 Mori Associates, Inc. vs. Allied Technologies and
 Consulting, LLC

Friday, March 11, 2011

All cases submitted on brief

Courtroom No. 1

No. 02788/09 Kenneth D. Walker et al. vs. Chula Vista Farms,
 LLC

No. 02821/09 Marie B. LaRoche vs. Department of Labor,
 Licensing and Regulation et al.

THE JUDICIARY

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No. 02832/09 Marcel L. Bouchez et ux. vs. Roy C. Kline et al.
No. 02645/09 Adrian A. Britton vs. State of Maryland
No. 02669/09 Edward Thornton vs. State of Maryland
No. 02670/09 Anthony Chever vs. State of Maryland
No. 02674/09 Karriem S. Dunbar vs. State of Maryland
No. 02684/09 Reginald T. Hayward vs. State of Maryland
No. 02782/09 Latresha L. Weems vs. State of Maryland
No. 02844/09 William Alphonso Emerson vs. State of Maryland

Courtroom No. 2

No. 01733/09 Kaleel Satchell vs. State of Maryland
No. 00839/10 Melie Manning Bacon vs. State of Maryland
No. 00532/10 Liley Lee Gordon vs. State of Maryland
No. 02053/10* In Re: Na'imah S.
No. 02544/06 Mark David Preston vs. State of Maryland
No. 02571/08 Leonard Haney vs. State of Maryland
No. 00468/09 Shawn Dickey vs. State of Maryland
No. 00656/09 Devin Jermaine Fields vs. State of Maryland
No. 01126/09 Lawrence Mosley vs. State of Maryland
No. 01365/09 James S. Clark vs. State of Maryland

*8-207(a)

Monday, March 14, 2011

All cases submitted on brief

Courtroom No. 1

No. 02900/09 Kayode Tani-Olu vs. Montgomery County Sheriff's Office et al.
No. 02942/09 Anthony M. Holland vs. Department of Labor, Licensing and Regulation et al.
No. 00015/10 Edar Rogler et al. vs. Diane Rogler-Goodman
No. 02873/09 Deontay Smith a/k/a Daryl Fletcher vs. State of Maryland
No. 02889/09 Thomas Hutchinson vs. State of Maryland
No. 03010/09 Antoni Robert Pedzich vs. State of Maryland
No. 03012/09 Lauron Zacharie Hoyle vs. State of Maryland
No. 03023/09 Larry Dwayne Sweeney, Jr. vs. State of Maryland
No. 00080/10 Siobhan S. Beckett-Adkins vs. State of Maryland

Courtroom No. 2

No. 00461/10 Steven Ernest Hester a/k/a Damani Muata Nantambu vs. State of Maryland
No. 00693/10* Ahmad El vs. Cynthia Peet
No. 01158/09 Ricky A. Walker vs. Secretary, Department of Public Safety and Correctional Services
No. 02039/09 Larry Elliott Anthony, Jr. vs. State of Maryland
No. 02051/09 Gregory Imes, Jr. vs. State of Maryland
No. 01416/10* In Re: Robert J.
No. 02154/09 Dontanyon Tyrie Taylor vs. State of Maryland
No. 02212/09 Michael Andrews vs. State of Maryland
No. 02339/09 Mark Terrill Rich vs. State of Maryland

*8-207(a)

Tuesday, March 15, 2011

All cases submitted on brief

Courtroom No. 1

No. 00062/10 Daniel George vs. Kay Management Company, Inc.
No. 00651/10 Anthony John Cherry vs. David R. Blumberg et al.
No. 00114/10 Christopher Cooke vs. State of Maryland
No. 00132/10 Michael Johnson vs. State of Maryland
No. 00135/10 Munther Saleh Haddad vs. State of Maryland
No. 00139/10 Reginald Stringfellow vs. State of Maryland
No. 00146/10 April Johnson vs. State of Maryland
No. 00161/10 Rick Delon Britton vs. State of Maryland

No. 00790/10 Theodore Ronald Reed vs. State of Maryland
No. 02628/09 Antoinette Jean Richardson vs. State of Maryland

Courtroom No. 2

No. 02495/09 Union Baptist Development Corp. et al. vs. Union Baptist Church et al.
No. 02365/09 Darnell L. Chappel a/k/a Durrell Chappell vs. State of Maryland
No. 02326/09 Sherron Cheatham et al. vs. Othello Marrisssa Nelson
No. 02618/09 Ivan Maurice Lynch vs. Department of Public Safety and Correctional Services, Division of Correction
No. 02370/09 Edward Palmer vs. State of Maryland
No. 02423/09 Lamont Anthony Johnson vs. State of Maryland
No. 02473/09 Christopher Hutchinson vs. State of Maryland
No. 02490/09 Rodney Patrick Morton vs. State of Maryland
No. 02625/09 Kareem Eugene Hunt vs. State of Maryland
No. 02644/09 Roland Charleau vs. State of Maryland

On the day of argument, counsel are instructed to register in the Office of the Clerk no later than 9 a.m. The Court is located at 361 Rowe Boulevard, in the Robert C. Murphy Courts of Appeals Building. After March 15, 2011, the Court will recess until April, 2011.

LESLIE D. GRADET
Clerk

ADMINISTRATIVE ORDER

Pursuant to Maryland Rule 8-522(a), I hereby direct that oral argument in the month of March be limited to 20 minutes per side, subject to the discretion of the hearing panel to allow additional argument, not exceeding a total of 30 minutes per side.

This directive applies only to cases scheduled in March, 2011.

Chief Judge's signature appears on original Administrative Order

Dated: January 25, 2011

[11-04-28]

ADMINISTRATIVE OFFICE OF THE COURTS

Court Appointed Special Advocate (CASA) Notice of Funding Availability

The Department of Family Administration at the Administrative Office of the Courts is requesting applications for Court Appointed Special Advocate (CASA) Grants. The grants, designed to improve the management of family law cases and support a spectrum of services to families involved in the legal system are administered by the DFA.

Subject to the provision of funds for Fiscal Year 2012, grants will be awarded to CASA programs which enhance the experience of families and children involved with Maryland's legal system. Grant applications are due March 21, 2011.

For more detailed information, please review the Notice of Funding Announcement and Grant Guidelines found on the Department of Family Administration's website: www.courts.state.md.us/family/grantadmin.html or call 410-260-1739.

Post/Release Date: February 4, 2011

Application Due Date: March 21, 2011

[11-04-41]

Special Project Notice of Funding Availability

The Department of Family Administration at the Administrative Office of the Courts is requesting applications for Special Project Grants. Subject to the provision of funds for Fiscal Year 2012 grants will be awarded to State and local courts and governments within the State of Maryland, non-profit organizations, and institutions of higher education within the State of Maryland that work in collaboration with the courts to increase access to justice and enhance the experience of families and children involved with Maryland's legal system.

The Special Projects grant category funds a broad range of programs, including but not limited to, those in the following categories: Domestic Violence, Juvenile Justice, Foster Care, and Alternative Dispute Resolution. Priority is given to programs previously funded, but new projects will also be considered.

For more detailed information, please review the Notice of Funding Announcement and Grant Guidelines found on the Department of Family Administration's website: www.courts.state.md.us/family/grantadmin.html or call 410-260-1739.

Post/Release Date: February 4, 2011

Application Due Date: March 21, 2011

[11-04-42]

Regulatory Review and Evaluation

Regulations promulgated under the Administrative Procedure Act will undergo a review by the promulgating agency in accordance with the Regulatory Review and Evaluation Act (State Government Article, §§10-130 — 10-139; **COMAR 01.01.2003.20**). This review will be documented in an evaluation report which will be submitted to the General Assembly's Joint Committee on Administrative, Executive, and Legislative Review. The evaluation reports have been spread over an 8-year period (see **COMAR 01.01.2003.20** for the schedule). Notice that an evaluation report is available for public inspection and comment will be published in this section of the Maryland Register.

TITLE 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Availability of Evaluation Reports

Pursuant to Executive Order 01.01.2003.20, Implementation of the Regulatory Review and Evaluation Act, notice is hereby given that the Evaluation Reports concerning COMAR 10.18, 10.47—10.49, and 10.51—10.52 are available for public inspection and comment for a period of 60 days following the date of this notice.

These reports may be reviewed at the Office of Regulations Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, Maryland 21201, Monday through Friday, 7 a.m. to 4 p.m., except State holidays, or on-line at www.dhmf.state.md.us/regs/html/evalrpt.htm.

Information may be obtained by contacting Michele Phinney at (410) 767-6499 or regs@dhmf.state.md.us.

[11-04-12]

Emergency Action on Regulations

Symbol Key

- Roman type indicates text existing before emergency status was granted.
- *Italic type* indicates new text.
- [Single brackets] indicate deleted text.

Emergency Regulations

Under State Government Article, §10-111(b), Annotated Code of Maryland, an agency may petition the Joint Committee on Administrative, Executive, and Legislative Review (AELR), asking that the usual procedures for adopting regulations be set aside because emergency conditions exist. If the Committee approves the request, the regulations are given emergency status. Emergency status means that the regulations become effective immediately, or at a later time specified by the Committee. After the Committee has granted emergency status, the regulations are published in the next available issue of the Maryland Register. The approval of emergency status may be subject to one or more conditions, including a time limit. During the time the emergency status is in effect, the agency may adopt the regulations through the usual promulgation process. If the agency chooses not to adopt the regulations, the emergency status expires when the time limit on the emergency regulations ends. When emergency status expires, the text of the regulations reverts to its original language.

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 06 SALES AND USE TAX

03.06.01 Sales and Use Tax

Authority: Tax-General Article, §§11-102 and 11-226, Annotated Code of Maryland

Notice of Emergency Action

[11-092-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulation **.44** under **COMAR 03.06.01 Sales and Use Tax**.

Emergency status began: January 20, 2011.

Emergency status expires: May 20, 2011.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

.44 Tax-Free Weekend for Certain Energy Efficient Equipment.

A. Definitions.

(1) In this regulation, the following terms have the meaning indicated.

(2) Terms Defined.

(a) “Compact fluorescent light bulb” means a fluorescent light bulb that has been compressed into the size of a standard-issue screw-in incandescent light bulb.

(b) “Energy Star product” means an air conditioner, clothes washer, clothes dryer, furnace, heat pump, standard size refrigerator, compact fluorescent light bulb, dehumidifier, boiler, or programmable thermostat that has been designated as meeting or exceeding the applicable Energy Star efficiency requirements developed by the U.S. Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.

(c) “Solar water heater” means a system composed of equipment designed to heat water by the use of solar energy.

(d) “Standard size refrigerator” means a refrigerator with a factory-built, self-contained cabinet that is marketed for use in a private residence or household, whether or not used in a private residence.

B. Exempt Sales.

(1) The sales and use tax does not apply to the sale of a qualified Energy Star product or a solar water heater that is sold between 12:01 a.m. on the Saturday immediately preceding the third Monday in February and 11:59 p.m. on the third Monday of February, beginning in February 2011 and each February thereafter.

(2) Requirements for Exemption.

(a) The sale is considered made during the tax-free period if the contract of sale and payment for the product takes place during the specified period, even if delivery of the product is delayed until after the period.

(b) For lay-away sales, the sale will be considered to be made during the tax-free period if the contract of sale is entered into and the initial payment is made during the specified period and the product is removed from normal inventory and set aside for the purchaser at that time.

(c) A product purchased pursuant to a rain check is not eligible for exemption unless the contract of sale and payment for the product takes place during the specified period.

(d) The initial lease payment for a qualifying product will be exempt from sales and use tax if the lease agreement is entered into and the first payment is made during the specified period.

(e) For catalogue or internet sales, the sale will be considered to be made during the tax-free period if the transaction is completed, payment is made, and the vendor has taken action to immediately fulfill the order during the specified period.

(3) If sales and use tax is paid on the sale of an item that qualifies for exemption, the person paying the tax may apply to the Comptroller for a refund pursuant to COMAR 03.06.03.05.

(4) In addition to record-keeping requirements under Tax-General Article, §11-504, Annotated Code of Maryland, vendors and purchasers of Energy Star products and solar water heaters shall keep records or documentation identifying the items as meeting the requirements for the exemption under this regulation for a period of 4 years from the date of sale.

PETER FRANCHOT
Comptroller of the Treasury

Title 08

DEPARTMENT OF NATURAL RESOURCES

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§4-215 and 4-1009.1, Annotated Code of Maryland

Notice of Emergency Action

[11-091-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .13 under **COMAR 08.02.04 Oysters**.

Emergency status began: January 20, 2011.

Emergency status expires: March 31, 2011.

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

.13 Harvest Reserve Area — Definition and Listing.

A. (text unchanged)

B. Harvest Reserve Areas. *Notwithstanding Regulation .15 of this chapter, the following areas are harvest reserve areas:*

(1) Chester River.

(a) – (j) (text unchanged)

(k) *Old Field Reserve. The reserve consists of all of the waters of the area enclosed by a line beginning at a point defined by Lat. 39°4.785' N, Long. 76°10.172' W; then running 28° True to a point, defined by Lat. 39°5.24' N, Long. 76°9.863' W; then running 124° True to a point, defined by Lat. 39°5.161' N, Long. 76°9.71' W; then running 202° True to a point, defined by Lat. 39°4.666' N, Long. 76°9.972' W; then running 307° True to the point of beginning.*

(2) Choptank River.

(a) — (e) (text unchanged)

(f) *Oyster Shell Point Reserve. The reserve consists of all of the area enclosed by a line beginning at a point defined by Lat. 38°35.324' N, Long. 76°0.396' W; then running 23° True to a point, defined by Lat. 38°35.462' N, Long. 76°0.32' W; then running 128° True to a point, defined by Lat. 38°35.264' N, Long. 75°59.999' W; then running 200° True to a point, defined by Lat. 38°35.148' N, Long. 76°0.052' W; then running 303° True to the point of beginning.*

(g) *Harris Creek – Mill Point Reserve. The reserve consists of all of the waters of the area enclosed by a line beginning at a point defined by Lat. 38°44.229' N, Long. 76°18.175' W; then running 357° True to a point, defined by Lat. 38°44.315' N, Long. 76°18.18' W; then running 103° True to a point, defined by Lat. 38°44.285' N, Long. 76°18.017' W; then running 195° True to a point, defined by Lat. 38°44.15' N, Long. 76°18.063' W; then running 312° True to the point of beginning.*

(h) *Harris Creek — Walnut Reserve. The reserve consists of all of the waters of the area enclosed by a line beginning at a point defined by Lat. 38°45.669' N, Long. 76°18.496' W; then running 13° True to a point, defined by Lat. 38°45.74' N, Long. 76°18.475' W; then running 93° True to a point, defined by Lat. 38°45.734' N, Long. 76°18.343' W; then running 204° True to a point, defined by Lat.*

38°45.663' N, Long. 76°18.383' W; then running 274° True to the point of beginning.

(3) Eastern Bay[—].

(a) *Cox Neck Reserve. The reserve consists of all of the area of Crab Alley Bay enclosed by a line beginning at a point defined by Lat. 38°54.760' N, Long. 76°17.358' W; then running approximately 170° True to a point defined by Lat. 38°54.579' N, Long. 76°17.318' W; then running approximately 66° True to a point defined by Lat. 38°54.621' N, Long. 76°17.195' W; then running approximately 337° True to a point defined by Lat. 38°54.772' N, Long. 76°17.278' W; then running approximately 259° True to the point of beginning.*

(b) *Ringgold Middleground Reserve. The reserve consists of all of the waters of the area enclosed by a line beginning at a point defined by Lat. 38°54.32' N, Long. 76°18.53' W; then running 24° True to a point, defined by Lat. 38°54.39' N, Long. 76°18.49' W; then running 113° True to a point, defined by Lat. 38°54.37' N, Long. 76°18.43' W; then running 199° True to a point, defined by Lat. 38°54.3' N, Long. 76°18.46' W; then running 290° True to the point of beginning.*

(4) — (11) (text unchanged)

(12) *Nanticoke River — Wilson Shoal Reserve. The reserve consists of all of the waters of the area enclosed by a line beginning at a point defined by Lat. 38°17.231' N, Long. 75°55.401' W; then running 12° True to a point, defined by Lat. 38°17.477' N, Long. 75°55.332' W; then running 115° True to a point, defined by Lat. 38°17.413' N, Long. 75°55.161' W; then running 191° True to a point, defined by Lat. 38°17.18' N, Long. 75°55.221' W; then running 290° True to the point of beginning.*

JOHN R. GRIFFIN
Secretary of Natural Resources

Subtitle 02 FISHERIES SERVICE

08.02.04 Oysters

Authority: Natural Resources Article, §§4-11A-04 and 4-11A-05, Annotated Code of Maryland

Notice of Emergency Action

[11-059-E-I]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amend Regulation .17 under **COMAR 08.02.04 Oysters**.

Emergency status began: January 20, 2011.

Emergency status expires: July 19, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:3 Md. R. 161 — 162 (January 28, 2011), referenced as [11-059-P-I].

JOHN R. GRIFFIN
Secretary of Natural Resources

Title 14
INDEPENDENT AGENCIES
Subtitle 01 STATE LOTTERY AGENCY
14.01.10 Video Lottery Terminals

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

Notice of Emergency Action
[11-075-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to Regulation .20 under **COMAR 14.01.10 Video Lottery Terminals**.

Emergency status began: January 20, 2011.

Emergency status expires: July 19, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:3 Md. R. 206 — 207 (January 28, 2011), referenced as [11-075-P].

STEPHEN L. MARTINO
Director
State Lottery Agency

Title 26
DEPARTMENT OF THE
ENVIRONMENT

Subtitle 09 MARYLAND CO₂ BUDGET
TRADING PROGRAM

Notice of Emergency Action
[11-029-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to:

(1) Regulation .02 under **COMAR 26.09.01 General Administrative Provisions**; and

(2) Regulation .08 under **COMAR 26.09.02 Applicability, Determining Compliance, and Allowance Distribution**.

Emergency status began: February 1, 2011.

Emergency status expires: July 30, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:2 Md. R. 96—100 (January 14, 2011), referenced as [11-029-P].

ROBERT M. SUMMERS, Ph.D.
Acting Secretary of the Environment

Subtitle 11 AIR QUALITY

Notice of Emergency Action
[11-030-E]

The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to amendments to:

(1) Regulation .01 under **COMAR 26.11.01 General Administrative Provisions**;

(2) Regulations .01 and .12 under **COMAR 26.11.02 Permits, Approvals, and Registration**; and

(3) Regulation .14 under **COMAR 26.11.06 General Emission Standards, Prohibitions, and Restrictions**.

Emergency status began: January 2, 2011,

Emergency status expires: June 30, 2011.

Editor's Note: The text of this document will not be printed here because it appeared as a Notice of Proposed Action in 38:2 Md. R. 101—104 (January 14, 2011), referenced as [11-030-P].

ROBERT M. SUMMERS, Ph.D.
Acting Secretary of the Environment

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 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 46 BOARD OF OCCUPATIONAL THERAPY PRACTICE

10.46.04 Continuing Competency Requirement

Authority: Health Occupations Article, §§10-205 and 10-311, Annotated Code of Maryland

Notice of Final Action

[10-330-F]

On January 19, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.02** and **.04—06** under **COMAR 10.46.04 Continuing Competency Requirement**. This action, which was proposed for adoption in 37:24 Md. R. 1671—1674 (November 19, 2010), has been adopted as proposed.

Effective Date: February 21, 2011.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Title 11

DEPARTMENT OF TRANSPORTATION

Subtitle 11 MOTOR VEHICLE ADMINISTRATION — ADMINISTRATIVE PROCEDURES

11.11.05 Motor Vehicle Fees

Authority: Transportation Article, §§12-104(b) and 12-301, Annotated Code of Maryland

Notice of Final Action

[10-280-F]

On December 17, 2010, the Administrator of the Motor Vehicle Administration adopted amendments to Regulation **.03** under **COMAR 11.11.05 Motor Vehicle Fees**. This action, which was proposed for adoption in 37:21 Md. R. 1456—1457 (October 8, 2010), has been adopted as proposed.

Effective Date: February 21, 2011.

JOHN T. KUO
Administrator
Motor Vehicle Administration

Title 14

INDEPENDENT AGENCIES

Subtitle 01 STATE LOTTERY AGENCY

14.01.10 Video Lottery Terminals

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

Notice of Final Action

[10-344-F]

On January 31, 2011, the Maryland State Lottery Agency adopted amendments to Regulations **.03** and **.16** under **COMAR 14.01.10 Video Lottery Terminals**. This action, which was proposed for adoption in 37:26 Md. R. 1816 (December 17, 2010), has been adopted as proposed.

Effective Date: February 21, 2011.

STEPHEN L. MARTINO
Director
State Lottery Agency

Title 31

MARYLAND INSURANCE ADMINISTRATION

Subtitle 09 LIFE INSURANCE AND ANNUITIES

31.09.14 Retained Asset Accounts

Authority: Insurance Article, §§2-109(a), 12-208, and 16-108, Annotated Code of Maryland

Notice of Final Action

[10-319-F]

On January 4, 2011, the Acting Insurance Commissioner adopted amendments to Regulation **.05** under **COMAR 31.09.14 Retained Asset Accounts**. This action, which was proposed for adoption in 37:24 Md. R. 1696 (November 19, 2010), has been adopted as proposed.

Effective Date: February 21, 2011.

ELIZABETH SAMMIS
Acting Insurance Commissioner

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 07

DEPARTMENT OF HUMAN RESOURCES

Subtitle 01 OFFICE OF THE SECRETARY

07.01.04 Administrative Hearings

Authority: Human Services Article, §§5-303, 5-408, and 5-501; State Government Article, §§9-1607.1, 9-1607.2, and 10-201—10-222; Family Law Article §§10-108.1—10-108.4, 10-112.1, 10-113, 10-113.1, 10-113.2, 10-114, 10-119, 10-119.3, and 12-102.3; and Transportation Article, §11-203;

Annotated Code of Maryland;

Agency Note: Federal Regulatory Reference: 7 CFR §§273.15 and 273.16, and 45 CFR §§303.32c(5), 303.72 and 303.105; and 42 U.S.C. §666(a)(17) and (c)(1)(G)(ii)

Notice of Proposed Action

[11-063-P]

The Secretary of Human Resources proposes to amend Regulation .03 under **COMAR 07.01.04 Administrative Hearings**.

Statement of Purpose

The purpose of this action is to add the interception of abandoned property to the appeals that an obligor can request at the Office of Administrative Hearings.

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 Andrea Shuck, Acting Regulations Coordinator, Department of Human Resources, Office of Government, Corp. and Comm. Affairs, 311 W. Saratoga Street, Suite 270, Baltimore, Maryland 21201, or call 410-767-2149, or email to AShuck@dhr.state.md.us, or fax to 410-333-0637. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.03 Appeal Request.

A.—B. (text unchanged)

C. Child Support Enforcement Appeals. An individual may request a hearing or a record review when the agency:

(1) Has caused the interception or offset of all or part of the individual's State tax refund, *abandoned property*, or *any payment due to the obligor* from the Comptroller of the Treasury, or lottery prize as a result of an arrearage in child support;

(2)—(6) (text unchanged)

D.—K. (text unchanged)

BRIAN WILBON

Interim Secretary of Human Resources

Subtitle 07 CHILD SUPPORT ENFORCEMENT ADMINISTRATION

07.07.01 Child Support Enforcement — Definitions

Authority: Family Law Article, §§10-113, 10-113.2, 10-114, and 12-102, Annotated Code of Maryland;

Agency Note: Federal Regulatory Reference—42 U.S.C. §652(f)

Notice of Proposed Action

[11-065-P]

The Secretary of Human Resources proposes to amend Regulation .02 under **COMAR 07.07.01 Child Support Enforcement — Definitions**.

Statement of Purpose

The purpose of this action is to amend the definitions of certify and intercept by the State Comptroller to include abandoned property and any payment due the obligors who owe certain child support arrears.

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 Andrea Shuck, Acting Regulations Coordinator, Department of Human Resources, Office of Government, Corp. and Comm. Affairs, 311 W. Saratoga Street, Suite 270, Baltimore, Maryland 21201, or call 410-767-2149, or email to AShuck@dhr.state.md.us, or fax to 410-333-0637. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(3-1) (text unchanged)

(4) "Certify" means to furnish the name, other identification, and amount of arrearage of an individual owing a delinquent support obligation for:

(a)—(c) (text unchanged)

(d) A lottery intercept; [or]

(e) *Abandoned property*;

(f) *Any payment due to the obligor*; or

[(e)] (g) (text unchanged)

(5)—(14) (text unchanged)

(15) "Intercept" means the action of the:

(a) State Comptroller in withholding all or a part of:

(i) [a] A State income tax refund due a taxpayer; [or]

(ii) *Abandoned property*; or

(iii) *Any payment due to the obligor*; or

(b) (text unchanged)

(16)—(38) (text unchanged)

BRIAN WILBON

Interim Secretary of Human Resources

Subtitle 07 CHILD SUPPORT

ENFORCEMENT ADMINISTRATION

07.07.08 State [Tax Refund] Comptroller Intercept Program

Authority: Family Law Article, §§10-113 and 10-113.2, Annotated Code of Maryland

Notice of Proposed Action

[11-064-P]

The Secretary of Human Resources proposes to adopt new Regulation .01 and to amend and recodify existing Regulations .01—

.05 to be Regulations .02—.06 under COMAR 07.07.08 State Comptroller Intercept Program.

Statement of Purpose

The purpose of this action is to amend the chapter title; add a scope and purpose section; define terms; and establish a procedure for the Child Support Enforcement Administration to receive from the Comptroller abandoned property and any payment due to an obligor.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. In State Fiscal Year 2011, General Fund revenues are estimated to decrease by approximately \$500,000 to reflect a reduction in abandoned property held by the State Comptroller. The Comptroller's Office, the Department of Human Resources, and the Office of Administrative Hearings can implement the requirements of the program with existing resources.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:		
State Comptroller's Office (R-)		\$500,000
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

B. In FY 2011, the Comptroller's general fund revenue will decrease by approximately \$500,000 to reflect a reduction in abandoned property held by the State. In subsequent fiscal years, there will be a minimal reduction in abandoned property that cannot be estimated at this time.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Acting Regulations Coordinator, Department of Human Resources, Office of Government, Corp. and Comm. Affairs, 311 W. Saratoga Street, Suite 270, Baltimore, Maryland 21201, or call 410-767-2149, or email to AShuck@dhr.state.md.us, or fax to 410-333-0637.

Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.01 Purpose and Scope.

A. This chapter establishes the procedures of the Child Support Enforcement Administration for identifying and reporting certain delinquent child support obligors to the Comptroller for interception of:

- (1) State tax refunds;
- (2) Abandoned property; and
- (3) Any payment due to the obligor.

B. The interception by the Comptroller of these payments is to satisfy child support arrears.

[.01] .02 Definitions.

A. In this chapter, the following [term has] terms have the [meaning] meanings indicated.

B. Terms Defined.

(1) "Abandoned property" means any personal property delivered to the Comptroller as abandoned by any person.

(2) "Comptroller" means the Comptroller of the Treasury [Income Tax Division].

[.02] .03 Duties of the Administration.

A. The Administration shall annually certify to the Comptroller child support obligations which are:

- (1) More than \$150 [or more] in arrears; and
- (2) Owed on cases in which the [custodial parent] obligee is receiving services under Title IV-D of the Social Security Act.

B. The certification shall include, if known, the name of the [noncustodial parent] obligor, Social Security number (when known), the total amount of accumulated arrears, the address, case number, and any known alias of the person certified, and the name of the [custodial parent] obligee.

C. Written Notice of Certification.

(1) The Administration shall send a written notice of the certification to the [noncustodial parent] last known address of the obligor at least 30 days before certification.

(2) The notice shall advise the [noncustodial parent] obligor of the:

- (a)—(c) (text unchanged)

D.—E. (text unchanged)

F. In a case certified for non-TCA arrears only, the Administration shall remit the intercepted amount to the [custodial parent] obligee within 30 days after its receipt from the Comptroller, if no appeal of intercept is made.

G. The Administration shall deduct a fee of \$10 before distributing [an intercepted amount] a tax refund to any non-TCA [custodial parent] obligee. However, the fee may not exceed 25 percent of the amount otherwise to be distributed to the [custodial parent] obligee.

[.03] .04 Duties of the Comptroller of the Treasury.

A.—C. (text unchanged)

D. If a match is made between a taxpayer eligible for a tax refund and a certified obligor, the Comptroller shall determine whether the refund or the arrears due the obligee or the Administration are greater. If the refund is equal to or less than the arrears due, the Comptroller shall pay the full refund to the Administration. If the refund is greater than the arrears, the Comptroller shall pay only that portion of the refund to the Administration which is equal to the arrears. The Comptroller shall pay the remainder of the refund to the obligor.

E.—H. (text unchanged)

I. The Comptroller shall:

(1) Withhold the amount of the arrears from abandoned property or any payment due to the obligor;

- (2) Remit the amount withheld to the Administration; and
- (3) Notify the obligor of:
 - (a) The amount paid to the Administration; and
 - (b) The right to appeal the intercept:
 - (i) To the Office of Administrative Hearings; and
 - (ii) Pursuant to Regulation .06 of this chapter.

[.04] .05 Investigation.

A. (text unchanged)

B. The Administration may decline to investigate a complaint under the following conditions:

- (1) The complaint concerns an issue other than the existence or the amount of the arrears; [or]
- (2) The complaint requesting an investigation was received more than 15 days from the date the notification of certification was sent to the obligor for a tax refund; or
- (3) The complaint requesting an investigation was received more than 30 days from the date the notification of certification was sent to the obligor for abandoned property or any payment due to the obligor.

C.—D. (text unchanged)

[.05] .06 Appeals.

A. Appeal Rights and Restrictions.

(1) A certified obligor has the right to appeal the intercept of all or part of the obligor's tax refund, abandoned property, or any payment due to the obligor.

(2)—(4) (text unchanged)

B. Remedies.

(1)—(2) (text unchanged)

(3) If the administrative law judge determines that the tax refund, abandoned property, or any payment due to the obligor remitted to the Administration is in excess of the arrears as of the date of the review or hearing, the Administration shall remit the excess to the obligor within 30 days of the date of the decision.

BRIAN WILBON
Interim Secretary of Human Resources

Title 09
DEPARTMENT OF LABOR,
LICENSING, AND
REGULATION
Subtitle 13 BOARD FOR
PROFESSIONAL LAND SURVEYORS
09.13.06 Minimum Standards of Practice

Authority: Business Occupations and Professions Article, [§15-308(b)(4)] §15-208(b)(4), Annotated Code of Maryland

Notice of Proposed Action

[11-086-P]

The Board for Professional Land Surveyors proposes to amend Regulation .12 under **COMAR 09.13.06 Minimum Standards of Practice**. This action was considered by the Board for Professional Land Surveyors at a public meeting held November 3, 2010, notice of which was given by publication in 37:22 Md. R. 1588—1589 (October 22, 2010), pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to strengthen the existing titleblock rules by requiring that a licensee who signs and seals surveying documents add a professional certification to the effect that the documents have been prepared by him or her or under his or her responsible charge, and would also state the licensee's license number and the license expiration date.

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 Pamela J. Edwards, Assistant Executive Director, Board for Professional Land Surveyors, 500 N. Calvert Street, Room 308, Baltimore, MD 21202, or call 410-230-6263, or email to pamedwards@dllr.state.md.us, or fax to 410-333-0021. Comments will be accepted through April 6, 2011. A public hearing will be held, April 6, 2011 at 11 a.m., 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202.

Open Meeting

Final action on the proposal will be considered by the Board for Professional Land Surveyors during a public meeting to be held on April 6, 2011, at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202.

.12 Business Practices.

A. — G. (text unchanged)

H. *When signing and sealing surveying documents, a licensee shall place the following certification on such documents:*

"Professional Certification. I hereby certify that these documents were prepared by me or under my responsible charge, and that I am a duly licensed [professional land] [property line] surveyor under the laws of the State of Maryland, License No. _____, Expiration Date _____."

JOHN V. METTEE III
Chair

Board for Professional Land Surveyors

Subtitle 23 BOARD FOR PROFESSIONAL ENGINEERS

09.23.01 Procedural Regulations

Authority: Business Occupations and Professions Article, §§14-205 and 14-208; State Government Article, §10-204; Annotated Code of Maryland

Notice of Proposed Action

[11-085-P]

The Board for Professional Engineers proposes to amend Regulation .04 under COMAR 09.23.01 Procedural Regulations. This action was considered at a public meeting held on November 8, 2010, notice of which was given by publication in the Daily Record on November 1, 2010, pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to ensure that applicants for engineering licensing examinations are committed to the licensing process by requiring those applicants who failed the licensing examination three times to submit documentation to the Board indicating their updated engineering-related experience. The experience must be acquired during the statutorily required 2-year waiting period that an applicant must comply with in the event of a three-time exam failure. This action is intended to encourage applicants who are experiencing difficulties with passing the examination to continue on improving their technical skills and to amplify their chances of passing the licensing examination. Other nonsubstantive changes reflect the updated name of the national examination provider and formalize the deadline for submission of an application to take the Fundamentals of Engineering exam.

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 Pamela J. Edwards, Assistant Executive Director, Board for Professional Engineers, 500 N. Calvert Street, Room 308, Baltimore, MD 21202, or call 410-230-6263, or email to pamedwards@dllr.state.md.us, or fax to 410-333-0021. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the Board for Professional Engineers during a public meeting to be held on April 14, 2011, 9 a.m., at 500 N. Calvert Street, Third Floor Conference Room, Baltimore, MD 21202.

.04 Examinations.

A. All examinations, except by specific action of the Board to the contrary, shall be those developed by the National Council of Examiners [of Engineers and Surveyors] *for Engineering and Surveying*.

B. The deadline for submission of applications to take the examination for the first time is [120 calendar days before the examination date.] *as follows:*

- (1) 60 calendar days before the *Fundamentals of Engineering examination date; and*
- (2) 120 calendar days before the *Principles and Practice of Engineering examination date.*

C. As of this filing deadline, applications which are not complete in all respects, as detailed in the most current application form, may not be reviewed for that examination.

[C.] D. — [D.] E. (text unchanged)

F. *An applicant who fails an examination three times may take the examination again only if the applicant complies with the requirements set forth in Business Occupations and Professions Article, §14-309, Annotated Code of Maryland, and submits to the Board documentation that is acceptable to the Board indicating the applicant's updated work experience.*

HOWARD C. HARCLERODE
Chairman
Board for Professional Engineers

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 07 HOSPITALS

10.07.05 Residential Service Agencies

Authority: Health-General Article, Title 19, Subtitle 4A, Annotated Code of Maryland

Notice of Proposed Action

[11-090-P]

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulations .01—.08 in their entirety and adopt new Regulations .01—.28 under **COMAR 10.07.05 Residential Service Agencies**.

Statement of Purpose

The purpose of this action is to update the regulations for residential service agencies (RSAs) to incorporate current practices, to clarify standards and licensing requirements, and to establish sanctions for noncompliance with the regulations of this chapter. As people increasingly receive care in the community rather than in facilities, residential service agencies have emerged as a fast-growing and increasingly relied-upon source of health care services.

This new chapter includes:

- (1) Stronger professional requirements of the owners of RSAs;
- (2) Sanctions for falsely advertising the agency prior to licensure;
- (3) The opportunity to dispute statements of deficiencies;
- (4) Clear expectations of the responsibilities of the governing authority, policies and procedures, complaint process, and training requirements;
- (5) The responsibilities of the registered nurse and the supervision of the certified and uncertified nursing aides;
- (6) Detailed explanation of the development of the care plan;
- (7) Information regarding informed consent and waived services by a cognitively capable adult;
- (8) Nurse supervision requirements;
- (9) What needs to be in the clinical record, including standards for care notes, maintenance of client records, and a comprehensive list of client rights and responsibilities; and
- (10) Multiple sanctions and penalties that could be imposed if harm or egregious findings are identified during the survey process.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposal includes a \$50 administrative fee when a licensee changes information that requires issuance of a new license. There is also a revisit fee of \$250 assessed upon the Department's need to conduct a second or third announced prelicensure survey when the agency agreed upon and was unprepared for its first announced prelicensure survey. Penalties and sanctions included in the regulations only apply to those licensees that fail to comply with the regulations of this chapter. The proposed regulations should have no meaningful fiscal impact on licensees because these regulations clarify standards, incorporating current practices. Residential service agencies are increasingly relied upon to provide in-home nursing and assistance with the activities of daily living. Current standards of the Board of Nursing require nursing oversight of many of these tasks. These regulations clarify

that some nursing oversight is required, while allowing clients, with informed consent, to contract for lesser care and for there to be no nursing oversight for companion and other non-health related services. The new fee for amending a license only applies to licensees that require this service. Penalties and sanctions apply only to those licensees that fail to comply with the regulations. Current license fees have not changed.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
<hr/>		
A. On issuing agency:		
(1) License amendments	(R+)	\$1,500
(2) Penalties	(R+)	\$4,000
(3) Sanctions	(R+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
<hr/>		
D. On regulated industries or trade groups:		
(1) License amendments	(-)	\$1,500
(2) Penalties	(-)	\$4,000
(3) Sanctions	(-)	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.)

A(1) and D(1). About 30 licensees each year change company name, address, or services resulting in the need for issuance of a new license. The \$50 fee for issuing a corrected license covers administrative costs.

A(2) and D(2). The Department estimates that it would likely impose four \$1,000 fines per year upon residential service agencies for operating without a license for a total of \$4,000.

A(3) and D(3). The fiscal impact of sanctions for noncompliance with regulations is indeterminable. The Department may impose a single sanction or multiple sanctions against an agency depending upon the nature and severity of the deficiency or deficiencies found during an inspection and the agency's noncompliance history.

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:

Individuals with disabilities who receive services from a residential service agency will be better assured that care complies with standards.

Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.01 Purpose.

The purpose of this chapter is to establish minimum standards for licensure of residential service agencies that conduct business in Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Activities of daily living" means normal daily activities including:

- (a) Eating or being fed;
- (b) Grooming, bathing, oral hygiene including brushing teeth, shaving, and combing hair;
- (c) Mobility, transferring, ambulation, and access to the outdoors, when appropriate;
- (d) Toileting; and
- (e) Dressing in clean, weather-appropriate clothing.

(2) "Agency" means a residential service agency as defined in §B(25) of this regulation.

(3) "Branch office" means a satellite office of a residential service agency that:

(a) Is operated by the same person, corporation, or other business entity that manages the parent residential service agency; and

(b) Along with the parent residential service agency has the same:

- (i) Ownership tax identification number as the parent residential service agency;
- (ii) Upper-level management;
- (iii) Policies and procedures; and
- (iv) Services within the same geographic area as the parent residential service agency.

(4) "Certified care" means a service or services that:

(a) May be performed for compensation only by an individual who is certified by the Board of Nursing, including a certified medication technician, a certified medicine aide, or a certified nursing assistant; and

(b) Include nursing functions that are routinely delegated by a registered nurse.

(5) "Certified medication technician" means an individual who:

(a) Has completed a Board-approved medication technician training program;

(b) Is certified by the Board as a medication technician; and

(c) Only performs delegated nursing functions of medicine administration.

(6) "Certified medicine aide" means an individual who is:

(a) A certified nursing assistant who has completed a Board-approved course in medication administration; and

(b) Certified by the Board as a certified medicine aide.

(7) "Certified nursing assistant" means an individual, regardless of title, who:

(a) Routinely performs for compensation delegated nursing tasks which were delegated by a registered nurse or licensed practical nurse; and

(b) Is certified by the Maryland Board of Nursing as a certified nursing assistant.

(8) "Client representative" means an individual with legal authority to make decisions on behalf of the client as set forth in Regulation .13 of this chapter.

(9) "Clinical record" means a written account of all services provided to a client by the agency as well as all pertinent medical information necessary to provide care.

(10) "Department" means the Maryland Department of Health and Mental Hygiene.

(11) "Governing authority" means the individual, partnership, agency, group, corporation, or other entity that is designated to assume full responsibility for the policy determination, management, operation, and financial liability of the agency.

(12) "Home health care" includes any of the following services:

- (a) Audiology and speech pathology;
- (b) Dietary and nutritional services;
- (c) Drug services;
- (d) Home health aide;
- (e) Laboratory;
- (f) Medical social services;
- (g) Nursing;
- (h) Occupational therapy;
- (i) Physical therapy;
- (j) Provision of invasive medical equipment; and
- (k) Home medical equipment services.

(13) "Home medical equipment services" means the delivery, installation, maintenance, or replacement of, or instruction in the use of, medical equipment used by a sick or disabled individual to allow the individual to be maintained in a noninstitutional environment.

(14) "Household or family support services" means performance of tasks necessary to supplement an individual's ability to perform:

- (a) Child care for children who require no medical attention; or
- (b) Instrumental activities of daily living.

(15) "Informal dispute resolution conference (IDR)" means an informal meeting that provides a licensee the opportunity to question the Department about deficiencies cited on a recent inspection.

(16) "Informed consent" means the willing, uncoerced acceptance of medical intervention by a client or a client representative with legal authority to make health care decisions after adequate disclosure of the nature of the intervention, and its risks and benefits, as well as alternatives with their risks and benefits.

(17) "Instrumental activities of daily living" means:

- (a) Light housekeeping and home management;
- (b) Meal planning and preparation; or
- (c) Shopping and errands.

(18) "Intravenous therapy" means the provision of services and monitoring and instruction related to substances that are administered intravenously, including but not limited to:

- (a) Total parenteral nutrition (TPN);
- (b) Hydration therapy;
- (c) Chemotherapy;
- (d) Antibiotic therapy; and
- (e) Blood and blood products.

(19) "Invasive medical equipment" means a device that invades tissue or a body cavity for the purpose of maintaining treatment modalities, including but not limited to:

- (a) Intravenous lines, whether enteral or parenteral;
- (b) Catheters;
- (c) Ventilators;
- (d) Gastric or nasogastric tubes;
- (e) Tracheostomy; and
- (f) Ostomies.

(20) "Law enforcement agencies" mean the Maryland State Police or a police agency of a county or municipal corporation.

(21) "License" means a document issued by the Secretary to a person to operate a residential service agency in this State.

(22) "Medical equipment" means technologically sophisticated medical devices including but not limited to:

- (a) Oxygen and oxygen delivery systems;
- (b) Ventilators;
- (c) Respiratory disease management devices;
- (d) Electronic and computer-driven wheelchairs and seating systems;

(e) Apnea monitors;

(f) Transcutaneous electrical nerve stimulator (T.E.N.S.) units;

(g) Low air loss cutaneous pressure management devices;

(h) Sequential compression devices;

(i) Neonatal home phototherapy devices;

(j) Feeding pumps; and

(k) Electrically powered hospital beds.

(23) "Personal care provider under the Medical Assistance Personal Care Program" means an individual or personal care agency that has been approved by the Department as meeting requirements set forth in COMAR 10.09.20 and 10.09.36 to provide personal care services to individuals who are certified for and receiving Medical Assistance benefits.

(24) "Plan of correction" means a written response from the residential service agency that addresses each deficiency cited as a result of an inspection by the Department.

(25) Residential Service Agency.

(a) "Residential service agency" means:

(i) An individual, partnership, firm, association, corporation, or other entity of any kind that is engaged in a nongovernmental business of employing or contracting with individuals to provide at least one home health care service for compensation to an unrelated sick or disabled individual in the residence of that individual; or

(ii) An agency that employs or contracts with individuals directly for hire as home health care providers.

(b) "Residential service agency" does not include:

(i) A home health agency that is licensed under Health-General Article, Title 19, Subtitle 4, Annotated Code of Maryland;

(ii) An individual, partnership, firm, association, corporation, or other entity of any kind that is required to be licensed as a home health agency under Health-General Article, Title 19, Subtitle 4, Annotated Code of Maryland;

(iii) A home-based hospice care program that is licensed under Health-General Article, Title 19, Subtitle 9, Annotated Code of Maryland;

(iv) A hospital that is licensed under Health-General Article, Title 19, Subtitle 3, Annotated Code of Maryland;

(v) A related institution that is licensed under Health-General Article, Title 19, Subtitle 3, Annotated Code of Maryland;

(vi) A nursing referral service agency that is licensed under Health-General Article, Title 19, Subtitle 4B, Annotated Code of Maryland, that screens or refers individuals for a client's selection or rejection as its sole business operation, and does not itself provide any home health care service;

(vii) A personal care provider under the Medical Assistance Personal Care Program;

(viii) An individual practicing in a health occupation for which the individual is authorized to practice under Health Occupations Article, Annotated Code of Maryland;

(ix) A business entity consisting of a group of individuals licensed under the same title of Health Occupations Article,

Annotated Code of Maryland, which provides only that same, single, licensed health care service to its clients; or

(x) A residential rehabilitation services provider approved under regulations adopted under Health-General Article, §10-901, Annotated Code of Maryland.

(26) "Secretary" means the Secretary of Health and Mental Hygiene.

(27) Significant Change of Condition.

(a) "Significant change of condition" means a change in a client's health, functional, or psychosocial condition that causes either an improvement or a deterioration in a client's condition.

(b) "Significant change of condition" does not include any ordinary, day-to-day fluctuations in health status, function, or behavior or an acute short-term illness, such as a cold, unless these fluctuations continue to reoccur.

(28) "Skilled care" means a service or services that may be provided only by an individual who:

(a) Is licensed under Health Occupations Article, Annotated Code of Maryland; and

(b) Exercises specialized knowledge, judgment, and skill.

(29) "Skilled services" means services provided by or under the supervision of a registered nurse and in accordance with the plan of treatment.

(30) "Waiver of services" means an informed agreement by a competent adult client to receive certified care or skilled services that are less than the level of care that is recommended by the licensee or a representative of the licensee.

.03 License Required.

A. A person, partnership, corporation, association, or other entity may not conduct or operate an agency in this State without first obtaining a license from the Secretary and complying with the regulations of this chapter.

B. An agency that provides only household or family support services as defined in Regulation .02B(14) of this chapter does not require licensure.

C. Separate License Required.

(1) Except as provided in §C(2) of this regulation, a separate license is required for each agency.

(2) A branch office may operate under the same license of the agency.

D. Posting of a License. The licensee shall display the agency's current license in a conspicuous place, at or near the entrance of the agency's office.

E. This chapter does not preclude an agency from operating with independent contractors.

.04 Licensing Procedures.

A. Application for License.

(1) To obtain and maintain a license, an applicant shall meet all of the requirements of:

(a) This chapter; and

(b) Other applicable federal, State, and local laws and regulations.

(2) An applicant shall submit:

(a) An application on a form developed by the Department;

(b) Verification that the applicant or corporate representative is 21 years old or older;

(c) Documentation of any prior denial, suspension, or revocation of a license or certification to provide care to third parties;

(d) Identification of any individual or corporate owner of a 25 percent or more interest in the agency;

(e) A current criminal background check and documentation of any conviction of the applicant or person identified in §A(2)(d) of this regulation;

(f) Ownership information as specified on an addendum to the application;

(g) Information concerning any license or certification held by the applicant under Health Occupations Article or Health-General Article, Annotated Code of Maryland, including prior or current operation of a similar health care program by the applicant;

(h) Disclosure of any criminal charges or convictions, and disclosure of any findings of violation of:

(i) Medicare and Medicaid laws and regulations;

(ii) Health-General Article, Annotated Code of Maryland; or

(iii) Health Occupations Article, Annotated Code of Maryland;

(i) Information demonstrating the financial or administrative ability to operate an agency in compliance with this chapter, which shall include at a minimum a business plan that contains a:

(1) 1-year operating budget;

(ii) Marketing plan that identifies the populations to be served; and

(iii) Detailed and specific description of agency services;

(j) Copies of the agency's policies and procedures as specified in Regulation .08B of this chapter;

(k) Proof of Workers' Compensation for all employees as required by the Maryland Workers' Compensation Commission; and

(l) A nonrefundable 1-year license fee of \$500 made payable to the Department.

B. Additional Requirements for Initial Licensure.

(1) If the applicant, owner, or person identified in §A(2)(d) of this regulation has had their license suspended or revoked by the Department that person may not own, operate, or manage another agency for 10 years without good cause shown. After 10 years, the applicant shall submit evidence to the Department that the applicant is capable of owning, managing, or operating an agency within the laws and regulations.

(2) If an applicant, owner, or person identified in §A(2)(d) of this regulation operates or manages an agency, that applicant, owner, or individual may not apply to open additional agencies, if the agency:

(a) Has had sanctions imposed within the last 2 years; and

(b) Has not achieved compliance with the regulations at the time of application for licensure.

(3) The Department reserves the right to deny licensure for a residential service agency to an applicant, an owner, or an individual identified in §A(2)(d) of this regulation, based on that person's prior:

(a) History of violations of residential service agency regulations; or

(b) Criminal history that the Department determines may be potentially harmful to clients.

C. The Department shall review all applications for licensure to determine whether the applicant:

(1) Can provide appropriate services to sick or disabled individuals who require care in the individuals' residence; and

(2) Meets the regulatory requirements of this chapter.

D. In addition to any other rights of inspection, before approving or denying an application for licensure, the Department may conduct an announced or unannounced on-site inspection of the agency.

E. Based on information provided to the Department by the applicant, the Secretary shall:

(1) Approve the application unconditionally;

(2) Approve the application conditionally, which may include, among other conditions, requiring:

(a) The applicant to use the services of a management firm approved by the Secretary; or

(b) A licensure term of less than 1 year; or

(3) Deny the application.

F. The Secretary may not require the use of a management firm for a period in excess of 24 months.

G. A person aggrieved by a decision of the Secretary under this regulation to deny a license application may appeal the Secretary's action by filing a request for a hearing consistent with Regulation .28 of this chapter.

H. Duration of License. A license is valid for 1 year from the date of issuance, unless:

(1) Surrendered, suspended, or revoked; or

(2) It is a provisional license as described in §J of this regulation.

I. License Renewal. A licensee shall submit to the Department:

(1) An application for license renewal;

(2) A nonrefundable 1-year license renewal fee of \$500 payable to the Department;

(3) Copies of any policies and procedures that have changed substantively since they were previously reviewed by the Department, including those relevant to:

(a) Handling of complaints made to the agency; and

(b) Evaluation and assessment of clients;

(4) Valid professional licenses and certificates for all current employees; and

(5) An annual data collection survey in the form and manner prescribed by the Secretary with each application for license renewal.

J. Licenses for Less than 1 Year.

(1) The Department may issue a provisional license if:

(a) The agency intends to provide services limited to skilled nursing and home health aid services; or

(b) The residential service agency is not in full compliance with this chapter, but, in the opinion of the Department, the:

(i) Noncompliance does not constitute a safety or health hazard; and

(ii) Applicant or licensee has submitted a plan of correction that is acceptable to the Department which satisfactorily addresses the correction of each deficiency within a timeframe acceptable to the Department.

(2) A provisional license may not be extended beyond its expiration date.

K. If an agency fails to comply with the regulations of this chapter and the Department needs to conduct more than one on-site precensure visit, the Department may:

(1) Charge \$250 per additional on-site visit; or

(2) Deny the license.

.05 Changes in an Agency That Affect the Operating License.

A. Change of Services or Name.

(1) During the licensure period, a licensee may not:

(a) Provide services for which it has not been approved to provide; or

(b) Change the name under which the program is doing business without the Department's approval.

(2) When the licensee wants to provide additional services which require a license under this chapter, before offering the services, the licensee shall submit to the Department:

(a) A new application and written request for a new license citing the additional services the agency wants to provide;

(b) Policies and procedures pertaining to the additional services the agency wants to provide; and

(c) An application fee as required by Health-General Article, §19-4A-03(c), Annotated Code of Maryland.

(3) When there is a change in name or address of the licensee, but no change of ownership, an amended license is required and the licensee shall pay \$50 for the issuance of an amended license.

(4) *Sale or Transfer of an Agency.*

(a) *If a sale or transfer of an agency causes a change in the person or persons who control or operate the agency, the agency is considered a new agency and the licensee shall apply for a new license and conform to all regulations applicable at the time of the transfer of operations.*

(b) *The transfer of any stock which results in a change of the person or persons who control the agency or the transfer of any stock in excess of 25 percent of the outstanding stock constitutes a sale.*

B. Voluntary Closure or Change of Residential Service Agency Ownership.

(1) *A licensee shall notify the Department in writing at least 45 days in advance of any intention to:*

- (a) *Voluntarily close;*
- (b) *Change ownership; or*
- (c) *Sell its agency.*

(2) *The licensee shall include the following information in the notice to the Department:*

(a) *The method for informing clients or client representatives, if applicable, of its intent to close, change ownership, or sell its agency; and*

(b) *The actions the licensee will take to assist clients in securing comparable services and assistance, if necessary.*

(3) *A licensee shall notify clients or client representatives, if applicable, of any proposed changes set forth in §B(1) of this regulation, in writing, at least 45 days before the effective date of the proposed change.*

(4) *Whenever ownership of an agency is transferred from the person or organization named on the license to another person or organization, the future owner shall apply for a new license. The future owner shall file an application for a license at least 45 days before the transfer.*

(5) *The Department shall issue a new license to a new owner who meets the requirements for licensure under this chapter. The former licensee shall return its license to the Department by certified mail.*

(6) *A licensee named in the original license remains responsible for the operation of the agency until a new license is issued to the new owner. The current licensee remains responsible for correction of all outstanding deficiencies and impending sanctions until a new license is issued to the new owner. After a new license is issued, the new owner shall become responsible for correction of all outstanding deficiencies and impending sanctions.*

(7) *In addition to the notice to the Department required by §B(1) and (2) of this regulation, after an agency closes, the licensee shall:*

- (a) *Notify the Department of the date of closure; and*
- (b) *Return all licenses, past and present, to the Department by certified mail.*

C. Changes to Licensure Information. A licensee shall immediately notify the Department of any change in the information the licensee had submitted with the most recent application.

D. License — Sale, Assignment, or Transfer. The license is valid in the name of the licensee to whom it is issued, and is not subject to sale, assignment, or other transfer.

E. If an agency fails to comply with §§A—D of this regulation, the Department may impose a fine of up to \$500 for each violation.

F. A license is void if the agency ceases to operate.

.06 Public Representation.

A. An agency shall include the following information in all of the agency's advertising and marketing materials:

- (1) *The agency's license number; and*

(2) *The statement "Licensed as a residential service agency by the Maryland Department of Health and Mental Hygiene, Office of Health Care Quality".*

B. Misleading or False Advertising.

(1) *A person may not advertise, represent, or imply to the public that an agency is authorized to provide a service that the agency is not licensed, certified, or otherwise authorized by the Department to provide under this chapter.*

(2) *A person may not advertise an agency in a misleading or fraudulent manner.*

(3) *A person licensed as an agency may not advertise that it is licensed as a hospice, home health agency, or nursing referral service agency unless it is separately licensed with the Department as such.*

C. A person who violates this regulation is subject to referral for criminal prosecution and imposition of civil money penalties in accordance with Regulations .21—.23 of this chapter.

.07 Inspection by the Department.

A. Residential Service Agency to be Open for Inspection.

(1) *The Department or its designee may conduct announced or unannounced licensure inspections or complaint investigations to ensure compliance with the requirements of this chapter.*

(2) *The agency shall be open for inspection by the Department during all hours identified in the agency's application as routine business hours.*

B. Access to Agency and Sites Where Services Are Offered. Upon the request of the Department, an agency shall:

(1) *Make its offices available for inspection during other than its routine business hours;*

(2) *Assist the Department in gaining access to sites where services are provided for the purpose of conducting inspections to:*

- (a) *Ensure that the agency is in compliance with the regulations of this chapter; and*
- (b) *Enable the Department to investigate and resolve complaints filed against the agency.*

C. Records and Reports.

(1) *Inspection.*

(a) *A licensee shall maintain records and reports to support compliance with the regulations of this chapter. All records and reports shall be open to inspection by the Department.*

(b) *Except for the records permitted to be stored off site, a licensee or licensee's designee shall immediately, upon request, provide copies of records and reports, including medical records of clients, to the Department. The Department shall, if requested, reimburse the licensee for the cost of copying records and reports.*

(2) *Maintenance.*

(a) *The residential service agency shall maintain files on site pertaining to:*

- (i) *Current clients;*
- (ii) *Clients that have been discharged within the last 12 months;*
- (iii) *Current staff;*
- (iv) *Staff that have been discharged within the last year; and*

(v) *Quality assurance activities.*

(b) *All other records may be stored off site, but shall be available for inspection within 24 hours of the Department's request.*

D. An agency shall make available upon request to clients, client representatives, potential clients, or federal, State, or local regulatory or law enforcement agencies any statements of deficiencies, reports, and plans of corrections.

E. Notice of Violations.

(1) *If a complaint investigation or survey inspection identifies a regulatory violation, the Secretary shall issue a notice:*

- (a) *Citing the violation or deficiency;*
- (b) *Requiring the residential service agency to submit an acceptable plan of correction within 10 calendar days of receipt of the notice of violation or deficiency;*
- (c) *Advising the residential service agency that failure to correct cited violations or deficiencies may result in sanctions; and*
- (d) *Offering the residential service agency the opportunity for an informal dispute resolution conference (IDR).*

(2) *The plan of correction referred to in §E(1)(b) of this regulation shall include the date by which the licensee shall complete the correction of each deficiency. Failure to return an acceptable plan of correction within the allotted timeframe may result in a sanction.*

(3) *When a licensee requests an IDR as provided in §F of this regulation, the licensee shall file a plan of correction within the required time, except to the extent that the licensee contests specific findings. If the licensee contests specific findings, absent the Department's directive, a licensee may delay submitting its plan of correction with respect to those specific findings until 5 days after the licensee is provided oral or written notice of the outcome of the IDR.*

F. Informal Dispute Resolution (IDR).

(1) *A licensee may request an informal dispute resolution conference (IDR) to question violations or deficiencies within 10 days of receiving the statement of deficiencies. The written request for an IDR shall fully describe the disagreement with the statement of deficiencies and be accompanied by any supporting documentation.*

(2) *At the discretion of the Office of Health Care Quality, the IDR may be held in person, by telephone, or in writing. In-person IDRs are informal in nature and are not attended by counsel.*

(3) *The IDR process may not delay the effective date of any enforcement action.*

.08 Administration.

A. Governing Authority.

- (1) *The agency shall have a governing authority.*
- (2) *The governing authority shall:*
 - (a) *Convene at least annually with management staff to review and advise the agency on policies; and*
 - (b) *Keep minutes, including:*
 - (i) *The participants of any meeting;*
 - (ii) *Agenda items considered; and*
 - (iii) *Actions taken.*

B. Policies and Procedures.

- (1) *An agency shall develop and implement policies and procedures, including but not limited to:*
 - (a) *Administration, limited to:*
 - (i) *Scope of services;*
 - (ii) *Delineation of services provided by the agency when the agency coordinates care within the agency or with another provider;*
 - (iii) *Notification to the client or client representative with legal authority to make health care decisions of the agency's responsibilities to coordinate care when appropriate;*
 - (iv) *Admission criteria;*
 - (v) *Assessment of potential clients before their acceptance into the program;*
 - (vi) *Billing and service records, maintenance of charges, and similar items, except for those clients receiving services through a managed-care health benefits plan or third party payor, in which case records are maintained as required by the third party payor;*
 - (vii) *Quality assurance program; and*

(viii) *Clinical management, including assessment, plans, delegation, and supervision;*

(b) *Personnel, including:*

- (i) *Job descriptions and educational qualifications for all employees and contractors;*
 - (ii) *Skill assessments of all employees and contractors;*
- and

(iii) *Health requirements for employees and contractors;*

(c) *Patient care, including:*

- (i) *Provision of home health care services and criteria for determining the need for skilled services;*
- (ii) *Administration of drugs;*
- (iii) *Enteral and parenteral nutrition procedures;*
- (iv) *Frequency of client monitoring; and*
- (v) *Training and retraining of clients or their family members, when indicated;*

(d) *Informed consent when:*

(i) *A client or client representative with legal authority to make legal decisions, signs an informed consent form consenting to changes to the agency's recommended plan of care; or*

(ii) *A client signs an informed consent form consenting to assistance by a nonlicensed individual with treatments of a routine nature, or with the self-administration of medications; and*

(e) *Environment and safety, including:*

- (i) *Preparation and storage of enteral formulas, intravenous therapies, other supplies, equipment, and similar items;*
- (ii) *Infection control procedures;*
- (iii) *Disposal of biomedical waste;*
- (iv) *Maintenance of equipment; and*
- (v) *Emergency procedures.*

(2) *The Department may waive the requirement of a policy and procedure that is required in §B of this regulation upon the agency's written explanation as to why the policy and procedure is inappropriate or unnecessary to the agency's specific operation.*

(3) *An agency that provides invasive equipment or supplies, such as intravenous therapy, shall arrange for 24-hour-a-day equipment maintenance service in case of equipment failure.*

.09 Complaint Process.

A. Internal Complaint Process. An agency shall institute an internal client complaint process that includes:

- (1) *Notice to the client or the client representative of the complaint process;*
- (2) *Protocols to investigate complaints; and*
- (3) *A mechanism for the receipt and timely investigation of written complaints that ensures that the client's services will not be disrupted due to the filing of a complaint.*

B. Internal Complaint Investigations.

- (1) *All investigation reports shall include:*
 - (a) *Time, date, place, and individuals involved;*
 - (b) *Complete description of the complaint;*
 - (c) *Disposition of the complaint; and*
 - (d) *Follow-up activities and steps taken to prevent its reoccurrence.*
- (2) *If the agency does not conduct a complaint investigation, the agency shall document in the complaint record the reason for not conducting an investigation.*
- (3) *An agency shall provide notice to the following persons regarding the disposition of a complaint:*
 - (a) *Client, or if the client is incompetent, the client representative;*
 - (b) *Client's physician, if needed; and*
 - (c) *Licensing or law enforcement agencies, when required by law.*

(4) An agency shall maintain records to support its internal complaint investigation process.

C. An agency shall provide notice to clients of the Department's complaint hotline number for complaints about services provided by the agency or services that the agency failed to provide.

D. Availability of Internal Investigation Reports.

(1) The agency shall make investigation reports available to the Department immediately upon request.

(2) An agency shall provide a summary report of any complaint investigation for public inspection, upon request, to the extent permitted by law.

.10 Employee, Independent Contractor, and Contractual Employee Requirements.

A. An agency shall develop and implement policies and procedures to screen a prospective employee, independent contractor, or contractual employee who will provide services to clients.

B. Screening.

(1) Screening shall include:

(a) A State criminal history records check or a private agency background check as required under Health-General Article, Title 19, Subtitle 19, Annotated Code of Maryland;

(b) Verification of current professional licensure or certification under Health Occupations Article, Annotated Code of Maryland;

(c) A basic health screening, including tuberculosis screening;

(d) Verification of references;

(e) Verification of employment history;

(f) Completion of I-9 forms for employment;

(g) Verification of identity and employment eligibility of an employee, independent contractor, or contractual employee;

(h) An in-person interview of an employee, independent contractor, or contractual employee before the individual is referred to clients; and

(i) Completion of a skills assessment and demonstration before client referral.

(2) An agency shall retain records of training in the personnel file.

C. An agency shall maintain records of information described in §B of this regulation for each employee, independent contractor, or contractual employee and retain the information in the agency's business office.

D. An agency may not knowingly provide or refer a caregiver who is not certified to provide services to a client unless the client:

(1) Does not require the caregiver to provide assistance with activities of daily living;

(2) Only requires assistance with activities of daily living and in the judgment of the supervising nurse, there are no predictable adverse health consequences; or

(3) Signs a waiver of skilled services form as required under Regulation .12D of this chapter.

E. An agency shall provide or refer a certified caregiver to a client who requires:

(1) A certified caregiver to perform activities of daily living; or

(2) Administration of medication.

F. If an agency is aware of an action or inaction by an individual who is provided or referred by the agency that may be grounds for action under Health Occupations Article, §§8-316 and 8-6A-10, Annotated Code of Maryland, the agency shall report the action or condition to the Board of Nursing and the Office of Health Care Quality immediately when the action or condition is known by the agency.

G. A nursing administrator, a registered nurse, a licensed practical nurse, and a certified nursing assistant shall have immunity from liability as described in Courts and Judicial Proceedings Article, §5-709, Annotated Code of Maryland, for making a report to the Board of Nursing as required under §F of this regulation. Other persons are entitled to the immunity from liability as described in the Courts and Judicial Proceedings Article, §5-708, Annotated Code of Maryland, for making a report to the Board of Nursing as required under §F of this regulation.

H. Use of Subcontract Agencies. If an agency subcontracts with another licensed agency to provide services, the subcontracting agency shall:

(1) Verify personnel information outlined in §B of this regulation; and

(2) Submit evidence to the contracting agency that verification has occurred.

.11 Training.

A. An agency shall ensure that individuals that are referred are trained appropriately to provide care that is needed by the agency's clients.

B. Sources other than the agency may provide training, as approved in writing by the Office of Health Care Quality.

C. At a minimum, training for individuals providing care in clients' homes shall include:

(1) Instruction and supervised practice in relevant personal care services of the sick or disabled at home;

(2) Identification of situations that require referral to a registered nurse, including significant changes in a client's condition;

(3) Record keeping;

(4) Ethical behavior and confidentiality of information;

(5) CPR;

(6) Standard precautions for infection control; and

(7) Prevention of abuse and neglect.

.12 Services Provided.

A. An agency shall take reasonable measures to ensure that all individuals who are referred to provide services to clients do so in accordance with Maryland laws and regulations, including but not limited to the Health Occupations Article, Annotated Code of Maryland.

B. Provision of Services.

(1) A registered nurse shall assess each new client who requires skilled services and assistance with the activities of daily living.

(2) The registered nurse shall also:

(a) Participate in developing the client's plan of care and in assigning appropriate personnel;

(b) Determine whether the client requires the services of a certified nursing assistant, or whether services may be provided by an individual who is not certified; and

(c) Participate in training and retraining the individuals who will provide the care, when indicated.

C. Plan of Care.

(1) A client's plan of care shall be based on assessments of the client's health, function, and psychosocial condition.

(2) An assessment of a client shall be completed:

(a) When the client is requesting or requiring services regulated by this chapter;

(b) Before the client receives services from the agency unless:

(i) The client does not request skilled care or skilled services; and

(ii) There is no reason to believe that the client requires skilled care or skilled services, such as discharge instructions requiring skilled care;

(c) Within 48 hours of when the client begins services when the client requires, including but not limited to:

- (i) Wound and catheter care;
- (ii) Treatment of stage three or stage four skin ulcers;
- (iii) Ventilator services;
- (iv) Skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or risk for, a fluctuating acute condition;
- (v) Monitoring of a chronic medical condition that is not readily controllable through available medications and treatments;
- (vi) Infusion therapy;
- (vii) Specialized intravenous therapies or nutrition support;
- (viii) Monitoring for being at high risk for health or safety complications which cannot be adequately managed; or
- (ix) A different level of care after notification of a significant change of condition;

(d) At the request of the client or the client representative;

(e) At least annually; and

(f) Except in the following circumstances:

- (i) Weather-related emergencies;
- (ii) Natural disasters; or
- (iii) Federal, state, or local declaration of an emergency.

(3) When a registered nurse determines in the nurse's clinical judgment that the client does not require an assessment within 48 hours of a significant change of condition as provided in §C(2)(c) of this regulation, the registered nurse shall:

- (a) Document the determination in the client's record; and
- (b) Ensure that an assessment of the client is conducted within 7 calendar days.

(4) The agency shall ensure that the care plan developed for the client at a minimum addresses:

- (a) The services to be provided to the client, which are based on the assessment of the client;
- (b) When and how often the services are to be provided;
- (c) How and by whom the services are to be provided;
- (d) Long-range and short-range goals for the client; and
- (e) Physical needs, including safety measures to protect against injury.

(5) Client care plans shall be reviewed by a registered nurse or another health care practitioner who is authorized to do so under Health Occupations Article, Annotated Code of Maryland, when appropriate.

D. Informed Consent.

(1) An adult client who is competent to make decisions or a client representative with legal authority to make health care decisions may consent to make changes to the agency's recommended plan of care.

(2) A cognitively capable adult client, but not a client representative with legal authority to make health care decisions, may waive the licensee's recommendation of certified care services to be provided in the adult client's home to assist with treatments of a routine nature, or with the self-administration of medications.

(3) A cognitively capable adult client may waive the licensee's recommended skilled care.

(4) Consents.

(a) The consent given under §D(1)–(3) of this regulation may be granted only after a discussion of the risks and benefits with the client or, if appropriate, the client representative with legal authority to make health care decisions. This discussion shall be reflected in an informed consent form.

(b) The informed consent form shall be:

- (i) Signed and dated by the client, or the client representative with legal authority over health care decisions; and
- (ii) Documented in the client's records.

(c) A form confirming a waiver of skilled services shall be signed by a cognitively capable adult client and maintained in the client's record.

(5) Client medications shall be administered in accordance with §F of this regulation.

E. Nursing Supervision.

(1) For clients who require skilled services or assistance with the activities of daily living, an agency shall have a registered nurse to provide oversight for:

- (a) Implementation of the care plan;
- (b) Delegation;
- (c) Supervision; and
- (d) Training.

(2) The registered nurse shall provide periodic, on-site supervision of care at least every 90 days unless the licensee administers medications to the client, in which case supervision shall occur at least every 45 days.

(3) The agency shall maintain accurate documentation of the supervision that is provided by the registered nurse.

F. Medication Administration. If agency employees, independent contractors, or contractual employees administer medications, the agency shall:

(1) Provide for administration of drugs and treatments by licensed or certified staff consistent with Maryland law and the client's plan of care, unless the client has executed an informed consent form under §D of this regulation;

(2) Provide for drugs and treatments to be administered only as ordered by the physician; and

(3) Document in the client's clinical record:

- (a) Medications administered or taken;
- (b) Medication errors; and
- (c) Adverse drug reactions and corrective action.

G. On-Call Services. The agency shall:

(1) Establish a procedure by which current clients or their representatives may contact a representative of the agency by telephone at any time, 24 hours a day and 7 days a week;

(2) Recognize and respond to emergency inquiries in a manner that is consistent with medical and nursing standards;

(3) Ensure that the call is directed to an individual for response as required by medical and nursing standards;

(4) Ensure that the individual responds to a telephone inquiry not later than 1 hour after the inquiry is received by the agency or sooner as necessitated by medical standards;

(5) Maintain a log of telephone inquiries that includes the identity of the response personnel, content of the inquiry, and the time of each inquiry; and

(6) Provide clients or the client representatives with written procedures and the phone number for on-call service.

.13 Client Representative.

A. An agency shall recognize the authority of:

(1) A guardian of the person under Estates and Trusts Article, §13-705, Annotated Code of Maryland;

(2) A guardian of the property under Estates and Trusts Article, §13-201, Annotated Code of Maryland;

(3) An advanced directive that meets the requirements of Health-General Article, §5-602, Annotated Code of Maryland;

(4) A surrogate decision maker with the authority under Health-General Article, §5-605, Annotated Code of Maryland;

(5) A power of attorney that meets the requirements of Estates and Trusts Article, Title 17, Annotated Code of Maryland;

- (6) A representative payee or other similar fiduciary; or
- (7) Any other person, if that person was designated by a client who was competent at the time of designation, and the client or client representative has provided the agency with documentation of the designation.

B. An agency may not recognize the authority of a client representative if the representative attempts to exceed the authority:

- (1) Stated in the instrument that grants the representative authority; or
- (2) Established by State law.

C. An agency shall:

- (1) Document in the client's record the name of the person, if any, with the authority identified in §A of this regulation; or
- (2) Include the documentation creating the authority in the record.

.14 Clinical Records.

A. With the exception of §B of this regulation, an agency shall ensure that a clinical record is maintained for each client in a manner that ensures security and confidentiality, and includes at a minimum:

- (1) The documentation required by §D of this regulation;
- (2) Any currently effective health care orders;
- (3) Nurse's assessment
- (4) Rehabilitation plans, if appropriate;
- (5) The care plan;
- (6) Medications administered or taken, including:
 - (a) Dosage;
 - (b) Route of administration; and
 - (c) Frequency;
- (7) History of sensitivities or allergic reactions;
- (8) Nutritional requirements, including specific dietary plans;
- (9) Medically necessary supplies and equipment;
- (10) Care notes;
- (11) The name, address, and telephone number of:
 - (a) The client's physicians; and
 - (b) The client representative; and
- (12) The following documents for each client upon discharge:
 - (a) Directions for the safe continuation of care after discharge; and
 - (b) If skilled services have been provided, a discharge summary that includes the reason for discharge.

B. An agency that provides care to clients who are assessed as not requiring certified caregivers or skilled services shall maintain a client record, including but not limited to:

- (1) Nursing assessment;
- (2) Plan of care;
- (3) Services provided;
- (4) Any significant change of condition; and
- (5) Any other pertinent information regarding the client being served.

C. An agency shall develop policies and procedures to ensure that all information relating to a client's condition or preferences, including any significant change of condition as defined in Regulation .02B(27) of this chapter, is documented in the client's record and communicated in a timely manner to:

- (1) The client;
- (2) The client representative, if appropriate; and
- (3) All appropriate health care professionals and staff who are involved in the development and implementation of the client's care plan.

D. Care Notes.

- (1) Appropriate staff shall write care notes for each client, at a minimum:
 - (a) On admission and at least weekly;

(b) Upon any significant changes in the client's condition; and

(c) When the care plan is modified.

(2) The agency shall ensure that all notes and reports that are entered in the clinical record, which may include an electronic record, are detailed, legible, chronological, dated, and signed with the name and title of the individual rendering the service.

E. The agency may accept orders for care with an electronic signature. Orders may be received by, but not limited to, mail, hand delivery, or facsimile transmission.

.15 Maintenance of Records.

A. The agency shall maintain a client's record for 5 years after the client is discharged. For a client younger than 18 years old, the agency shall maintain the client's record after discharge until the resident is 21 years old, or for 5 years after the record is made, whichever is later, except as otherwise provided in Health-General Article, §4-403, Annotated Code of Maryland.

B. If an agency ceases operation, the agency shall make arrangements to return the records to the client or client representative with legal authority to make health care decisions, or retain the records as required by §A of this regulation.

C. An agency shall:

- (1) Maintain the privacy and confidentiality of a client's medical records;
- (2) Release medical records or medical information about a client only with the written consent of the client or client representative, or as permitted by Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland; and
- (3) Maintain and dispose of a client's medical records in accordance with Health-General Article, Title 4, Subtitle 3 and 4, Annotated Code of Maryland.

D. In addition to the provisions of §§A—C of this regulation, the agency shall establish and implement procedures that ensure that:

- (1) Records of discharged clients are completed no later than 30 days after the date of discharge; and
- (2) Safeguards are in place to protect clinical record information against loss, destruction, or illegal or unauthorized use.

.16 Client's Rights and Responsibilities.

A. The agency shall ensure that agency staff develops and implements written policies and procedures concerning clients' rights and responsibilities.

B. The agency shall make the policies and procedures available to clients or client representatives.

C. The policies and procedures shall ensure that the agency provides the client or client representative with:

- (1) An estimate of costs associated with the services requested by the client;
- (2) A statement clarifying the costs that the client or client representative will be responsible for if services are not covered by third-party payors;
- (3) Fully itemized billing statements, including dates of services and unit charge, to be made available on request of the client or client representative;
- (4) The name of the caregiver or caregivers referred by the agency to provide the service or services;
- (5) The name and contact information for the individual who is responsible for supervising the client's care;
- (6) The telephone number where a client or the client representative can contact the agency 24 hours a day, 7 days a week regarding care; and
- (7) Disclosure of any subcontractual relationship with any individual or agency to be assigned or referred to provide care to the client.

D. Rights.

(1) A client of an agency or, if appropriate, the client representative with legal authority to make health care decisions has the right to:

- (a) Be treated with consideration, respect, and full recognition of the client's human dignity and individuality;
- (b) Receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State, local, and federal laws and regulations;
- (c) Participate in the development of the client's care plan and medical treatment;
- (d) Refuse treatment after the possible consequences of refusing treatment have been fully explained;
- (e) Privacy;
- (f) Be free from mental, verbal, sexual, and physical abuse, neglect, involuntary seclusion, and exploitation; and
- (g) Confidentiality.

(2) A client or client representative has the right to:

- (a) Make suggestions or complaints, or present grievances on behalf of the client to the agency, government agencies, or other persons without the threat or fear of retaliation;
- (b) Receive a prompt response, through an established complaint or grievance procedure, to any complaints, suggestions, or grievances the participant may have; and
- (c) Have access to the procedures for making a complaint to the Office of Health Care Quality, and to:
 - (i) The Adult Protective Services Program of the local department of social services, if the client is an adult; or
 - (ii) The Child Protective Services Program of the local department of social services, if the client is a minor.

E. Advanced Directives. With the exception of durable medical equipment agencies, an agency shall:

- (1) Provide information to a client about advance directives and the right to have an advance directive; and
- (2) Obtain information regarding the client's advance directives to determine whether the advance directive information has an impact on care provided.

F. Client Directed Care. The agency shall honor the right of:

- (1) A cognitively capable adult client, or a client representative with legal authority to make health care decisions, to refuse any portion of planned treatment or other portions of the treatment plan, except where medical contraindications to partial treatment exist; and
- (2) A cognitively capable adult client to have an individual who is not certified to provide assistance with activities of daily living and treatments of a routine nature if the client signs a waiver of skilled services detailing the potential risks and benefits of waiver as required under Regulation .12D of this chapter.

G. Informed Consent. The agency shall provide sufficient information to the client or the client representative to allow the client or the client representative to make an informed decision regarding treatment as required under Regulation .12D of this chapter, including:

- (1) The purpose and nature of an evaluation or treatment regimen;
- (2) Alternatives to treatment;
- (3) Side effects and benefits of a proposed treatment regimen and the alternatives to the treatment;
- (4) The estimated cost of the treatment and the alternatives; and
- (5) The right to withdraw from treatment at any time, including the risks associated with withdrawing from treatment.

H. Client Participation. The agency shall allow a client, or client representative with legal authority to make health care decisions, to accept or reject, at the client's or client representative's discretion

without fear of retaliation from the agency, any employee, independent contractor, or contractual employee that is referred by the agency.

.17 Special Requirements for the Provision of Intravenous or Related Therapies.

A. This regulation applies to intravenous or related therapy provided in the home.

B. A provider of intravenous or related therapies shall meet the requirements of this regulation in addition to meeting the requirements of Regulations .01 — .16 of this chapter.

C. Specialized intravenous therapies and nutritional support services administered enterally or parenterally shall be considered skilled nursing functions.

D. Medications.

(1) Medications and preparations used in the provision of intravenous or nutritional support shall be obtained from a licensed pharmacy.

(2) The agency shall document any adverse reactions associated with the therapy and notify the client's physician.

E. Education and Training. When an agency provides intravenous or related therapies, the agency shall provide:

- (1) Education, training, and written instructions to the client, client representative, or the individual caring for the client before the initiation of treatment, which includes:
 - (a) Feeding formulation or medication preparation;
 - (b) Administration of the therapy;
 - (c) Accessing private care;
 - (d) Equipment maintenance;
 - (e) Recognition of complications of therapy, adverse medication reactions, and equipment malfunctions; and
 - (f) Mechanisms for accessing a clinician during business hours and at any time after hours for questions related to drug therapy, drug administration, or equipment troubleshooting or malfunctions; and
- (2) Retraining and a review to the client, client representative, or the individual caring for the client as needed or requested.

F. The agency shall maintain a clinical record for a client receiving intravenous or related therapies, which, in addition to the documents required to be maintained in accordance with the provisions set forth in Regulations .14 and .15 of this chapter, includes the following:

- (1) Results of training or retraining of the client, client representative, or the individual caring for the client;
- (2) Composition, indication for use, role, and mode of administration of feeding formulas or medications; and
- (3) Summary statement at termination of the intravenous or related therapy which includes the results of therapy, complications, outcome, and disposition of the client.

.18 Special Requirements for the Provision of Ventilator Services.

A. A provider of ventilator services shall meet the requirements of this regulation in addition to meeting the requirements of Regulations .01—.16 of this chapter.

B. This regulation applies to ventilator services provided in the home, including:

- (1) Volume ventilation;
- (2) Pressure ventilation;
- (3) Emergency back-up power systems;
- (4) Alarms and troubleshooting equipment;
- (5) Emergency resuscitation; and
- (6) All related medical equipment used with the provision of respiratory services, including but not limited to:
 - (a) Nebulizers;
 - (b) Suction equipment; and
 - (c) Oxygen.

C. *Education and Training.* When an agency provides ventilator services, the agency shall:

(1) Use either a licensed registered nurse or a licensed respiratory care practitioner to supervise the provision of education and training and written instruction to the client, client representative, or individual caring for the client; and

(2) Provide retraining and review on a monthly basis, and as frequently as necessary.

D. *Client Record.* For a client receiving ventilator services, the agency shall maintain a clinical record, in addition to the documents required to be maintained in accordance with the provisions set forth in Regulations .14 and .15 of this chapter, that includes the following:

(1) An evaluation of use of the ventilator and all related medical equipment by the client, client representative, or individual caring for the client that includes:

(a) Training at least monthly on the provision of ventilator services; and

(b) Retraining, more frequently as needed, on the provision of ventilator services;

(2) A prescription that includes the mode, frequency, and ventilator settings;

(3) Respiratory and all specialized services, including the results, complications, and outcomes;

(4) Physician orders and pharmacy-dispensed respiratory medications;

(5) Evidence that the client, client representative, or individual caring for the client was instructed that medications are to be obtained from a licensed pharmacy; and

(6) A discharge summary when a client is no longer receiving ventilator-related services.

.19 Special Requirements for the Provision of Home Medical Equipment Services.

A. An agency that provides home medical equipment services shall meet the requirements of this regulation in addition to meeting the requirements of Regulations .01—.16 of this chapter.

B. *Education and Training.* When an agency provides home medical equipment services, the agency shall:

(1) Ensure that its personnel demonstrate competency in delivering and installing the equipment;

(2) Provide education, training, and written instructions to the client, the client representative, or the individual caring for the client on the use of the equipment at the time of installation; and

(3) Provide the client, client representative, or the individual caring for the client the telephone number of the agency in the event of equipment failure or emergency.

C. Upon request, an agency shall provide the prescribing physician with a copy of the:

(1) Qualifications, duties, and responsibilities of agency personnel who deliver the home medical equipment services; and

(2) Instructions given to the client and the client's caregivers.

D. *Client Records.* The agency shall maintain a client record for each client receiving home medical equipment services in accordance with industry standards, including but not limited to:

(1) Physician order for the provision of home medical equipment services;

(2) Any significant change of condition;

(3) Services provided; and

(4) Any other pertinent information regarding the client being served.

E. An agency shall ensure that the installation, maintenance, repair, and storage of home medical equipment comply with the manufacturer's specifications.

.20 Sanctions.

A. If the Secretary determines that an agency has violated this chapter, the Secretary, in addition to the sanctions set forth in Regulations .21—.27 of this chapter may:

(1) Restrict the number of clients the agency may serve;

(2) Limit the types of clients an agency may serve;

(3) Require the licensee, and any of its staff, to receive remedial instruction in a specific area;

(4) Require the agency to use the services of a management firm that is approved by the Department;

(5) Mandate staffing patterns that specify the number of personnel or personnel qualifications, or both;

(6) Direct the licensee to correct the violations in a specific manner or within a specified timeframe;

(7) Notify, or require the agency to notify, the client, the client representative, or the family of any client who is affected by the noncompliance;

(8) Increase the frequency of monitoring visits during a specified period of time; or

(9) Establish certain conditions for continued operation, including time limits for continued operation and for compliance.

B. If the Secretary determines that the licensee has violated a condition or requirement of an imposed sanction, the Secretary may suspend or revoke the license.

C. A licensee aggrieved by the imposition of a sanction under §A(1) or (2) or B of this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .28 of this chapter.

.21 Civil Money Penalties.

A. The Secretary may impose a civil money penalty on an agency if a deficiency or continuing pattern of deficiencies exists in the residential service agency.

B. In determining whether a civil money penalty will be imposed, the Secretary shall consider the following factors:

(1) Nature, number, and seriousness of the deficiencies;

(2) The extent to which the deficiency or deficiencies are part of a continuing pattern during the preceding 24 months;

(3) The degree of risk to the health, life, or safety of the clients of the agency that is caused by the deficiency or deficiencies;

(4) The efforts made by, and the ability of, the agency to correct the deficiency or deficiencies; and

(5) An agency's prior history of compliance.

C. If the Department determines that a deficiency or a continuing pattern of deficiencies exists, the Department shall notify the agency of the deficiency or deficiencies and may:

(1) Permit the agency the opportunity to correct the deficiencies by a specified date;

(2) Impose a civil money penalty of up to \$1,000 per day until sustained compliance is achieved; or

(3) Impose a civil money penalty for each instance of violation.

D. If the Department permits an agency the opportunity to correct the deficiencies by a specific date, and the agency fails to comply with this requirement, the Department may impose a civil penalty of up to \$1,000 for each day of violation until correction of the deficiency or deficiencies has been verified and sustained compliance has been maintained.

E. If the Department proposes to impose a civil money penalty, the Secretary shall issue an order which shall state the:

(1) Deficiency or deficiencies on which the order is based;

(2) Amount of the civil money penalties to be imposed;

(3) Manner in which the amount of the civil money penalty was calculated; and

(4) Appeal rights.

.22 Amount of Civil Money Penalties.

A. A civil money penalty imposed on a person under this chapter may not exceed \$10,000 per instance or, as provided in Regulation .21 of this chapter, \$1,000 per day.

B. In setting the amount of the civil money penalty under this chapter, the Secretary shall consider the following factors:

- (1) Nature, number, and seriousness of the deficiencies;
- (2) The degree of risk to the health, life, or safety of the clients of the agency that is caused by the deficiency or deficiencies;
- (3) The efforts made by, and ability of, the agency to correct the deficiency or deficiencies;
- (4) Whether the amount of the civil money penalty will jeopardize the financial ability of the agency to continue operation as an agency;
- (5) Prior history of compliance by the agency; and
- (6) Other factors as justice may require.

C. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .28 of this chapter.

.23 Civil Money Penalties — Hearings.

A. A hearing on the appeal shall be held consistent with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

B. The Secretary shall have the burden of proof with respect to the imposition of the civil money penalties under this chapter.

.24 Emergency Suspension.

A. The Secretary may immediately suspend a license on finding that the public health, safety, or welfare imperatively requires emergency action

B. The Department shall deliver a written notice to the licensee:

- (1) Informing the licensee of the emergency suspension;
- (2) Giving the reasons for the action, and the regulation or regulations with which the licensee has failed to comply that forms the basis for the emergency suspension; and
- (3) Notifying the licensee of its right to request a hearing and to be represented by counsel.

C. The filing of a hearing request does not stay the emergency action.

D. When a license is suspended by emergency action:

- (1) The agency shall immediately return the license to the Department;
- (2) The agency shall immediately stop providing services; and
- (3) The agency shall notify competent clients and client representatives about the suspension and make every reasonable effort to assist them in making other arrangements for services.

E. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .28 of this chapter.

F. Show Cause Hearing.

(1) In addition to the right to request an evidentiary hearing in accordance with Regulation .28 of this chapter, a person aggrieved by the action of the Secretary under this regulation shall be provided with the opportunity for a hearing to show cause why the Department should lift the summary suspension before the evidentiary hearing.

- (2) The show cause hearing shall be held promptly.
- (3) The show cause hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the summary suspension.

(4) The show cause hearing shall be conducted before the Secretary, or a designee of the Secretary, who:

- (a) Shall determine procedural issues;
- (b) May impose reasonable time limits on each party's oral argument; and

(c) Shall make rulings reasonably necessary to facilitate the effective and efficient operation of the show cause hearing.

(5) At the conclusion of the show cause hearing, the Secretary or the Secretary's designee may:

- (a) Affirm the order of summary suspension;
- (b) Rescind the order of summary suspension;
- (c) Enter into a consent order; or
- (d) Enter into an interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(6) After the show cause hearing, if the Secretary or the Secretary's designee decides to continue the summary suspension, the person aggrieved by the decision may request an evidentiary hearing before the Office of Administrative Hearings in accordance with Regulation .28 of this chapter.

G. If the Secretary's final decision does not uphold the emergency suspension, the agency may resume operation.

.25 Denial or Revocation of a License.

The Secretary, for cause shown, may deny, revoke, or refuse to reissue any license issued for inability or failure to comply with the regulations of this chapter. This action is subject to the provisions of the Administrative Procedure Act, State Government Article, §10-201 et seq., Annotated Code of Maryland.

.26 Notice to Clients.

Unless otherwise ordered by the Secretary, the agency shall notify each competent client and each client representative within at least 30 days of:

- A. Any significant change of licensure status;
- B. A voluntary surrender of its agency license; or
- C. Denial, revocation, or suspension of the license.

.27 Penalty for Unlicensed Operation.

A person that operates a residential service agency without a license may be assessed a civil money penalty by the Department not to exceed \$10,000 per violation and, additionally, is guilty of a misdemeanor and, on conviction, is subject to a criminal fine not exceeding \$1,000 for the first offense and \$10,000 for each subsequent offense. Each day that a violation is continued after the first conviction is a separate offense.

.28 Hearings.

A. An agency shall file a request for a hearing with the Office of Administrative Hearings, with a copy to the Office of Health Care Quality, not later than 30 days after receipt of notice of the Secretary's action. The request shall include a copy of the Secretary's action.

B. A hearing requested under this chapter shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 10.01.03 and 28.02.01.

C. The burden of proof is as provided in COMAR 10.01.03.28.

D. Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in State Government Article, §10-205, Annotated Code of Maryland.

E. An aggrieved party may file exceptions as provided in COMAR 10.01.03.35.

F. A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.34 Therapeutic Behavioral Services

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

Notice of Proposed Action

[11-089-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .01 under **COMAR 10.09.34 Therapeutic Behavioral Services**.

Statement of Purpose

The purpose of this action is to bring current the regulatory citation that identifies the type of psychiatric rehabilitation programs that are eligible to participate.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dohmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.01 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) — (12) (text unchanged)

(13) “Therapeutic behavioral service provider” means:

(a) — (c) (text unchanged)

(d) A psychiatric rehabilitation program approved under [COMAR 10.21.21] *COMAR 10.21.29*.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

10.09.36 General Medical Assistance Provider Participation Criteria

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

Notice of Proposed Action

[11-088-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .06 and adopt new Regulation .11 under **COMAR 10.09.36 General Medical Assistance Provider Participation Criteria**.

Statement of Purpose

The purpose of this action is to centrally identify and define rights of participating Medicaid providers and to clarify existing procedures regarding billing time limitations.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Department of Health and Mental Hygiene, 201 W. Preston, Room 512, Baltimore, MD 21201, or call 410-767-6499, or email to regs@dohmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.06 Billing Time Limitations.

A. Definition.

(1) *In this regulation, the following term has the meaning indicated.*

(2) *Term Defined. “Received” means:*

(a) *The Program taking delivery of a claim after the Program signs a certified mail, return receipt requested parcel from the United States Postal Service; or*

(b) *The claim is reported on the provider’s remittance advice.*

B. Unless specified in Regulation .03A(1) of this chapter, the following apply:

[A.] (1) (text unchanged)

[B.] (2) Medicare Claims. For any claim initially submitted to Medicare and for which services have been:

[(1)] (a) — [(2)] (b) (text unchanged)

(3) *Fee for Service Claims.*

(a) *Fee for service claims shall be submitted and received by the Program within 12 months of:*

(i) *The date of service;*

(ii) *The date of discharge, if the service was a hospital inpatient service; or*

(iii) *The month of service, if the service was provided in a nursing or rehabilitation facility or is a hospice service.*

(b) *The Program shall only pay claims for services provided on different dates and submitted on a single claim if the single claim form is received by the Program within 12 months of the earliest date of service.*

(c) *The Program shall only pay a claim that was initially rejected, denied, or not acted upon within reasonable promptness after being received by the Program, if the claim is:*

(i) *Complete according to Program billing instructions and the 837 HIPAA compliant and companion guidelines;*

(ii) *Resubmitted; and*

(iii) *Received by the Program within the later of 12 months from the date of service or 60 days from the date last received by the Program or last rejected by the Program.*

[C.] (4) (text unchanged)

[D. A claim which is rejected for payment due to improper completion or incomplete information shall be paid only if it is properly completed, resubmitted, and received by the Program within

the original 12-month period, or within 60 days of rejection, whichever is later.]

(5) *The Program shall only pay a claim that was initially rejected, denied, or not acted upon within reasonable promptness after being received by the Program, if the claim is:*

(a) *Complete according to Program billing instructions and the 837 HIPAA compliant and companion guidelines;*

(b) *Resubmitted; and*

(c) *Received by the Program within the later of:*

(i) *12 months from the date of service; or*

(ii) *60 days from the date last received by the Program or last rejected by the Program.*

[E.] (6) (text unchanged)

(7) *Late Charge Billing.*

(a) *The Program shall only accept additional or supplemental claims that were not included with a larger primary claim paid by the Program if all of the additional or supplemental claims are:*

(i) *Submitted together;*

(ii) *Submitted in accordance with the requirements of §B(3) of this regulation; and*

(iii) *Received within 60 days of the original paid claim date.*

(b) *The Program shall only accept one additional or supplemental claim under §B(7)(a) of this regulation for each:*

(i) *Date of service;*

(ii) *Date of discharge; or*

(iii) *Month of service billed.*

(8) *Adjustment Requests. Requests by providers to adjust information in claims already paid, including but not limited to changing the days billed, the amount charged, the units of service, or the rate of the service, shall be submitted to the Program in accordance with §B(3) and (5) of this regulation.*

.11 Provider Rights.

Providers participating in the Program shall have the right to:

A. *Be treated professionally with courtesy, dignity, and respect regardless of the individual's:*

(1) *Race;*

(2) *Color;*

(3) *Religion;*

(4) *Gender;*

(5) *Sexual orientation;*

(6) *National origin;*

(7) *Political affiliation;*

(8) *Disability;*

(9) *Marital status;*

(10) *Age; or*

(11) *Union affiliation;*

B. *File a complaint with the appropriate State agency when the provider believes that the provider has been discriminated against because of:*

(1) *Race;*

(2) *Color;*

(3) *Religion;*

(4) *Gender;*

(5) *Sexual orientation;*

(6) *National origin;*

(7) *Political affiliation;*

(8) *Disability;*

(9) *Marital status;*

(10) *Age; or*

(11) *Union affiliation;*

C. *Have the information in the provider's Program file kept confidential except as otherwise stated by State or federal law;*

D. Be reimbursed for covered services provided to Program recipients; and

E. Participate in an impartial grievance and appeals process as outlined in COMAR 10.09.36.09.

JOHN M. COLMERS
Secretary of Health and Mental Hygiene

Title 19A STATE ETHICS COMMISSION

Subtitle 05 BOARD OF EDUCATION ETHICS REGULATIONS

Notice of Proposed Action

[11-071-P]

The State Ethics Commission proposes to:

(1) Repeal existing Regulations **.01— .04** and adopt new Regulations **.01— .03** under **COMAR 19A.05.01 General Provisions;**

(2) Repeal existing Regulations **.01— .06** and adopt new Regulations **.01— .06** under **COMAR 19A.05.02 Review Criteria;**

(3) Repeal existing Regulations **.01— .03** and adopt new Regulations **.01** and **.02** under **COMAR 19A.05.03 Review Procedures;**

(4) Adopt new Regulations **.01** and **.02** under **COMAR 19A.05.04 Model Regulations;** and

(5) Repeal existing Appendices **A** and **B** and adopt new Appendices **A** and **B** under **COMAR 19A.05.**

This action was considered at the State Ethics Commission open meeting held on November 4, 2010, notice of which was provided pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement the provisions of Ch. 277, Acts of 2010, which requires local boards of education to adopt conflict of interest and financial disclosure requirements for members of boards of education and, for elected boards of education, candidates to be members of boards of education that are at least as stringent as the requirements for public officials contained in the Public Ethics Law. In addition, under current law, boards of education either may adopt conflict of interest and financial disclosure requirements similar to the requirements of the Public Ethics Law for other officials and employees or those officials and employees will be subject to the conflicts of interest and financial disclosure requirements of the county in which the board is located. This proposed action clarifies the criteria and process the State Ethics Commission will follow in determining whether a board of education's regulations are at least as stringent as the Public Ethics Law, for members of and candidates to be members of the board of education, and similar to the Public Ethics Law, for other officials and employees.

In addition, this proposed action adopts new model ethics regulations that meet these requirements. The new models reflect the changes required by Chapter 277 and incorporate amendments to the Public Ethics Law since the previous models were adopted.

Finally, the proposed actions revise the Commission's previous regulations and models for clarity and style.

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 A. Hahn, Executive Director, State Ethics Commission, 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401, or call 410-260-7770, or email to rhahn@gov.state.md.us, or fax to 410-260-7747. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

19A.05.01 General Provisions

Authority: State Government Article, §§15-206 and 15-811—15-815, Annotated Code of Maryland

.01 Applicability.

This subtitle applies to each board of education in each county of the State and to the Baltimore City Board of School Commissioners.

.02 Definitions.

A. In this subtitle, the following words have the meanings indicated.

B. Defined Terms.

(1) "Board of education" means the local board of education of a county and includes the Baltimore City Board of School Commissioners.

(2) "Candidate to be a member of the school board" means a person who has filed for election to an elected school board.

(3) "County" includes Baltimore City.

(4) "Member of the school board" means an elected or appointed member of a board of education.

(5) "School employee" means an employee of the board of education or the county school system.

(6) School Official.

(a) "School official" means an employee or other official of the board of education or the school system.

(b) "School official" does not include a member of the school board.

(7) "School system" means the educational system under the authority of a board of education.

.03 General Requirements.

A. Conflicts of Interest and Financial Disclosure Regulations — Required for Members of and Candidates for School Board.

(1) A board of education shall adopt conflict of interest regulations applicable to members of the school board.

(2) A board of education shall adopt financial disclosure regulations applicable to members of the school board and, if the board is an elected board under Education Article, Title 3, Subtitle 1, Part III, Annotated Code of Maryland, to candidates to be members of the school board.

(3) The regulations adopted under this section for members of the school board and candidates to be members of the school board shall be at least equivalent to the requirements for officials contained in State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland.

B. Conflicts of Interest and Financial Disclosure Regulations for School Officials and Employees and Lobbying Disclosure Regulation — Permissible.

(1) A board of education may adopt ethics regulations under this subtitle covering conflicts of interest and financial disclosure for school officials and school employees and covering lobbying disclosure similar to the Public Ethics Law.

(2) If a board of education does not adopt ethics regulations that are approved by the Commission as similar to the Public Ethics Law under COMAR 19A.05.03.02, its school officials and its school employees are subject to the local ethics laws in the county in which the board is located, adopted under State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland.

19A.05.02 Review Criteria

Authority: State Government Article, §§15-206 and 15-811—15-815, Annotated Code of Maryland

.01 Scope.

A. The provisions of this chapter reflect the minimum elements that shall be addressed by board of education regulations in order for the Commission to view the regulations as:

(1) Similar or substantially similar to the Public Ethics Law; and

(2) For members of the school board and candidates to be members of the school board, at least equivalent to the requirements of State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland.

B. A board of education may adopt regulations more stringent than State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland, based on local circumstances and where more stringent provisions are necessary to prevent conflicts of interest in that school system.

.02 Coverage.

A. To be viewed as similar to the Public Ethics Law, all members of the school board, school officials, and school employees shall be subject to the board of education's ethics regulations.

B. Conflicts of Interest.

(1) A board of education's ethics regulations shall include conflict of interest provisions for members of the school board and candidates to be members of the school board equivalent to or exceeding the requirements of the Public Ethics Law, State Government Article, Title 15, Subtitle 5, Annotated Code of Maryland.

(2) A board of education's ethics regulations shall include conflict of interest provisions for school officials and school employees.

(3) A board of education may adopt conflict of interest provisions for school officials and school employees that are identical to the conflict of interest provisions for members of the school board.

C. Financial Disclosure.

(1) A board of education's ethics regulations shall include financial disclosure provisions for members of the school board and candidates to be members of the school board equivalent to or exceeding the requirements for officials required in State Government Article, Title 15, Subtitle 6, Annotated Code of Maryland.

(2) School Officials and Employees.

(a) Except as provided in §C(2)(b) of this regulation, a board of education's ethics regulations shall include financial disclosure provisions for school officials and school employees.

(b) Under State Government Article, §15-813(a)(2)(ii), Annotated Code of Maryland, a board of education's financial

disclosure regulations may not be applied to a classroom teacher unless the teacher is assigned other duties not normally expected of classroom teachers.

(3) Except as provided in §C (2)(b) of this regulation, a board of education's ethics regulations may include financial disclosure requirements for school officials and school employees identical to the requirements for members of the board of education.

.03 Administration and Enforcement.

A board of education's ethics regulations shall:

A. Identify or establish an entity responsible for implementing the regulations;

B. Within the board of education's administrative authority, provide a mechanism to issue advisory opinions as to the applicability of the regulations to members of the school board, school officials, school employees, and other persons subject to the provisions of the regulations;

C. Establish a mechanism for processing and making determinations in response to complaints alleging violations of the regulations; and

D. Within the board of education's administrative authority, include sanctions for enforcement of the substantive provisions.

.04 Conflicts of Interest.

A. To be equivalent to the requirements of and similar to the Public Ethics Law, a board of education's ethics regulations shall address conflict of interest restrictions as described in this regulation.

B. Disqualification.

(1) The regulations shall include, for members of the school board, the disqualification and participation restrictions included in State Government Article, §15-501, Annotated Code of Maryland.

(2) The local law shall include a disqualification provision prohibiting a school official or school employee from participating, as a school official or school employee, in a school system matter that would have a direct economic impact, distinct from the impact on the public at large, on the school official or school employee, or that, to the knowledge of the school official or school employee would have a direct economic impact on:

(a) The spouse, parent, sibling, or child of the school official or school employee; or

(b) A business entity with which any of the following is affiliated:

(i) The school official or school employee; or

(ii) The spouse, parent, sibling, or child of the school official or employee.

(3) The regulations may include:

(a) A provision that allows participation when the potential conflict is disclosed and when no other school official or school employee may act;

(b) A provision which allows participation when the potential conflict is disclosed and disqualification would result in lack of board quorum; or

(c) Exception provisions allowing the entity implementing the law to waive the disqualification requirement when no conflict of interest exists or when the interest is too remote and insubstantial to affect the integrity of the public actions of the official or employee.

C. Outside Employment.

(1) The regulations shall include, for members of the school board, the secondary employment restrictions included in State Government Article, §§15-502, 15-503, and 15-504(a), Annotated Code of Maryland.

(2) The regulations shall prohibit, for school officials and school employees, outside employment that would impair the impartiality and independent judgment of the school official or school employee.

(3) The regulations may prohibit, for school officials and school employees, outside employment with an entity that:

(a) Is subject to the authority of school system or board of education; or

(b) Is negotiating or has entered a contract with or is a subcontractor on a contract with the school system or board of education.

(4) The regulations may include provisions to allow the entity implementing the regulations to grant an exception when the outside employment would not affect the official duties of the school official or school employee.

D. Financial Interest Prohibitions.

(1) The regulations shall include, for members of the school board, the financial interest restrictions included in State Government Article, §§15-502, 15-503, and 15-504(a), Annotated Code of Maryland.

(2) The regulations may prohibit, for school officials and school employees, financial interests in an entity that:

(a) Is subject to the authority of the school system or board of education; or

(b) Is negotiating or has entered a contract with or is a subcontractor on a contract with the school system or board of education.

(3) The regulations may include provisions to allow the entity implementing the regulations to grant an exception when the financial interest would not affect the official duties or the school official or school employee.

E. Post-Employment Restrictions.

(1) The regulations shall include, for former members of the school board, the post-employment restrictions included in State Government Article, §15-504(d), Annotated Code of Maryland.

(2) The regulations shall include a restriction on former school officials' and school employees' activities relating to cases, contracts, or other specific matters in which the former school officials or former school employees significantly participated in their school positions.

F. Prestige of Office.

(1) The regulations shall include, for members of the school board, the prestige of office restrictions included in State Government Article, §15-506, Annotated Code of Maryland.

(2) The regulations shall prohibit school officials and school employees from using their official positions or public positions for their private gain or the private gain of another.

G. Confidential Information.

(1) The regulations shall include, for members of the school board, the restrictions on the use of confidential information included in State Government Article, §15-507, Annotated Code of Maryland.

(2) The regulations shall prohibit school officials and school employees from using or disclosing, except in the discharge of an official duty, nonpublic information obtained in the course of official school duties for personal economic benefit or the economic benefit of another.

H. Gifts.

(1) The regulations shall include, for members of the school board, the gift restrictions included in State Government Article, §15-505, Annotated Code of Maryland.

(2) The regulations shall prohibit school officials and school employees from:

(a) Soliciting a gift; and

(b) Directly soliciting or facilitating the solicitation of a gift, on behalf of another person, from an individual registered as a lobbyist under the regulations.

(3) The regulations shall prohibit school officials and school employees from accepting gifts from persons regulated by or

contracting with the school system with which the school official or school employee is affiliated.

(4) The regulations shall define "gift":

(a) To include the transfer of any thing or service of value without identifiable and adequate consideration; and

(b) To exclude regulated campaign contributions similar to the exclusions in the Public Ethics Law.

(5) The regulations may:

(a) Include exceptions similar to the exceptions included in State Government Article, §15-505, Annotated Code of Maryland; and

(b) Include provisions to allow the person or entity responsible for implementing the regulations to grant exceptions and exemptions from the gift acceptance prohibitions similar to the exception and exemption authority granted to the State Ethics Commission in State Government Article, §15-505, Annotated Code of Maryland.

I. Procurement.

(1) The regulations shall include, for members of the school board, the procurement restrictions included in State Government Article, §15-508, Annotated Code of Maryland.

(2) The regulations may prohibit an individual or a person that employs an individual who assists a school system unit in the drafting of specifications, an invitation for bid, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or request for proposals from:

(a) Submitting a bid or proposal for that procurement; or

(b) Assisting or representing another person, directly or indirectly, who is submitting a bid or proposal for that procurement.

.05 Financial Disclosure.

A. Members of the School Board.

(1) For members of the school board, the regulations shall include financial disclosure requirements that are at least equivalent to the requirements of State Government Article, Title 15, Subtitle 6, Annotated Code of Maryland.

(2) The regulations shall require:

(a) A member of the school board who is appointed to fill a vacancy in an office and who has not already filed a statement for the preceding calendar year to file a financial disclosure statement for the preceding calendar year within 30 days of appointment;

(b) A member of the school board who leaves office, other than by reason of death, to file a financial disclosure statement within 60 days after leaving the office for the portion of the current calendar year during which the individual held office and, if a statement has not been filed for the preceding calendar year, for the preceding calendar year; and

(c) All other members of the school board to file a financial disclosure statement for the preceding calendar year on or before April 30 of each year.

B. Candidates to Be Members of the School Board.

(1) This section only applies to a school board that is an elected board under Education Article, Title 3, Subtitle 1, Part III, Annotated Code of Maryland.

(2) The regulations shall require candidates to be members of the school board to file financial disclosure statements disclosing the same information members of the school board are required to disclose under §A of this regulation.

(3) The regulations shall require that candidates to be members of the school board file required financial disclosure statements no later than the filing of the certificates of candidacy for the positions and on or before April 30 of each subsequent year until the election.

C. School Officials and School Employees.

(1) Except as provided in COMAR 19A.05.02.02C(2)(b), the regulations shall require school officials and school employees who,

acting alone or as members or employees of a local entity, have decision making authority or act as principal advisors to a person with that authority in making school system or school board policy or exercising quasi-judicial, regulatory, licensing, inspecting, or auditing functions:

(a) To file an annual statement, on or before a date established in the regulations, disclosing gifts received from entities contracting with or regulated by the school board or school system; and

(b) To file a statement disclosing interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the school employee or school official, sufficiently in advance of the action to provide adequate disclosure to the public.

(2) Except as provided in COMAR 19A.05.02.02C(2)(b), the regulations may require school employees and school officials to file financial disclosure statements disclosing the information that members of the school board are required to disclose under §A of this regulation.

D. The regulations shall provide that financial disclosure statements filed under the regulations are public records and are available for public inspection and copying.

.06 Lobbying.

A. Lobbying Registration.

(1) To be substantially similar to the Public Ethics Law, the regulations shall require, at a minimum, that a person register as a lobbyist with the entity responsible for implementing the regulations on the form provided by entity if the person provides members of the school board, school officials, or school employees with food, entertainment, or other gifts exceeding an amount specified in the regulations during a period specified in the regulations in connection with efforts to influence official school board or school system actions.

(2) The regulations shall require that a lobbyist registration shall:

(a) Identify the lobbyist, the subject matters on which the lobbyist will lobby, and any other person for whom the lobbyist lobbies; and

(b) Cover a defined period of time, as specified in the regulations.

B. The regulations shall require periodic disclosure, including identification of recipients of food, entertainment, and gifts to members of the school board, school officials, and school employees from a lobbyist when the cumulative value of the gifts exceeds an amount specified in the regulations.

C. The regulations may adopt provisions similar to the lobbying provisions of State Government, Title 15, Subtitle 7, Annotated Code of Maryland, including:

(1) Compensation-based registration criteria;

(2) A requirement to report compensation received by a lobbyist for lobbying activities;

(3) Lobbying registration and reporting requirements for lobbying related to regulations and procurement; and

(4) Registration requirements similar to State Government Article, §15-701(1), Annotated Code of Maryland.

D. To be substantially similar to the Public Ethics Law, the regulations shall provide that lobbying registrations and reports are public records and are available for public inspection and copying.

19A.05.03 Review Procedures

Authority: State Government Article, §§15-206 and 15-811—15-815, Annotated Code of Maryland

.01 Submission of Regulations.

A board of education shall submit promptly a copy of any ethics regulations or amendments or additions to the Commission for the Commission’s review and approval.

.02 Commission Review of Board of Education Regulations.

A. Preliminary Review by Commission.

(1) A board of education may submit proposed new ethics regulations and amendments to the Commission for review prior to final adoption.

(2) The Commission may provide preliminary review and comment on proposed ethics regulations and amendments to a board of education.

B. The Commission shall review all enacted regulations and amendments and shall determine if the regulations or amendments meet the requirements of this subtitle and State Government Article, Title 15, Subtitle 8, Part II, Annotated Code of Maryland.

C. In determining whether a board of education’s regulations or amendments meet the statutory requirements for members of school boards and for being similar to the Public Ethics Law, the Commission shall apply the criteria of COMAR 19A.05.02 and State Government Article, Title 15, Subtitle 8, Part II, Annotated Code of Maryland.

D. Disapproval by Commission.

(1) The Commission may disapprove a regulation or amendment adopted by a board of education:

(a) Within 60 days of submission by the board to the Commission; and

(b) Only if the Commission finds that the regulation or amendment is not in substantial compliance with this subtitle or State Government Article, Title 15, Subtitle 8, Part II, Annotated Code of Maryland.

(2) If the Commission determines that a board of education’s regulations or amendments do not meet the requirements of this subtitle or State Government Article, Title 15, Subtitle 8, Part II, Annotated Code of Maryland, the Commission promptly shall notify the board of education of the determination, and Commission staff shall assist the board of education in developing regulations that comply with these requirements.

E. If the Commission does not disapprove a regulation or amendments to a regulation as provided in §D of this regulation, the regulation or amendment is deemed to have been approved.

F. Regulations and amendments adopted under this subtitle and State Government Article, Title 15, Subtitle 8, Part II, Annotated Code of Maryland, become effective 60 days after submission to the Commission unless the Commission disapproves the regulations as provided in §D of this regulation.

19A.05.04 Model Regulations

Authority: State Government Article, §§15-206 and 15-811—15-815, Annotated Code of Maryland

.01 Model Regulations.

The model board of education ethics regulations in Appendices A and B to this subtitle are established as alternative model provisions developed by the Commission.

.02 Effect of Models.

A. The model board of education ethics regulations in Appendices A and B to this subtitle are informational and examples only.

B. Compliance with Public Ethics Law Requirements.

(1) The model regulations in Appendices A and B comply with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland.

(2) The model conflict of interest and financial disclosure provisions for members of school boards in Appendices A and B are equivalent to the requirements of State Government Article, Title 15, Subtitles 5 and 6, Annotated Code of Maryland.

C. Applicability.

(1) The model regulations in Appendix A may be viewed as a guide for boards of education in larger counties.

(2) The model law in Appendix B may be viewed as a guide for boards of education in smaller counties.

Appendix A—Model Board of Education Ethics Regulations

Authority: State Government Article, §§15-206 and 15-811—15-815, Annotated Code of Maryland

CHAPTER ____—ETHICS PROVISIONS

Section 1. Short title.

This document may be cited as the [_____] County Board of Education Ethics Regulations.

Section 2. Statement of purpose and policy.

(a) The Board of Education of [_____] County, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

(b) It is evident that this confidence and trust is eroded when the conduct of public business is subject to improper influence and even the appearance of improper influence.

(c) For the purpose of guarding against improper influence, the [_____] County Board of Education adopts these Ethics Regulations to require school officials and employees to disclose their financial affairs and to set minimum standards for their conduct of school system business.

(d) It is the intention of the Board that this chapter be liberally construed to accomplish this purpose.

Section 3. Definitions.

In these regulations, the following terms have the meanings indicated.

(a) “Board” or “Board of Education” means the Board of Education of [_____] County.

(b) (1) “Business entity” means a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit.

(2) “Business entity” does not include a governmental entity.

(c) (1) “Compensation” means any money or thing of value, regardless of form, received or to be received by any individual covered by this chapter from an employer for service rendered.

(2) For the purposes of §7 of this chapter, if lobbying is only a portion of a person’s employment, “compensation” means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties.

(d) “Doing business with” means:

(1) Having or negotiating a contract that involves the commitment, either in a single or combination of transactions, of \$____ or more of school system funds;

(2) Being subject to the authority of the school system; or

- (3) Being registered as a lobbyist under §7 of this chapter.
- (e) (1) "Employee" means an employee of the Board or the school system.
- (2) "Employee" includes the Superintendent.
- (f) "Financial interest" means:
 - (1) Ownership of any interest as the result of which the owner has received within the past 3 years or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year; or
 - (2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than 3 percent of a business entity by an official or the spouse of an official.
- (g) (1) "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.
- (2) "Gift" does not include political campaign contributions regulated under the Elections Law Article, Annotated Code of Maryland, or any other provision of State or local law regulating the conduct of elections or the receipt of political campaign contributions.
- (h) "Immediate family" means a spouse and dependent children.
- (i) (1) "Interest" means a legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.
- (2) For purposes of §6 of this chapter, "interest" includes any interest held at any time during the reporting period.
- (3) "Interest" does not include:
 - (i) An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;
 - (ii) An interest in a time or demand deposit in a financial institution;
 - (iii) An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;
 - (iv) A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code; or
 - (v) A college savings plan under the Internal Revenue Code.
- (j) "Lobbying" means:
 - (1) (i) Communicating in the presence of an official with the intent to influence any official action of that official; and
 - (ii) Spending over \$_____ for food, entertainment, or other gifts during the calendar year in connection with the communication or intent to influence; or
 - (2)(i) Engaging in activities having the express purpose of soliciting others to communicate with an official with the intent to influence that official; and
 - (ii) Spending over \$_____ in connection with the activities or intent to influence.
- (k) "Lobbyist" means a person required to register and report expenses related to lobbying under §7 of this chapter.
- (l) "Member of the Board" means a member of the [_____] County Board of Education.
- (m) "Official" includes a member of the school board, an employee of the school board or the school system, and the Superintendent.
- (n) "Panel" means the [_____] County School System Ethics Panel established under §4(a) of this chapter.
- (o) "Person" includes an individual or business entity.
- (p) "Qualified relative" means a spouse, parent, child, or sibling.
- (q) "School system" means the educational system under the authority of the [_____] County Board of Education.

Section 4. Administration.

- (a) (1) There is a [_____] County School System Ethics Panel that consists of ____ members appointed by the Chairman of the Board of Education with the concurrence of the other members of the Board.
- (2) The Panel members shall serve ____ year overlapping terms.
- (3) A Panel member may serve until a successor is appointed and qualifies.
 - (b)(1) The Panel shall elect a chairman from among its members.
 - (2) The term of the chairman is one year.
 - (3) The chairman may be reelected.
- (c) (1) The Board of Education Attorney shall assist the Panel in carrying out its duties.
- (2) If a conflict of interest under §5 of this chapter or another conflict prevents the Board Attorney from assisting the Panel in a specific matter:
 - (i) The Panel shall identify other counsel to assist the Panel in the matter; and
 - (ii) The Board shall provide sufficient funds to hire counsel.
- (d) The Panel is the advisory body responsible for interpreting this chapter and advising persons subject to this chapter regarding its application.
- (e) The Panel shall implement a public information and education program regarding the purpose and implementation of this chapter.
- (f) The Panel, assisted by the Superintendent or other official designated by the Board, shall be the custodian of all forms submitted by any person under this chapter.
- (g) (1) Any official, employee or other person subject to this chapter may request an advisory opinion from the Panel concerning the application of this chapter.
 - (2) The Panel shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter within 60 days of the request based on the facts provided or reasonably available to the Panel.
 - (3) In accordance with applicable State laws regarding public records, the Panel shall publish or otherwise make available to the public copies of the advisory opinions with the identities of the subjects deleted.
- (h) (1) Any person may file a complaint with the Panel alleging a violation of any of the provisions of this chapter.
 - (2) A complaint shall be in writing and under oath.
 - (3) The Panel may refer a complaint to the Board Attorney or other legal counsel, if appropriate, for investigation and review.
 - (4) If the Panel determines that there are insufficient facts upon which to base a determination of a violation, the Panel shall recommend to the Board of Education that the complaint be dismissed.
 - (5) If there is a reasonable basis for believing a violation has occurred, the subject of the complaint shall be given an opportunity for a hearing conducted by the Panel in accordance with the applicable Board of Education rules of procedure.
 - (6) (i) A respondent may propose a settlement or cure to the Panel before a hearing.
 - (ii) If the panel determines that the proposed settlement or cure is consistent with the purposes of this chapter, the Panel shall recommend that the Board accept the proposed settlement or cure.
 - (iii) If the Board concurs with the recommendation of the Panel, the Board shall accept the proposed settlement or cure.
 - (7) The Panel's findings of a violation resulting from the hearing shall include findings of fact and conclusions of law.
 - (8) The Panel shall report its findings and recommendations for action to the Board.

(9) If the Board concurs with the findings of a violation and recommendations of the Panel, the Board may take enforcement action as provided in § 8 of this chapter.

(10) The Board may dismiss a complaint:

(i) On the recommendation of the Panel; or

(ii) If the Board disagrees with a finding of a violation by the Panel.

(11) (i) After a complaint is filed and until a final determination by the Board, all actions regarding a complaint are confidential.

(ii) Concurrence by the Board with a finding of a violation by the Panel is public information.

Section 5. Prohibited conduct and interests.

(a) Participation.

(1) Except as permitted by Board of Education regulation or in the exercise of an administrative or ministerial duty that does not affect the disposition or decision in the matter, an official may not participate in:

(i) Any matter in which, to the knowledge of the official, the official or a qualified relative of the official has an interest; or

(ii) Any matter in which any of the following is a party:

(A) A business entity in which the official has a direct financial interest of which the official may reasonably be expected to know;

(B) A business entity for which the official or a qualified relative of the official is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or, to the knowledge of the official, a qualified relative of the official is negotiating or has any arrangement concerning prospective employment;

(D) A business entity that is a party to an existing contract with the school official or which, to the knowledge of the official, a qualified relative of the official, if the contract reasonably could be expected to result in a conflict between the private interests of the official and the school system or Board duties of the official;

(E) An entity, doing business with the Board of Education or school system, in which a direct financial interest is owned by another entity in which the official has a direct financial interest, if the official may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official knows is a creditor or obligee of the official or a qualified relative of the official with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or qualified relative of the official.

(2) An official who is disqualified from participating under paragraph (1) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official is required by law to act; or

(iii) The disqualified official is the only person authorized to act.

(3) The prohibitions of paragraph (1) of this subsection do not apply if participation is allowed by opinion of the Panel.

(b) Employment and financial interests.

(1) Except as permitted by regulation of the Board of Education when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official may not:

(i) Be employed by or have a financial interest in an entity that is:

(A) Subject to the authority of the school system or Board; or

(B) Negotiating or has entered a contract with the school system or Board; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official.

(2) This prohibition does not apply to:

(i) An official whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted in accordance with regulations adopted by the Board of Education;

(ii) Subject to other provisions of regulation and law, a member of the Board in regard to a financial interest or employment held at the time of the oath of office, if the financial interest or employment:

[For an appointed board] (A) Was publicly disclosed to the appointing authority and the Panel at the time of appointment; or

[For an elected board] (B) Was disclosed on the financial disclosure statement filed with the certificate of candidacy to be a candidate to be a member of the Board; or

(iii) Employment or financial interests allowed by opinion of the Panel if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-employment. A former official may not assist or represent any party other than the Board of Education or school system for compensation in a case, contract, or other specific matter involving the Board or the school system if that matter is one in which the former official significantly participated as an official.

(d) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official may not assist or represent a party for contingent compensation in any matter before or involving the Board of Education or the school system.

(e) Prestige of office.

(1) An official may not intentionally use the prestige of office or public position for the private gain of that official or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by a member of the Board without additional compensation.

(f) Gifts.

(1) An official may not solicit any gift.

(2) An official may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual lobbyist.

(3) An official may not knowingly accept a gift, directly or indirectly, from a person that the official knows or has reason to know:

(i) Is doing business with or seeking to do business with the school system or Board;

(ii) Is subject to the authority of the school system;

(iii) Is a lobbyist with respect to matters within the jurisdiction of the official; or

(iv) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the school system duties of the official.

(4) (i) This paragraph does not apply to a gift:

(A) That would tend to impair the impartiality and independence of judgment of the official receiving the gift;

(B) Of significant value that would give the appearance of impairing the impartiality and independent judgment of the official; or

(C) Of significant value that the recipient official believes or has reason to believe is designed to impair the impartiality and independent judgment of the official.

(ii) Notwithstanding paragraph (3) of this subsection, an official may accept:

(A) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(B) Ceremonial gifts or awards that have insignificant monetary value;

(C) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official at a meeting which is given in return for the participation of the official in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to members of the Board of Education to attend a charitable, cultural, or political event, if the purpose of the gift or admission is a courtesy or ceremony extended to the Board of Education;

(F) A specific gift or class of gifts which the Panel exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the school system or Board and that the gift is purely personal and private in nature;

(G) Gifts from a person related by blood or marriage, or any other individual who is a member of the household of the official; or

(H) An honorarium for speaking to or participating in a meeting, provided that the offering of the honorarium is in no way related to the school system or Board position of the official.

(g) Disclosure of confidential information. Other than in the discharge of official duties, an official may not disclose or use confidential information that the official acquired by reason of the official's public position and that is not available to the public for the economic benefit of the official or the economic benefit of another person.

(h) Procurement.

(1) An individual or person that employs an individual who assists the school system or Board in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Panel may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring unit of the school system.

Section 6. Financial Disclosure.

(a) This section applies to all members of the Board, all candidates to be members of the Board, and the following employees:

List by Job Title

(b) Except as provided in subsection (d) of this section, a member of the Board, candidate to be a member of the Board, or employee shall file the financial disclosure statement required under this subsection:

- (1) On a form provided by the Panel;
- (2) Under oath or affirmation; and
- (3) With the Panel or the office designated by the Panel.

(c) Deadlines for filing statements.

(1) An incumbent official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(2) An official who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(3)(i) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

(d) Candidates to be members of the Board.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be a member of the Board shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be a member of the Board shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be a member of the Board:

(i) May file the statement required under §6(d)(2)(i) of this chapter with the Board of Election Supervisors with the certificate of candidacy or with the Panel prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §6(d)(2)(ii) and (iii) of this chapter with the Panel or the office designated by the Panel or Board.

(4) If a candidate fails to file a statement required by this section after written notice is provided by the Board of Election Supervisors at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(5) The Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this section has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the Board of Election Supervisors shall forward the statement to the Panel, or the office designated by the Panel or Board.

(e) Public Record.

(1) The Panel or office designated by the Panel shall maintain all financial disclosure statements filed under this section.

(2) The Panel or office designated by the Panel shall make financial disclosure statements available during normal office hours, for examination and copying by the public subject to reasonable fees and administrative procedures established by the Panel or the Board.

(3) If an individual examines or copies a financial disclosure statement, the Panel or the office designated by the Panel shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the individual whose financial disclosure statement was examined or copied, the Panel or the office designated by the Panel shall provide the individual with a copy of the name and

home address of the person who reviewed the individual's financial disclosure statement.

(f) *Retention requirements.* The Panel or the office designated by the Panel shall retain financial disclosure statements for four years from the date of receipt.

(g) *Contents of statement.*

(1) *Interests in Real Property.*

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) *Interests in corporations and partnerships.*

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the school system or Board.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) *Interests in business entities doing business with the school system or Board.*

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with

the school system or Board, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) *Gifts.*

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the school system or Board.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) *Employment with or interests in entities doing business with the school system or Board.*

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the school system or Board.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each school system or Board unit with which the entity is involved as indicated by identifying one or more of the three categories of "doing business", as defined in §3(d) of this chapter.

(6) *Indebtedness to entities doing business with the school system or Board.*

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the school system or Board owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) Employment with the school system or Board. A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the school system or Board in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the Board or school system does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(h) For the purposes of §6(g)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(i) (1) The Panel shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The Board may take appropriate enforcement action to ensure compliance with this section.

Section 7. Lobbying.

(a) Except as provided in subsections (b) and (c) of this section, a person or entity who engages in lobbying as defined in §3(j) of this chapter shall file a lobbying registration with the Panel or the office designated by the Panel or Board.

(b) The following activities are exempt from regulation under this section:

(1) Professional services in advising and rendering opinions to clients as to the construction and effect of proposed or pending Board actions when these services do not otherwise constitute lobbying;

(2) Appearances before the Board upon its specific invitation or request if the person or entity engages in no further or other activities in connection with the passage or defeat of Board actions;

(3) Appearances before an organizational unit of the school system upon the specific invitation or request of the unit if the person or entity engages in no further or other activities in connection with the passage or defeat of school system or Board action;

(4) Appearance as part of the official duties of a duly elected or appointed official or employee of the State or a political subdivision of the State, or of the United States, and not on behalf of any other entity;

(5) Actions of a publisher or working member of the press, radio, or television in the ordinary course of the business of disseminating news or making editorial comment to the general public who does not engage in further or other lobbying that would directly and specifically benefit the economic, business, or professional interests of the person or entity or the employer of the person or entity;

(6) Appearances by an individual before the Board at the specific invitation or request of a registered lobbyist if the person performs no other lobbying act and notifies the Board that the person or entity is testifying at the request of the lobbyist;

(7) Appearances by an individual before the Board or an organizational unit of the school system at the specific invitation or request of a registered lobbyist if the person or entity performs no other lobbying act and notifies the unit that the person or entity is testifying at the request of the lobbyist;

(8) The representation of a bona fide religious organization solely for the purpose of protecting the right of its own members to practice the doctrine of the organization; and

(9) Appearance as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in lobbying for counties and municipalities and not on behalf of any other entity.

(c) Limited exemption — employer of a lobbyist.

(1) A person or entity who employs one or more lobbyists and who would otherwise be required to register as a lobbyist is not required to file a registration and submit lobbying reports if the person or entity reasonably believes that all expenses incurred in connection with the lobbying activities will be reported by a properly registered person or entity acting on behalf of the person or entity.

(2) A person or entity exempted under this subsection becomes subject to this section immediately upon failure of the lobbyist to report any information required under this section.

(d) (1) The registration filed under this section shall be filed on or before the later of the beginning of the calendar year in which the person or entity expects to lobby and within five days of first engaging in lobbying activities in the calendar year.

(2) The registration filed under this section:

(i) Shall be dated and on a form developed by the Panel; and

(ii) Shall include:

(A) The lobbyist's full and legal name and permanent address;

(B) The name, address, and nature of business of any person or entity on whose behalf the lobbyist acts;

(C) The written authorization of any person or entity on whose behalf the lobbyist acts or an authorized officer or agent, who is not the lobbyist, of the person or entity on whose behalf the lobbyist acts;

(D) A statement of whether the person or entity on whose behalf the lobbyist acts is exempt from registration under subsection (c) of this section;

(E) The identification, by formal designation, if known, of matters on which the lobbyist expects to act;

(F) Identification of the period of time within a single calendar year during which the lobbyist is authorized to engage in these activities, unless terminated sooner; and

(G) The full legal signature of the lobbyist and, when appropriate, the person or entity on whose behalf the lobbyist acts or an agent or authorized officer of the person or entity on whose behalf the lobbyist acts.

(e) A lobbyist shall file a separate registration for each person or entity that has engaged or employed the lobbyist for lobbying purposes.

(f) A lobbyist may terminate the lobbyist's registration by providing written notice to the Panel and submitting all outstanding reports and registrations.

(g) A person or entity may not engage in lobbying activities on behalf of another person or entity for compensation that is contingent upon the passage or defeat of any action by the Board or the outcome of any school system action.

(h) Activity report.

(1) A lobbyist shall file with the Panel or the office designated by the Panel:

(i) By July 31, one report concerning the lobbyist's lobbying activities covering the period beginning January 1 through June 30; and

(ii) By January 31, one report covering the period beginning July 1 through December 31.

(2) A lobbyist shall file a separate activity report for each person or entity on whose behalf the lobbyist acts.

(3) If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form.

(4) The report shall include:

(i) A complete and current statement of the information required to be supplied with the lobbyist's registration form.

(ii) Total expenditures on lobbying activities in each of the following categories:

(A) Total compensation paid to the lobbyist not including expenses reported under items (B) — (H) of this subparagraph;

(B) Office expenses of the lobbyist;

(C) Professional and technical research and assistance not reported in item (i) of this subparagraph;

(D) Publications which expressly encourage persons to communicate with officials;

(E) Names of witnesses, and the fees and expenses paid to each witness;

(F) Meals and beverages for officials;

(G) Reasonable expenses for food, lodging, and scheduled entertainment of officials for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

(H) Other gifts to or for officials or members of their immediate families; and

(I) Other expenses.

(i) Special gift report.

(1) (i) With the six-month activity report required under subsection (h) of this section, a lobbyist shall report, except for gifts reported in item (h)(ii)(G) of this section, gifts from the lobbyist with a cumulative value of \$75 or more during the reporting period to an official or member of the immediate family of an official.

(ii) The lobbyist shall report gifts under this paragraph regardless of whether the gift was given in connection with lobbying activities.

(2) The report shall include the date, beneficiary, amount or value, and nature of the gift.

(j) Notification to official and confidentiality.

(1) If any report filed under this section contains the name of an official or a member of the official's immediate family, the Panel shall notify the official within 30 days.

(2) The Panel shall keep the report confidential for 60 days following receipt by the Panel.

(3) Within 30 days of the notice required under paragraph (1) of this subsection, the official may file a written exception to the inclusion in the report of the name of the official or the member of the official's immediate family.

(k) The Panel may require a lobbyist to submit other reports the Panel determines to be necessary.

(l) (1) The Panel or office designated by the Panel shall maintain all registrations and reports filed under this section for four years from the date of receipt by the Panel.

(2) The Panel shall make lobbying registrations and reports available during normal office hours, for examination and copying by the public subject to reasonable fees and administrative procedures established by the Panel or the Board.

(m) (1) The Panel shall review the registrations and reports filed under this section for compliance with this section and shall notify persons engaging in lobbying activities of any omissions or deficiencies.

(2) The Panel or the Board may take appropriate enforcement action to ensure compliance with this section.

(n) Annual report.

(1) The Panel shall compute and make available a subtotal under each of the ten required categories in subparagraph (h)(4)(ii) of this section.

(2) The Panel shall compute and make available the total amount reported by all lobbyists for their lobbying activities during the reporting period.

Section 8. Sanctions.

(a) An official who violates this chapter is subject to discipline, personnel action, or removal from office, as provided by law and consistent with procedures set forth in [_____].

(b) A person who violates this chapter is subject to the provisions or sanctions in [_____].

Appendix B—Model Board of Education Ethics Regulations

Authority: State Government Article, §§15-206 and 15-811—15-815, Annotated Code of Maryland

CHAPTER _____—ETHICS PROVISIONS

Section 1. Applicability and definitions.

(a) This chapter applies to members of the Board of Education, candidates to be members of the Board of Education, school officials, and employees of the [_____] County school system.

(b)(1) In this chapter, the following terms have the meanings indicated.

(2) "Gift":

(i) Means the transfer of any service or thing of economic value regardless of form without adequate and lawful consideration; and

(ii) Does not include a political campaign contribution regulated under Elections Article, Annotated Code Maryland.

(3) "Official" includes a member of the Board of Education, an employee of the school system or Board of Education, and the Superintendent.

Section 2. Ethics Panel.

(a) There is a [_____] County School System Ethics Panel that consists of ____ members appointed by the Chairman of the Board of Education with the concurrence of the other members of the Board.

(b) The Ethics Panel shall:

(1) Devise, receive, and maintain all forms required by this chapter;

(2) Provide advisory opinions to persons subject to this chapter regarding the applicability of these provisions to them;

(3) Process and make determinations regarding complaints alleging violations of this chapter;

(4) Refer findings regarding complaints and other enforcement matters to the Board of Education for action; and

(5) Conduct an information program regarding the purposes and application of this chapter.

Section 3. Conflicts of interest.

(a) In this section, “qualified relative” means a spouse, parent, child, or sibling.

(b) Participation.

(1) Except as permitted by Board of Education regulation or in the exercise of an administrative or ministerial duty that does not affect the disposition or decision in the matter, an official may not participate in:

(i) Any matter in which, to the knowledge of the official, the official or a qualified relative of the official has an interest; or

(ii) Any matter in which any of the following is a party:

(A) A business entity in which the official has a direct financial interest of which the official may reasonably be expected to know;

(B) A business entity for which the official or a qualified relative of the official is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or, to the knowledge of the official, a qualified relative of the official is negotiating or has any arrangement concerning prospective employment;

(D) A business entity that is a party to an existing contract with the school official or which, to the knowledge of the official, a qualified relative of the official, if the contract reasonably could be expected to result in a conflict between the private interests of the official and the school system or Board of Education duties of the official;

(E) An entity, doing business with the Board of Education or school system, in which a direct financial interest is owned by another entity in which the official has a direct financial interest, if the official may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official knows is a creditor or obligee of the official or a qualified relative of the official with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or qualified relative of the official.

(2) An official who is disqualified from participating under paragraph (1) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official is required by law to act; or

(iii) The disqualified official is the only person authorized to act.

(c) Employment and financial interests.

(1) Except as permitted by regulation of the Board of Education when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official may not:

(i) Be employed by or have a financial interest in an entity that is:

(A) Subject to the authority of the school system or Board of Education; or

(B) Negotiating or has entered a contract with the school system or Board of Education; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official.

(2) This prohibition does not apply to:

(i) An official whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted in accordance with regulations adopted by the Board of Education; or

(ii) Subject to other provisions of regulation and law, a member of the Board of Education in regard to a financial interest or employment held at the time of the oath of office, if the financial interest or employment:

[For an appointed board] (A) Was publicly disclosed to the appointing authority and the Panel at the time of appointment; or

[For an elected board] (B) Was disclosed on the financial disclosure statement filed with the certificate of candidacy to be a candidate to be a member of the Board.

(d) Post-employment. A former official may not assist or represent any party other than the Board of Education or school system for compensation in a case, contract, or other specific matter involving the Board of Education or the school system if that matter is one in which the former official significantly participated as an official.

(e) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official may not assist or represent a party for contingent compensation in any matter before or involving the Board of Education or the school system.

(f) Prestige of office.

(1) An official may not intentionally use the prestige of office or public position for the private gain of that official or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by a member of the Board of Education without additional compensation.

(g) Gifts.

(1) An official may not solicit any gift.

(2) An official may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual lobbyist.

(3) An official may not knowingly accept a gift, directly or indirectly, from a person that the official knows or has reason to know:

(i) Is doing business with or seeking to do business with the school system or Board unit with which the official is affiliated;

(ii) Is subject to the authority of the school system or Board of Education;

(iii) Is a regulated lobbyist with respect to matters within the jurisdiction of the official; or

(iv) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the school system duties of the official.

(4) (i) This paragraph does not apply to a gift:

(A) That would tend to impair the impartiality and independence of judgment of the official receiving the gift;

(B) Of significant value that would give the appearance of impairing the impartiality and independent judgment of the official; or

(C) Of significant value that the recipient official believes or has reason to believe is designed to impair the impartiality and independent judgment of the official.

(ii) Notwithstanding paragraph (3) of this subsection, an official may accept:

(A) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(B) Ceremonial gifts or awards that have insignificant monetary value;

(C) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official at a meeting which is given in return for the participation of the official in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to members of the Board of Education to attend a charitable, cultural, or political event, if the purpose of the gift or admission is a courtesy or ceremony extended to the Board of Education;

(F) A specific gift or class of gifts which the Panel exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the school system or Board of Education and that the gift is purely personal and private in nature;

(G) Gifts from a person related by blood or marriage, or any other individual who is a member of the household of the official; or

(H) An honorarium for speaking to or participating in a meeting, provided that the offering of the honorarium is in no way related to the school system or Board position of the official.

(h) Disclosure of confidential information. Other than in the discharge of his official duties, an official may not disclose or use confidential information that the official acquired by reason of the official's public position and that is not available to the public for the economic benefit of the official or the economic benefit of another person.

(i) Procurement.

(1) An individual or person that employs an individual who assists a school system or Board of Education in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Panel may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring unit of the school system.

Section 4. Financial disclosure — members of the Board of Education and candidates to be members of the Board of Education.

(a) This section applies to all members of the Board of Education and candidates to be members of the Board of Education.

(b) Except as provided in subsection (d) of this section, a member of the Board or candidate to be a member of the Board shall file the financial disclosure statement required under this subsection:

- (1) On a form provided by the Panel;
- (2) Under oath or affirmation; and
- (3) With the Panel or the office designated by the Panel.

(c) Deadlines for filing statements.

(1) An incumbent official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(2) An official who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(3) (i) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

(d) Candidates to be members of the Board of Education.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be a member of the Board of Education shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be a member of the Board of Education shall file a statement required under this section:

- (i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;
- (ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and
- (iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be a member of the Board of Education:

(i) May file the statement required under §6(d)(2)(i) of this chapter with the Board of Election Supervisors with the certificate of candidacy or with the Panel prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §6(d)(2)(ii) and (iii) of this chapter with the Panel or the office designated by the Panel.

(4) If a candidate fails to file a statement required by this section after written notice is provided by the Board of Election Supervisors at least 20 days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

(5) The Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this section has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the Board of Election Supervisors shall forward the statement to the Panel, or the office designated by the Panel.

(d) Public record.

(1) The Panel or office designated by the Panel shall maintain all financial disclosure statements filed under this section.

(2) The Panel or office designated by the Panel or Board shall make financial disclosure statements available during normal office hours, for examination and copying by the public subject to reasonable fees and administrative procedures established by the Panel or the Board.

(3) If an individual examines or copies a financial disclosure statement, the Panel or the office designated by the Panel shall record:

- (i) The name and home address of the individual reviewing or copying the statement; and
- (ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the individual whose financial disclosure statement was examined or copied, the Panel or the office designated by the Panel shall provide the individual with a copy of the name and home address of the person who reviewed the individual's financial disclosure statement.

(e) Retention requirements. The Panel or the office designated by the Panel shall retain financial disclosure statements for four years from the date of receipt.

(f) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the school system or Board of Education.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with the school system or Board of Education.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the school system or Board of Education, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the

interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the school system or Board of Education.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with the school system or Board of Education.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the school system or Board of Education.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each school system or Board unit with which the entity is involved.

(6) Indebtedness to entities doing business with the school system or Board.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the school system or Board of Education owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) Employment with the school system or Board of Education. A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the school system or Board of Education in any capacity at any time during the reporting period.

(8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from

which the individual or member of the individual's immediate family received earned income at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the school system or Board of Education does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(9) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(g) For the purposes of §6(g)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held by a business entity in which the individual held a 30% or greater interest at any time during the reporting period.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(h) (1) The Panel shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The Panel or Board of Education may take appropriate enforcement action to ensure compliance with this section.

Section 5. Financial disclosure — Employees and appointed officials.

(a) This section only applies to the following appointed officials and employees.

(list of appointed official titles and employee titles)

(b) A statement filed under this section shall be filed with the Panel or office designated by the Panel under oath or affirmation.

(c) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is under the authority of the Board of Education or the school system, including the name of the donor of the gift and the approximate retail value at the time of receipt.

(d) An official or employee shall disclose employment and interest that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

(e) The Panel or office designated by the Panel shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §4(e) and (f) of this chapter.

Section 6. Lobbying.

(a) A person shall file a lobbying registration statement with the Panel or office designated by the Panel if the person:

(1) Personally appears before any school official or employee with the intent to influence that person in performance of the official duties of the official or employee; and

(2) In connection with the intent to influence, expends or reasonably expects to expend in a given calendar year in excess of \$[_____] on food, entertainment, or other gifts for officials and employees of the Board of Education or school system.

(b) A person shall file a registration statement required under this section on or before the later of January 15 of the calendar year or

within five days after first performing an act that requires registration in the calendar year.

(c) (1) The registration statement shall identify:

(i) The registrant;

(ii) Any other person on whose behalf the registrant acts; and

(iii) The subject matter on which the registrant proposes to make appearances specified in subsection (a) of this section.

(2) The registration statement shall cover a defined registration period not to exceed one calendar year.

(d) Within 30 days after the end of a calendar year during which a person was registered under this section, the person shall file a report with the Panel or office designated by the Panel disclosing:

(1) The value, date, and nature of any food, entertainment, or other gift provided to a school official or employee; and

(2) If a gift or series of gifts to a single official or employee exceeds \$[_____] in value, the identity of the official or employee.

(e) The Panel or office designated by the Panel shall maintain the registrations and reports filed under this section as public records available for public inspection and copying.

Section 7. Exemptions and modifications.

The Ethics Panel or the Board of Education, as appropriate, may grant exemptions and modifications to the provisions of §§3 and 5 of this chapter to employees and appointed officials who are not members of the Board of Education when the Panel or Board of Education determines that application of those provisions is not required to preserve the purposes of this chapter and would:

(a) Constitute an unreasonable invasion of privacy; and

(b) Significantly reduce the availability of qualified persons for public service.

Section 8. Sanctions.

(a) An official who violates this chapter is subject to discipline, personnel action, or removal from office, as provided by law and consistent with procedures set forth in [_____].

(b) A person who violates this chapter is subject to the provisions or sanctions in [_____].

(c) A finding of a violation of this chapter by the Board is public information.

ROBERT A. HAHN
Executive Director

Title 30
MARYLAND INSTITUTE
FOR EMERGENCY
MEDICAL SERVICES
SYSTEMS (MIEMSS)

Subtitle 02 EMERGENCY MEDICAL
SERVICES PROVIDERS

30.02.02 Licensure and Certification

Authority: Education Article, §13-516, Annotated Code of Maryland

Notice of Proposed Action

[11-087-P]

The State Emergency Medical Services Board proposes to amend Regulations .02—.06 and .09 in **COMAR 30.02.02 Emergency**

Medical Services Providers. This action was considered and approved by the State Emergency Medical Services Board at its regular meeting on December 14, 2010.

Statement of Purpose

The purpose of this action is to remove irrelevant and archaic references, update terminology, streamline testing procedures for EMS providers, provide greater flexibility for individuals seeking reciprocity, and increase the fees for testing, licensure, and certification of EMS providers.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The proposal increases fees charged for testing, licensure, and certification of EMS providers.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:		
Increase in Fees	(R+)	\$15,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:		
Increase in Fees	(+)	Minimal
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. Approximately 9,000 licenses and certificates are issued each year. Of those, approximately 1,500 are required to pay the fee.

D. Approximately 1,500 individuals each year would be required to pay an additional \$10 in fees.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Rae Oliveira, EMS Training Specialist, Maryland Institute for Emergency Medical Services Systems, 653 Pratt Street, Baltimore, Maryland 21201, or call 410-706-3666, or email to roliveira@miemss.org, or fax to 410-706-2367. Comments will be accepted through March 14, 2011. A public hearing has not been scheduled.

.02 Fees.

A. (text unchanged)

B. The fee for the first responder written examination and each reexamination is [\$15] §25.

C. The fee for the EMT-B written examination and each reexamination is [\$15] §25.

D. The fee for the practical examination for EMT-B is [\$50] §60.

E. The fee for the CRT and EMT-P written examinations and each written reexamination is [\$15] §25 per examination.

F. The fee for the health care provider to EMT-B program examination and each reexamination is [\$15] §25.

G. The fee for reciprocal certification or licensure is [\$25] §35.

.03 Requirements.

A. — B. (text unchanged)

C. In addition to the requirements of §B of this regulation, an applicant for first responder certification shall:

(1) (text unchanged)

(2) Have successfully completed the practical certification examination administered in conjunction with the first responder course; *and*

(3) Have [scored at least 70 percent on] *passed* a first responder written certification examination [approved and administered by MIEMSS] *administered by an EMS educational program approved by the EMS Board*]; *and*

(4) If the applicant will be using an automated external defibrillator as a first responder, be currently affiliated with an EMS operational program].

D. In addition to the requirements of §B of this regulation, an applicant for EMT-B certification shall:

(1) — (2) (text unchanged)

(3) Have [scored at least 70 percent on] *passed* an EMT-B written certification examination approved [and administered] by MIEMSS;

(4) — (5) (text unchanged)

E. In addition to the requirements of §B of this regulation, an applicant for initial CRT licensure shall:

(1) Have successfully completed:

(a) A CRT course approved by the EMS Board; *or*

[(b) Before July 1, 2008, a CRT update program; *or*

[(c)] (b) (text unchanged)

(2) (text unchanged)

(3) Submit evidence of[:

(a)] Current active status registration as an EMT-I/99 with the National Registry of Emergency Medical Technicians; [or

(b) Licensure before July 1, 2008, as a CRT, based on successful completion of a CRT update program;]

(4) — (5) (text unchanged)

(6) Have [scored at least 75 percent on] *passed* a written CRT licensure examination approved [and administered] by MIEMSS.

F. In addition to the requirements of §B of this regulation, an applicant for EMT-P licensure shall:

(1) — (5) (text unchanged)

(6) Have [scored at least 75 percent on] *passed* a written EMT-P licensure examination approved [and administered] by MIEMSS.

G. In addition to the requirements of §B of this regulation, an applicant for EMD licensure shall:

(1) — (3) (text unchanged)

(4) Have:

(a) (text unchanged)

(b) [Scored at least 75 percent on] Passed an EMD written licensure examination approved [and administered by] MIEMSS; *and*

(5) (text unchanged)

.04 Reciprocity.

A. (text unchanged)

B. In addition to the requirements of §A of this regulation, an applicant for first responder reciprocal certification shall:

- (1) Submit evidence of current:
 - (a) (text unchanged)
 - (b) Registration with the National Registry of Emergency Medical Technicians as a first responder; and
- (2) Successfully complete a 6-hour skills refresher course, approved by MIEMSS].

C. In addition to the requirements of §A of this regulation, an applicant for EMT-B reciprocal certification shall:

- (1) Submit evidence of current:
 - (a) Certification as an EMT-B in another state *if that state follows the national standards*;
 - (b) — (d) (text unchanged)
- (2) Successfully complete a:
 - (a) 12-hour skills refresher course approved by MIEMSS; or
 - (b) *Protocol review and system orientation, including skills check-off, as approved by MIEMSS.*

D. In addition to the requirements of §A of this regulation, an applicant for reciprocal CRT licensure shall:

- (1) — (2) (text unchanged)
- (3) [Score at least 75 percent on] *Pass* a written CRT licensure examination approved [and administered] by MIEMSS.

E. In addition to the requirements of §A of this regulation, an applicant for reciprocal EMT-P licensure shall:

- (1) Submit evidence of current active status registration as an EMT-P with the National Registry of Emergency Medical Technicians;
- (2) Successfully complete a Maryland protocol review session; and
- (3) *Pass* [Score at least 75 percent on] an EMT-P licensure examination approved [and administered] by MIEMSS.

F. — G. (text unchanged)

.05 Examination and Reexamination.

A. — B. (text unchanged)

C. If an applicant fails a second written certification or licensure examination, the applicant may retake the written examination one additional time within [6] *12* months of the second written examination subject to §D of this regulation.

D. Before taking a third written certification or licensure examination, the applicant shall complete remedial training for each of the modules [in] which the applicant *failed* [scored less than:

- (1) 70 percent on the second first responder or EMT-B written examination; or
- (2) 75 percent on the second CRT or EMT-P written examination].

E. — G. (text unchanged)

H. If an applicant for EMT-B fails [the] *a first or second* practical certification examination, the applicant may retake the practical examination:

- (1) Within 6 months of failing the first *or second* practical examination as provided in this regulation; and
- (2) (text unchanged)

[I. An applicant for EMT-B who fails a second EMT-B practical examination shall successfully complete an EMT-B 12-hour skills refresher before retaking the examination.]

[J.] *I.* If an applicant for EMT-B certification fails the third written or practical certification examination, the applicant shall successfully complete another approved EMT-B training course in its entirety and [score at least 70 percent on] *pass* an EMT-B written certification examination approved [and administered] by MIEMSS before taking another EMT-B practical certification examination.

.06 Issuance of License or Certificate.

A. — E. (text unchanged)

F. An EMS provider shall notify the MIEMSS Office of Education, *Licensure* and Certification in writing within 30 days of any change in:

- (1) — (3) (text unchanged)

G. Unless renewed or extended, the term of a license or certificate shall expire [at midnight] on the expiration date shown on the license or certificate.

H. Unless the certificate is *the initial certificate issued under COMAR 30.02.02.04* or is extended, revoked, or suspended, the certificate of a first responder or EMT-B is valid:

- (1) — (2) (text unchanged)

I. Unless the license is extended, revoked, or suspended, the license of a CRT is valid:

(1) In the initial licensure period, from the date of successful completion of all required licensure examinations until April 30 of the year the individual's registration with the National Registry of Emergency Medical Technicians expires;

(2) In each subsequent licensure period, for 2 years from the previous expiration date;

[(3) If issued after June 30, 2001, under a CRT update program:

(a) In the initial licensure period from the date of successful completion of all required licensure examinations until April 30 of the second year after issue; and

(b) In each subsequent licensure period, for 2 years from the previous expiration date;]

[(4)] (3) If issued under a CRT update program, through which the candidate becomes an EMT-I/99 with the National Registry of Emergency Medical Technicians:

(a) (text unchanged)

(b) In each subsequent licensure period, for 2 years from the previous expiration date; or

(5) If issued without the CRT update program:

(a) For 2 years from the previous expiration date; but

(b) The license is not valid after July 1, 2008].

J. — K. (text unchanged)

.09 Reinstatement.

A. (text unchanged)

B. An applicant for reinstatement as an EMS provider shall apply for reinstatement:

- (1) — (2) (text unchanged)

(3) As a CRT[.], *at any time if the applicant has current active status registration as EMT-I/99 with the National Registry of Emergency Medical Technicians; or*

(a) For an applicant who has

(b) For an applicant licensed before July 1, 2001, who has completed a CRT update program, not later than 2 years after the expiration of the applicant's CRT licensure; or

(c) For an applicant licensed before July 1, 2001, who has not completed a CRT update program, not later than 2 years after the expiration of the applicant's CRT licensure; or]

(4) (text unchanged)

C. (text unchanged)

D. If applying for reinstatement more than 1 year after the expiration of the individual's licensure or certification, in addition to the requirements of §C of this regulation, within 6 months of completion of the required continuing education, an applicant for reinstatement shall, if applying for reinstatement as:

(1) A first responder, pass the first responder:

(a) (text unchanged)

(b) Written certification examination approved [and administered] by MIEMSS;

(2) An EMT-B, pass the EMT-B written and practical certification examinations approved [and administered] by MIEMSS;

[(3) A CRT licensed before July 1, 2001, who has not completed a CRT update program, pass the CRT written licensure examination approved and administered by MIEMSS;]

[(4)] (3) A CRT:

(a) (text unchanged)

(b) [Score at least 75 percent on] *Pass* a CRT licensure examination approved [and administered] by MIEMSS;

[(5)] (4) An EMT-P:

(a) Successfully complete a Maryland Protocol Review class, and

(b) [Receive a score of at least 75 percent on] *Pass* an EMT-P licensure examination approved [and administered] by MIEMSS;
or

(6) (text unchanged)

E. (text unchanged)

ROBERT R. BASS, M.D.
Executive Director
Maryland Institute for Emergency Medical
Services Systems (MIEMSS)

Errata

COMAR 05.04.09

At 38:3 Md. R. 151 (January 28, 2011), column 1, line 14 from the top:

For: **.13**, and **.15—18** under **COMAR 05.04.09 Group Home**

Read: **.13**, and **.16—18** under **COMAR 05.04.09 Group Home**

COMAR 21.01.03

At 37:23 Md. R. 1624 (November 5, 2010), column 2, line 12 from the bottom:

For: Maryland; Ch. 198, Acts of 2009; Chs. 428, 495 and 713, Acts of 2010

Read: Maryland; Ch. 198, Acts of 2009; *Chs. 428, 495 and 713, Acts of 2010*

[11-04-45]

Special Documents

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Administration-Sponsored Capital Program Planning for Mental Health, Addictions, and Developmental Disabilities Facilities

The Department of Health and Mental Hygiene is currently updating its Five-Year Plan for funding the construction, acquisition, renovation, and equipping of community facilities providing mental health, addictions, or developmental disabilities services.

Applicants interested in being considered to receive State funds for capital development should request an application packet as soon as possible from Brooks Norris, Administrator, Administration-Sponsored Capital Programs, at the Office of Capital Planning, Budgeting, and Engineering Services, Department of Health and Mental Hygiene, 201 West Preston Street, Room 535H, Baltimore, MD 21201-2399, telephone 410-767-6589.

Applicants should submit an application to the Office of Capital Planning, Budgeting, and Engineering Services by April 8, 2011, in order to receive full consideration, should a bond loan be established in the 2012 General Assembly session (Fiscal Year 2013 funding). Applications received after April 8, 2011 will be considered; however, ranking on the departmental priority list cannot be guaranteed.

Applicants who received planning (architectural and engineering) funds in previous years must submit a complete application if they want to be considered for funding in Fiscal Year 2013.

Technical assistance for preparation of the application will be provided by Department of Health and Mental Hygiene staff upon request. For further information, please call Brooks Norris at 410-767-6589.

[11-04-10]

Administration-Sponsored Capital Program Planning for Federally Qualified Health Centers

The Department of Health and Mental Hygiene is currently updating its Five-Year Plan for funding the conversion, construction, acquisition, renovation, and equipping of facilities that have been designated as a Federally Qualified Health Center (FQHC) under 330 of the Federal Public Health Service Act, 42 U.S.C. §254B.

FQHCs interested in being considered to receive State funds for capital development should request an application packet as soon as possible from Brooks Norris, Administrator, Administration-Sponsored Capital Programs, at the Office of Capital Planning, Budgeting, and Engineering Services, Department of Health and Mental Hygiene, 201 West Preston Street, Room 535H, Baltimore, MD 21201-2399, telephone 410-767-6589.

Applicants should submit an application to the Office of Capital Planning, Budgeting, and Engineering Services by April 8, 2011, in order to receive full consideration, should a bond loan be established in the 2012 General Assembly session (Fiscal Year 2013 funding). Applications received after April 8, 2011, will be considered; however, ranking on the departmental priority list cannot be guaranteed.

Applicants who received planning (architectural and engineering) funds in previous years must submit a complete application if they want to be considered for funding in Fiscal Year 2013.

Technical assistance for preparation of the application will be provided by Department of Health and Mental Hygiene staff upon request. For further information, please call Brooks Norris at 410-767-6589.

[11-04-11]

MARYLAND HEALTH CARE COMMISSION

Application for Waiver to Provide Primary Percutaneous Coronary Intervention (pPCI) Services

The Maryland Health Care Commission hereby publishes this schedule for the submission of applications to request a waiver to provide primary percutaneous coronary intervention (pPCI) services in a hospital without on-site cardiac surgery. The Commission will receive applications on the dates listed below. This schedule extends the schedule published in 37:1 Md. Register, page 46 (January 4, 2010). A hospital that seeks to initiate pPCI services without on-site cardiac surgery must submit an application for a waiver. A hospital with a two-year pPCI waiver must submit an application for the renewal of its waiver. A hospital that has received a one-year waiver to initiate a pPCI program must provide pPCI services for a one-year period before receiving a two-year waiver. An applicant must demonstrate the ability to comply with all requirements for pPCI programs without on-site cardiac surgery as specified in the regulations. The general procedure to obtain a pPCI waiver is set forth at COMAR 10.24.17.05D(1). For further information about this schedule, call Dolores Sands, Chief, Specialized Services Policy & Planning, at 410-764-3371.

Applications from Hospitals Seeking to Initiate pPCI Services

Metropolitan Washington — April 13, 2011
Eastern Shore — July 13, 2011
Western Maryland — October 12, 2011
Metropolitan Baltimore — January 11, 2012

Renewal Applications from Hospitals with 2-Year pPCI Waivers

Waiver Issued in February 2011 — November 14, 2012
Waiver Issued in March 2011 — December 12, 2012
Waiver Issued in May 2011 — February 13, 2013
Waiver Issued in June 2011 — March 13, 2013
Waiver Issued in September 2011 — June 12, 2013
Waiver Issued in December 2011 — September 11, 2013

Applications for Two-Year Waivers from Hospitals with 1-Year pPCI Waivers

A hospital with a 1-year pPCI waiver must file an application seeking a 2-year waiver 90 days before the anniversary date of its initiation of primary PCI services at the hospital.

[11-04-35]

Notice of Docketing

The Maryland Health Care Commission (MHCC) hereby gives notice of docketing of the following application for renewal of a waiver to provide primary percutaneous coronary intervention in a hospital without on-site cardiac surgery: Upper Chesapeake Medical Center – Docket No. 11-12-0053 WR.

The MHCC shall review the application under COMAR 10.24.17. Please refer to the Docket No. listed above in any correspondence on the application. The application is available for review in the office of the MHCC during regular business hours by appointment. All correspondence should be addressed to: Pamela W. Barclay, Director, Center for Hospital Services, Maryland Health Care Commission, 4160 Patterson Avenue, Baltimore, Maryland 21215.

Contact: Pamela W. Barclay (410) 764-3232

[11-04-36]

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.

BOARD OF ARCHITECTS

Subject: Public Meeting
Date and Time: February 23, 2011, 10 a.m.
Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263

[11-04-24]

ATHLETIC COMMISSION

Subject: Public Meeting
Date and Time: February 24, 2011, 2 — 4:30 p.m.
Place: 500 N. Calvert St., 3rd Fl., Conf. Rm., Baltimore, MD
Contact: Patrick Pannella (410) 230-6223

[11-04-09]

BOARD OF AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

Subject: Public Meeting
Date and Time: February 17, 2011, 4 — 6 p.m.
Place: Metro Executive Bldg., 4201 Patterson Ave., Baltimore, MD
Contact: Christopher Kelter (410) 764-4725

[11-04-07]

BOARD OF BARBERS

Subject: Public Meeting
Date and Time: March 14, 2011, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195

[11-04-22]

BOARD OF COSMETOLOGISTS

Subject: Public Meeting
Date and Time: March 7, 2011, 9:30 a.m. — 4:30 p.m.
Place: 500 N. Calvert St., 2nd Fl., Baltimore, MD
Add'l. Info: Centre St. Entrance
Contact: Robert Wood (410) 230-6195

[11-04-21]

GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

Subject: Public Meeting
Date and Time: March 14, 2011, 3 — 5 p.m.
Place: Loch Raven Library, Baltimore, MD
Contact: Jessica Winpigler (410) 821-2829

[11-04-40]

JOINT CHAIRS OF THE DESIGN BOARDS

Subject: Public Meeting
Date and Time: March 2, 2011, 1:30 p.m.
Place: 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD
Contact: Pamela J. Edwards (410) 230-6263

[11-04-26]

MARYLAND STATE BOARD OF EDUCATION

Subject: Public Meeting
Date and Time: February 22, 2011, 9 a.m. — 5 p.m.; Additional Dates: March 22—23, April 26—27, May 24—25, June 21—22, 2011
Place: 200 W. Baltimore St., Baltimore, MD
Add'l. Info: The State Board of Education is pleased to receive oral public comment at each of its regular monthly meetings. In order to allow the State Board sufficient time for its other business, the total time allotted to public comment will generally be limited to 30 minutes. Individuals seeking to speak to the Board will be given 3 minutes each. Persons desiring to speak to the State Board, must call (410-767-0467) or e-mail (cnecessary@msde.state.md.us) the Board office no earlier than 1 week prior to the meeting to register to speak. Registration will be accepted on a first-come, first-served basis. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views.
Contact: Charlene L. Necessary (410) 767-0467

[11-04-32]

DEPARTMENT OF THE ENVIRONMENT/LAND MANAGEMENT ADMINISTRATION

Subject: Public Meeting
Date and Time: March 3, 2011, 9:30 — 11:30 a.m.
Place: MDE Headquarters, 1800 Washington Blvd., Aeris Conf. Rm., Baltimore, MD
Add'l. Info: Meeting of the Governor's Lead Poisoning Prevention Commission
Contact: Tracy Smith (410) 537-3847

[11-04-23]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/ DEVELOPMENTAL DISABILITIES ADMINISTRATION

Subject: Public Meeting — DDA Resource Coordination Provider Interest Meetings
Date and Time: March 1, 2011, 9 a.m. — 1 p.m.; Additional Dates: March 2 and 3, 2011, 9 a.m. — 1 p.m.
Place: Auditorium, 300 W. Preston St., Baltimore, MD
Add'l. Info: Admission by invitation only. Pre-registration required. Prospective providers need to attend only one session. See DDA website (www.ddamaryland.org) for additional information.
Contact: Ella Daley (410) 767-5600

[11-04-43]

DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MARYLAND BOARD OF PHYSICIANS

Subject: Public Meeting
Date and Time: February 23, 2011, 9 — 10 a.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

[11-04-08]

GENERAL NOTICES

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DEPARTMENT OF HEALTH AND MENTAL HYGIENE/OFFICE OF HEALTH SERVICES

Subject: State Plan Submission

Add'l. Info: The Department of Health and Mental Hygiene submitted Maryland Medicaid State plan amendment 10-06 on March 30, 2010, to CMS. The purpose of the amendment is to provide for the extension of the Transitional Medical Assistance (TMA) Program by: 1) Providing up to 12 months of continuous TMA coverage to families; and 2) Providing that individuals who no longer qualify due to job-related income, must have been eligible for Medical Assistance for 3 of the preceding 6 months in order to be eligible for TMA.

The Maryland Medicaid State plan amendment was approved by CMS on May 18, 2010, and is effective as of January 1, 2010.

The Department of Health and Mental Hygiene submitted Maryland Medicaid State plan amendment 10-08 on June 22, 2010, to CMS. The purpose of the amendment is to provide for comprehensive medical assistance benefits to independent foster care adolescents who are not otherwise eligible, in accordance with the passage of State legislation. To provide for individuals who: 1) Were in foster care under the responsibility of the State on their 18th birthday; 2) Have not reached the age of 21; and 3) Have household income that does not exceed 300 percent of the FPL. The Maryland Medicaid State plan amendment was approved by CMS on September 14, 2010, and is effective as of April 1, 2010.

The Department of Health and Mental Hygiene submitted Maryland Medicaid State plan amendment 10-09 on June 30, 2010, to CMS. The purpose of the amendment is to update Section 2.1 Coverage and Eligibility by adding Express Lane Option. The Maryland Medicaid State plan amendment was approved by CMS on September 28, 2010, and is effective as of April 1, 2010.

The Department of Health and Mental Hygiene submitted Maryland Medicaid State plan amendment 10-10 on September 9, 2010, to CMS. The purpose of the amendment is to provide for a cooperative agreement to provide comprehensive health care services to certain eligible low-income children under age 19 who are not otherwise eligible for Medicaid. The Maryland Medicaid State plan amendment was approved by CMS on November 16, 2010, and is effective as of August 10, 2010.

The Department of Health and Mental Hygiene submitted Maryland Medicaid State plan amendment 10-11 on September 30, 2010, to CMS. The purpose of the amendment is to define the State's coinsurance payment for Part B claims for all dual Medicare and Medicaid covered individuals and QMB-only individuals. The Maryland Medicaid State plan amendment was approved by CMS on December 13, 2010, and is effective as of July 1, 2010.

The Department of Health and Mental Hygiene submitted Maryland Medicaid State plan amendment 10-12 on September 29, 2010, to CMS. The purpose of the amendment is to reflect changes in State regulations related to reimbursement for nursing facility services. The Maryland Medicaid State plan amendment was approved by CMS on December 17, 2010, and is effective as of July 1, 2010.

Written requests for copies of the Maryland Medicaid State plan amendments may be sent to Rebecca Hyman, Office of Health Services, at rhyman@dhmh.state.md.us or DHMH, 201 W. Preston Street, Room 128E, Baltimore, Maryland 21201, or faxes to (410) 333-5154.

Contact: Rebecca Hyman (410) 767-1397
[11-04-44]

BOARD OF HEATING, VENTILATION, AIR- CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

Subject: Public Meeting

Date and Time: March 9, 2011, 9:30 a.m. — 12 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Steve Smitson (410) 230-6169
[11-04-06]

MARYLAND STATEWIDE INDEPENDENT LIVING COUNCIL

Subject: Public Meeting

Date and Time: February 16, 2011, 10 a.m. — 12 p.m.; Additional Dates: April 15 and December 16, 2011

Place: House Office Bldg., 6 Bladen St., Rm. 170, Annapolis, MD

Contact: Tonya Gilchrist (410) 554-5412
[11-04-33]

DIVISION OF LABOR AND INDUSTRY/MARYLAND OCCUPATIONAL SAFETY AND HEALTH (MOSH) ADVISORY BOARD

Subject: Public Meeting

Date and Time: March 2, 2011, 10 a.m.

Place: 10946 Golden West Dr., Ste. 160, Hunt Valley, MD

Add'l. Info: The Board is scheduled to meet to discuss issues relating to occupational safety and health and may consider regulations pertaining to Tree Care and Removal.

Contact: Debbie Stone (410) 767-2225
[11-04-38]

COMMISSIONER OF LAND PATENTS

Subject: Notice of Warrant No. 98

Add'l. Info: NOTICE OF WARRANT NO. 98

TAKE notice that in accordance with Title 13, Real Property Article, Annotated Code of Maryland (2010 Repl. Vol. and 2010 Supp.), the Maryland Department of Natural Resources, 580 Taylor Avenue, Annapolis, MD 21401 with the approval of the Maryland Board of Public Works made application to the Commissioner of Land Patents for a Certificate of Reservation for a parcel of land containing approximately 9.34 acres located within or adjacent to South Mountain State Park in the 8th Election District of Washington County.

The description and plat of the subject land can be viewed at the Maryland State Archives, 350 Rowe Boulevard, Annapolis, MD 21401. Copies of the description and plat can be ordered from the Maryland State Archives for a nominal fee.

PROVIDED certain conditions are met and unless an objection is filed in the proceeding as provided by Sections 13-401 and 13-402, Real Property Article, Annotated Code of Maryland (2010 Repl. Vol. and 2010 Supp.), a Certificate of Reservation may be issued by the Commissioner of Land Patents to the said Maryland Department of Natural Resources for the subject land.

INFORMATION concerning this matter, including the procedure for filing an objection to the issuance of a Certificate of Reservation, can be obtained from Richard H. Richardson, Deputy Commissioner of Land Patents, (410) 260-6407.

WITNESS my hand and the seal of the Land Office of the State of Maryland, the 19th day of January 2011.

Edward C. Papenfuss

Commissioner of Land Patents

Contact: Richard H. Richardson (410) 260-6407

[11-04-19]

COMMISSIONER OF LAND PATENTS

Subject: Notice of Warrant No. 99

Add'l. Info: NOTICE OF WARRANT NO. 99

TAKE notice that in accordance with Title 13, Real Property Article, Annotated Code of Maryland (2010 Repl. Vol. and 2010 Supp.), the Maryland Department of Natural Resources, 580 Taylor Avenue, Annapolis, MD 21401 with the approval of the Maryland Board of Public Works made application to the Commissioner of Land Patents for a Certificate of Reservation for a parcel of land containing approximately 79.249 acres located within or adjacent to Cunningham Falls State Park in the 15th Election District of Frederick County.

The description and plat of the subject land can be viewed at the Maryland State Archives, 350 Rowe Boulevard, Annapolis, MD 21401. Copies of the description and plat can be ordered from the Maryland State Archives for a nominal fee.

PROVIDED certain conditions are met and unless an objection is filed in the proceeding as provided by Sections 13-401 and 13-402, Real Property Article, Annotated Code of Maryland (2010 Repl. Vol. and 2010 Supp.), a Certificate of Reservation may be issued by the Commissioner of Land Patents to the said Maryland Department of Natural Resources for the subject land.

INFORMATION concerning this matter, including the procedure for filing an objection to the issuance of a Certificate of Reservation, can be obtained from Richard H. Richardson, Deputy Commissioner of Land Patents, (410) 260-6407.

WITNESS my hand and the seal of the Land Office of the State of Maryland, the 19th day of January 2011.

Edward C. Papenfuss

Commissioner of Land Patents

Contact: Richard H. Richardson (410) 260-6407

[11-04-20]

BOARD FOR PROFESSIONAL LAND SURVEYORS

Subject: Public Meeting

Date and Time: March 2, 2011, 10 a.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Pamela J. Edwards (410) 230-6263

[11-04-25]

BOARD FOR PROFESSIONAL LAND SURVEYORS AERIAL PHOTOGRAMMETRIC COMMITTEE

Subject: Public Meeting

Date and Time: March 2, 2011, 1 p.m.

Place: 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Pamela J. Edwards (410) 230-6263

[11-04-27]

MARYLAND STATE LOTTERY COMMISSION

Subject: Public Meeting

Date and Time: February 24, 2011, 9 — 11 a.m.

Place: Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD

Contact: Marie A. Torosino (410) 230-8790

[11-04-37]

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

Subject: Public Meeting

Date and Time: March 2, 2011, 8:30 a.m. — 5 p.m.

Place: Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., Richard Trainor Conf. Rm., 1st Fl., Hanover, MD

Contact: Pam Gregory (410) 865-1253

[11-04-05]

PROCUREMENT ADVISORY COUNCIL (PAC)

Subject: Public Meeting

Date and Time: February 25, 2011, 10 a.m. — 12 p.m.

Place: Dept. of Budget and Management, 45 Calvert St., Rm. 158, Annapolis, MD

Contact: Melissa Hodges (410) 260-7335

[11-04-29]

REAL ESTATE COMMISSION

Subject: Public Meeting

Date and Time: March 16, 2011, 10:30 a.m.

Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Patricia Hannon (410) 230-6199

[11-04-13]

REAL ESTATE COMMISSION

Subject: Public Hearing

Date and Time: March 16, 2011, 12:30 p.m.

Place: Dept. of Labor, Licensing, and Regulation, 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD

Contact: Patricia Hannon (410) 230-6199

[11-04-14]

MARYLAND TRANSPORTATION AUTHORITY

Subject: Public Meeting

Date and Time: February 24, 2011, 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

[11-04-01]

BOARD OF WATERWORKS AND WASTE SYSTEMS OPERATORS

Subject: Public Meeting

Date and Time: March 17, 2011, 10 a.m. — 4 p.m.

Place: Maryland Environmental Service, Millersville, MD

Add'l. Info: A portion of this meeting may be held in closed session.

Contact: Pat Kratochvil (410) 537-3167

[11-04-03]

BOARD OF WELL DRILLERS

Subject: Public Meeting

Date and Time: March 23, 2011, 9 a.m. — 4 p.m.

Place: MDE, 1800 Washington Blvd., Terra Conf. Rm., Baltimore, MD

Add'l. Info: A portion of this meeting may be held in closed session.

Contact: Willie Everett (410) 537-3644

[11-04-02]

WORKERS' COMPENSATION COMMISSION

Subject: Public Meeting

Date and Time: February 24, 2011, 9 — 11 a.m.

Place: 10 E. Baltimore St., Baltimore, MD

Add'l. Info: Portions of this meeting may be held in closed session.

Contact: Amy Lackington (410) 864-5300

[11-04-30]

**WORKERS' COMPENSATION
COMMISSION**

Subject: Public Meeting

Date and Time: March 10, 2011, 9 — 11
a.m.

Place: 10 E. Baltimore Street, Baltimore,
MD

Add'l. Info: Portions of this meeting may
be held in closed session.

Contact: Amy Lackington (410) 864-5300
[11-04-31]

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