

# Maryland Register

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Volume 39 • Issue 1 • Pages 1—96

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Judiciary  
Regulations  
Errata  
Special Documents  
General Notices

Pursuant to State Government Article, §7-206, Annotated Code of Maryland, this issue contains all previously unpublished documents required to be published, and filed on or before December 22, 2011, 5 p.m.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 December 22, 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
- 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

An Administrative History at the end of every COMAR chapter gives information about past changes to regulations. To determine if there have been any subsequent changes, check the "Cumulative Table of COMAR Regulations Adopted, Amended, or Repealed" which is found online at [www.dsd.state.md.us/CumulativeIndex.pdf](http://www.dsd.state.md.us/CumulativeIndex.pdf). This table lists the regulations in numerical order, by their COMAR number, followed by the citation to the Maryland Register in which the change occurred. The Maryland Register serves as a temporary supplement to COMAR, and the two publications must always be used together. A Research Guide for Maryland Regulations is available. For further information, call 410-260-3876.

## 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 \$15.00 per issue.

## 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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The Code of Maryland Regulations is available at [www.dsd.state.md.us](http://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](http://www.dsd.state.md.us).

For additional information, visit [www.sos.state.md.us](http://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.

## CLOSING DATES AND ISSUE DATES through JULY 27, 2012

Issue Date	Emergency and Proposed Regulations 5:00 p.m.*	Final Regulations 10:30 a.m.	Notices, etc. 10:30 a.m.
January 27**	January 9	January 18	January 13
February 10	January 23	February 1	January 30
February 24**	February 6	February 14	February 13
March 9**	February 17	February 29	February 27
March 23	March 5	March 14	March 12
April 6	March 19	March 28	March 26
April 20	April 2	April 11	April 9
May 4	April 16	April 25	April 23
May 18	April 30	May 9	May 7
June 1**	May 14	May 21	May 18
June 15**	May 24	June 6	June 4
June 29	June 11	June 20	June 18
July 13**	June 25	July 3	July 2
July 27	July 9	July 18	July 16

\* 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 COUNT REFLECTS THIS FORMATTING.**

\*\* Note closing date changes

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

## REGULATIONS CODIFICATION SYSTEM

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

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

09.12.01.01D(2)(c)(iii)

Title Subtitle Chapter Regulation Subsection Subparagraph

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

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

## Table of Pending Proposals

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

### 03 COMPTROLLER OF THE TREASURY

**03.01.02.02.,05** • 39:1 Md. R. 22 (1-13-12)  
**03.04.01.01** • 39:1 Md. R. 22 (1-13-12)  
**03.04.02.06** • 39:1 Md. R. 22 (1-13-12)  
**03.06.01.43** • 38:23 Md. R. 1425 (11-4-11)  
**03.06.01.44** • 38:13 Md. R. 758 (6-17-11)

**05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

05.11.01.03,.08 • 38:26 Md. R. 1699 (12-16-11)  
05.17.01.01—.13 • 38:21 Md. R. 1282 (10-7-11)  
05.17.02.01—.07 • 38:21 Md. R. 1282 (10-7-11)

## 07 DEPARTMENT OF HUMAN RESOURCES

07.02.07.04—.07,.09,.14,.19—.21 • 38:25 Md. R. 1585 (12-2-11)  
07.02.10.01—.21 • 38:26 Md. R. 1700 (12-16-11)  
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.39 • 38:25 Md. R. 1587 (12-2-11)  
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07.02.29.01—.14 • 38:25 Md. R. 1593 (12-2-11)

## 08 DEPARTMENT OF NATURAL RESOURCES

**08.02.01.05** • 39:1 Md. R. 23 (1-13-12)  
**08.02.04.17** • 38:22 Md. R. 1349 (10-21-11)  
**08.02.11.01** • 38:25 Md. R. 1598 (12-2-11)  
**08.02.13.02.,03.,05—,08** • 38:27 Md. R. 1766 (12-30-11)  
**08.02.19.02** • 38:25 Md. R. 1599 (12-2-11)  
**08.07.07.02** • 39:1 Md. R. 24 (1-13-12) (ibr)  
**08.18.02.07** • 38:25 Md. R. 1599 (12-2-11)  
**08.18.21.03** • 38:25 Md. R. 1600 (12-2-11)  
**08.18.39.01** • 38:25 Md. R. 1600 (12-2-11)

**09 DEPARTMENT OF LABOR, LICENSING, AND  
REGULATION**

**09.03.12.01—12** • 38:21 Md. R. 1289 (10-7-11)  
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**09.10.03.01,,04,,08** • 38:25 Md. R. 1600 (12-2-11)  
**09.10.04.25** • 38:25 Md. R. 1601 (12-2-11)  
**09.11.02.01,,02** • 38:27 Md. R. 1770 (12-30-11)  
**09.12.28.01—.07** • 38:14 Md. R. 794 (7-1-11) (ibr)  
**09.12.31** • 38:25 Md. R. 1602 (12-2-11)  
**09.13.08.02—.15** • 38:26 Md. R. 1719 (12-16-11)  
**09.16.01.05,,06** • 38:15 Md. R. 901 (7-15-11)  
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**09.38.01.01,,02,,05** • 38:25 Md. R. 1603 (12-2-11)  
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## 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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**10.01.04.01—.11 • 38:3 Md. R. 180 (1-28-11)**  
**38:14 Md. R. 800 (7-1-11)**  
**10.01.21.01—.07 • 38:20 Md. R. 1213 (9-23-11)**

**Subtitle 09 (2nd Volume)**

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**10.09.08.04** • 38:26 Md. R. 1722 (12-16-11)  
**10.09.08.06—13** • 38:26 Md. R. 1723 (12-16-11)  
**10.09.12.01.04** • 39:1 Md. R. 28 (1-13-12)  
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 10.09.56.01,.02,.04—.08,.21,.24 • 39:1 Md. R. 36 (1-13-12)  
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 10.15.04.02,.04,.05,.07—.09,.14,.16,.17,.19,  
 .20,.22 • 38:26 Md. R. 1723 (12-16-11)  
 10.15.12.01—.03 • 38:26 Md. R. 1725 (12-16-11)

**Subtitles 23 — 36 (4th Volume)**

10.24.17.01 • 38:27 Md. R. 1775 (12-30-11) (ibr)  
 10.26.02.05 • 38:25 Md. R. 1608 (12-2-11)  
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 10.27.21.01—.09 • 38:27 Md. R. 1775 (12-30-11)  
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 10.38.06.03 • 39:1 Md. R. 52 (1-13-12)  
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 10.41.03.06 • 39:1 Md. R. 53 (1-13-12)  
 10.42.09.01—.06 • 38:27 Md. R. 1779 (12-30-11)  
 10.44.06.02 • 38:25 Md. R. 1615 (12-2-11)  
 10.44.07.02,.05—.34 • 38:26 Md. R. 1727 (12-16-11)  
 10.44.30.01—.05 • 38:14 Md. R. 812 (7-1-11)  
 10.46.02.03,.04 • 39:1 Md. R. 54 (1-13-12)  
 10.54.01.03,.04,.07 • 38:24 Md. R. 1515 (11-18-11)  
 10.54.02.09,.10,.14 • 38:24 Md. R. 1515 (11-18-11)

**11 DEPARTMENT OF TRANSPORTATION**

11.21.01.01—.03 • 38:23 Md. R. 1458 (11-4-11)

**12 DEPARTMENT OF PUBLIC SAFETY AND  
CORRECTIONAL SERVICES**

12.04.01.04—.12,.14—.21 • 38:21 Md. R. 1297 (10-7-11)  
 12.04.02.01—.03,.11—.13 • 38:21 Md. R. 1297 (10-7-11)  
 12.04.05.01,.06 • 38:21 Md. R. 1297 (10-7-11)  
 12.04.06.01—.18 • 38:21 Md. R. 1297 (10-7-11)  
 12.10.01.04—.06,.08,.09,.14—.17,  
 .19—.27 • 38:15 Md. R. 904 (7-15-11)  
 38:26 Md. R. 1730 (12-16-11)

12.10.04.01—.31 • 38:15 Md. R. 904 (7-15-11)  
 12.10.05.01 • 38:15 Md. R. 904 (7-15-11)  
 12.10.06.01—.16 • 38:15 Md. R. 904 (7-15-11)  
 12.12.30.02—.09,.12,.13,.15—.27,.30—.37,  
 .39 • 38:24 Md. R. 1518 (11-18-11)

**13A STATE BOARD OF EDUCATION**

13A.04.07.01—.06 • 38:26 Md. R. 1732 (12-16-11)  
 13A.05.09.02 • 38:23 Md. R. 1459 (11-4-11)  
 13A.12.01.03 • 38:26 Md. R. 1733 (12-16-11)  
 13A.12.02.27 • 38:14 Md. R. 815 (7-1-11)  
 38:26 Md. R. 1734 (12-16-11)  
 13A.12.05.02,.03 • 38:26 Md. R. 1733 (12-16-11)  
 13A.18.01.01,.02 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.02.01—.08 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.03.01—.08 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.04.01—.04 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.05.01—.13 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.06.01—.10 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.07.01—.06 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.08.01—.08 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.09.01—.06 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.10.01—.06 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.11.01—.06 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.12.01—.06 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.13.01—.10 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.14.01—.09 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.15.01—.08 • 38:25 Md. R. 1616 (12-2-11)  
 13A.18.16.01—.04 • 38:25 Md. R. 1616 (12-2-11)

**13B MARYLAND HIGHER EDUCATION COMMISSION**

13B.02.03.01,.02,.03—.14,.16—.34 • 39:1 Md. R. 54 (1-13-12)

**14 INDEPENDENT AGENCIES**

14.06.03.02,.05,.07 • 39:1 Md. R. 68 (1-13-12)  
 14.09.01.06,.06-1 • 38:27 Md. R. 1781 (12-30-11)  
 14.09.03.01,.04,.09 • 38:23 Md. R. 1462 (11-4-11)  
 14.09.03.03 • 38:26 Md. R. 1735 (12-16-11)  
 14.22.02.02 • 38:26 Md. R. 1735 (12-16-11)  
 14.34.01.01—.03 • 38:24 Md. R. 1541 (11-18-11)  
 14.34.02.01—.03 • 38:24 Md. R. 1541 (11-18-11)

**20 PUBLIC SERVICE COMMISSION**

20.50.01.03,.05 • 38:5 Md. R. 332 (2-25-11)  
 38:22 Md. R. 1377 (10-21-11)  
 20.50.10.05 • 38:5 Md. R. 332 (2-25-11)  
 38:22 Md. R. 1377 (10-21-11)  
 20.61.02.01 • 38:27 Md. R. 1782 (12-30-11)

**21 STATE PROCUREMENT REGULATIONS**

21.01.03.03,.08 • 38:26 Md. R. 1737 (12-16-11)  
 21.05.08.10 • 38:26 Md. R. 1737 (12-16-11)  
 21.07.01.26 • 38:26 Md. R. 1737 (12-16-11)  
 21.07.03.26 • 38:26 Md. R. 1737 (12-16-11)  
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 21.11.07.01,.12 • 38:26 Md. R. 1739 (12-16-11)  
 21.11.12.01—.09 • 38:20 Md. R. 1249 (9-23-11)  
 21.13.01.14 • 38:26 Md. R. 1737 (12-16-11)

**24 DEPARTMENT OF BUSINESS AND ECONOMIC  
DEVELOPMENT**

**24.05.25.04** • 38:25 Md. R. 1644 (12-2-11)

**26 DEPARTMENT OF THE ENVIRONMENT**

**Subtitles 08—12 (Part 2)**

**26.08.02.03-3** • 39:1 Md. R. 69 (1-13-12)

**Subtitles 13—18 (Part 3)**

**26.11.01.01** • 38:25 Md. R. 1645 (12-2-11)  
38:25 Md. R. 1647 (12-2-11)  
**26.11.01.04** • 38:25 Md. R. 1648 (12-2-11)  
**26.11.02.01** • 38:25 Md. R. 1645 (12-2-11)  
**26.11.06.12** • 38:25 Md. R. 1647 (12-2-11)  
**26.11.06.14** • 38:25 Md. R. 1645 (12-2-11)  
**26.11.08.01,.02,.08-1,.08-2** • 38:25 Md. R. 1651 (12-2-11)  
**26.11.19.02** • 38:25 Md. R. 1648 (12-2-11)  
**26.11.19.23** • 38:25 Md. R. 1659 (12-2-11)  
**26.16.01.02,.03,.11** • 38:27 Md. R. 1783 (12-30-11)  
**26.16.02.03,.07** • 38:27 Md. R. 1783 (12-30-11)  
**26.16.05.08** • 38:27 Md. R. 1783 (12-30-11)  
**26.17.01.01** • 37:19 Md. R. 1329 (9-10-10) (err)  
**26.17.01.01—.11** • 37:18 Md. R. 1244 (8-27-10) (ibr)  
38:18 Md. R. 1101 (8-26-11) (ibr)

**27 CRITICAL AREA COMMISSION FOR THE  
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

**27.01.01.01** • 38:26 Md. R. 1740 (12-16-11)  
**27.01.09.01—.01-8** • 38:26 Md. R. 1740 (12-16-11)

**30 MARYLAND INSTITUTE FOR EMERGENCY MEDICAL  
SERVICES SYSTEMS (MIEMSS)**

**30.01.02.01** • 39:1 Md. R. 71 (1-13-12) (ibr)

**31 MARYLAND INSURANCE ADMINISTRATION**

**31.03.06.01-1—.03,.05,.06,.10,.11** • 38:25 Md. R. 1667 (12-2-11)  
**31.05.01.06** • 39:1 Md. R. 72 (1-13-12)  
**31.10.01.01—.03** • 38:24 Md. R. 1548 (11-18-11)  
**31.12.01.12** • 39:1 Md. R. 72 (1-13-12)  
**31.12.08.04** • 38:17 Md. R. 1039 (8-12-11)

**33 STATE BOARD OF ELECTIONS**

**33.01.01.01** • 38:23 Md. R. 1468 (11-4-11)  
**33.07.07.01—.04** • 38:23 Md. R. 1468 (11-4-11)  
**33.07.08.01,.03** • 38:23 Md. R. 1468 (11-4-11)  
**33.07.09.01—.06** • 38:23 Md. R. 1468 (11-4-11)  
**33.11.03.08** • 38:23 Md. R. 1470 (11-4-11)  
**33.11.04.03** • 38:23 Md. R. 1470 (11-4-11)  
**33.13.06.03,.05** • 38:23 Md. R. 1471 (11-4-11)  
**33.13.10.01,.02** • 38:23 Md. R. 1471 (11-4-11)  
**33.13.11.01—.04** • 38:26 Md. R. 1746 (12-16-11)  
**33.17.06.08—.11** • 38:23 Md. R. 1468 (11-4-11)

**34 DEPARTMENT OF PLANNING**

**34.04.09.08** • 38:25 Md. R. 1669 (12-2-11)



# The Governor

## EXECUTIVE ORDER 01.01.2011.22

### PlanMaryland Implementation

WHEREAS, The Maryland Department of Planning (MDP) has been required since 1959 by State law to prepare a State Development Plan;

WHEREAS, The General Assembly adopted the 1974 Land Use Act which reaffirmed the requirement that MDP create a State Development Plan;

WHEREAS, Growth and development trends over the past decade in Maryland have been largely unsustainable, which makes the adoption of a State Development Plan necessary;

WHEREAS, The General Assembly in 2007 and in 2010 charged the Task Force on the Future of Growth and Development and then the Maryland Sustainable Growth Commission with advising MDP on the preparation and content of the State Development Plan;

WHEREAS, MDP held three rounds of public meetings in 2008, 2010, and 2011, attended by hundreds of citizens, to solicit public input on the State Development Plan with over 3,000 people at these and other public meetings in addition to hundreds of on-line comments;

WHEREAS, MDP also received the advice of the Smart Growth Subcabinet and the Maryland Sustainable Growth Commission as it prepared the State Development Plan;

WHEREAS, After receiving this input, MDP released the first draft of the State Development Plan, called "PlanMaryland," in April 2011 and established a public comment period, in accordance with Title 5, Subtitle 6 of the State Finance and Procurement Article of the Annotated Code of Maryland, through September 1, 2011;

WHEREAS, Responding to public comments and concerns from local officials, MDP released a revised draft Plan in September 2011 and provided an additional two months for further public comment;

WHEREAS, PlanMaryland seeks to improve coordination between State agencies on Smart Growth because too often the actions of the State have been at cross-purposes to achieve the goals of Smart Growth;

WHEREAS, PlanMaryland is not a substitute for local comprehensive plans and it will not supplant local planning and zoning authority, which has been delegated to local government by the General Assembly; and

WHEREAS, PlanMaryland was adopted in accordance with Title 5, Subtitle 6 of the State Finance and Procurement Article of the Annotated Code of Maryland, when it was filed with the Secretary of State on December 16, 2011.

NOW, THEREFORE, I, MARTIN O'MALLEY GOVERNOR OF THE STATE OF MARYLAND BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVELY IMMEDIATELY:

#### A. Definitions.

(1) "Smart Growth Subcabinet" means the Smart Growth Subcabinet established under § 9-1406 of the State Government Article of the Annotated Code of Maryland.

(2) "State agencies" includes the following:

- (a) Budget and Management;
- (b) Business and Economic Development;
- (c) Housing and Community Development;
- (d) Environment;
- (e) General Services;
- (f) Planning;
- (g) Transportation;
- (h) Natural Resources;
- (i) Agriculture;
- (j) Health and Mental Hygiene;
- (k) Labor, Licensing and Regulation;
- (l) Maryland Energy Administration; and
- (m) Maryland Higher Education Commission.

#### B. Purpose of the Plan.

(1) PlanMaryland shall be recognized as the State Development Plan for the State of Maryland and shall serve as a guide to the economic and physical development of the State in order to:

- (a) Spur economic development, redevelopment, revitalization, and infill development;
- (b) Incentivize resource and agricultural based industries; and

(c) Protect the rural, agricultural, natural, environmental, and cultural lands and resources.

(2) PlanMaryland shall make State policies on development transparent, so local governments can most efficiently access State resources.

(3) State agencies shall review and consider PlanMaryland when making decisions about actions that affect development in the State.

#### C. Planning Areas.

(1) Maryland Department of Planning (MDP), in coordination with the Smart Growth Subcabinet, the Maryland Sustainable Growth Commission, local governments, and other stakeholders, shall draft Planning Area Guidelines for the State.

(a) The purpose of the Planning Area Guidelines is to establish criteria for identifying appropriate locations for Planning Areas that State agencies will use to direct their resources to achieve the goals and objectives of PlanMaryland.

(b) The draft Planning Area Guidelines shall describe the criteria for each Planning Area and how the criteria should be achieved.

(c) MDP shall distribute the draft Planning Area Guidelines to all local jurisdictions with planning and zoning authority for review and comment.

(d) MDP and other staff from State agencies will be available at various forums and meetings to explain the draft Planning Area Guidelines.

(2) (a) Local jurisdictions are encouraged to identify proposed Planning Areas by reviewing their existing comprehensive plans and regulations to see where and how they align with the Planning Area Guidelines.

(b) A local jurisdiction may provide information and mapping of their own proposed Planning Areas to MDP and the Smart Growth Subcabinet based on the Guidelines.

(c) MDP will coordinate the review of local information and mapping by State agencies and provide comments and feedback.

(d) MDP will develop the Planning Area maps by working collaboratively with State agencies and local governments.

(3) (a) Existing State resources will be directed to achieve the goals and objectives of PlanMaryland as appropriate to these Planning Areas.

(b) Local jurisdictions are encouraged to direct their own local resources to these jointly established Areas as appropriate to achieve the goals and objectives of PlanMaryland and their own local growth goals.

D. Implementation of PlanMaryland.

(1) The Smart Growth Subcabinet shall coordinate the implementation of PlanMaryland among the State agencies and report on the progress of its implementation.

(2) State agencies shall review their plans, programs, and policies to determine how they can best be aligned to support the goals and objectives of PlanMaryland.

(3) State agencies shall modify and align their plans, programs, and policies as appropriate within State Planning Areas in order to:

(a) Spur economic development, redevelopment, revitalization, and infill development;

(b) Incentivize resource and agricultural based industries; and

(c) Protect the rural, agricultural, natural, environmental, and cultural lands and resources.

(4) State agencies shall, within 180 days from the issuance of this Executive Order, report to the Smart Growth Subcabinet on their efforts to implement PlanMaryland consistent with this Executive Order.

(5) The report from each State agency shall propose:

(a) A work plan for implementing PlanMaryland in the agency, including a review of agency plans, programs, and policies in order to align them with PlanMaryland's goals and objectives;

(b) A timeline for the work plan; and

(c) A method of tracking the performance of the work plan and implementation of PlanMaryland.

(6) The Smart Growth Subcabinet shall review the workplan, timeline and tracking method.

(7) (a) The Smart Growth Subcabinet shall prepare a report within 240 days from the issuance of this Executive Order summarizing how each State agency proposes to implement PlanMaryland.

(b) The Subcabinet shall:

(i) Report periodically on the progress of implementing PlanMaryland;

(ii) Coordinate its efforts with the BayStat Subcabinet; and

(iii) Share the reports on the progress of implementing PlanMaryland with the BayStat Subcabinet.

(8) MDP and other State agencies shall provide staff and resource assistance to the Smart Growth Subcabinet in the preparation of this report.

Given Under my Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 19th Day of December, 2011.

MARTIN O'MALLEY  
Governor

ATTEST:

JOHN P. MCDONOUGH  
Secretary of State

[12-01-48]

# The Judiciary

## COURT OF APPEALS OF MARYLAND

### SCHEDULE

**Thursday, February 2, 2012**

Bar Admissions

- Misc. 8 In the Matter of the Application of R.C.S. For Admission to the Bar of Maryland
- AG 10 Attorney Grievance Commission of Maryland v. Darlene H. Smith
- No. 41 Michael S. Barclay, et ux. v. Lena Briscoe, et al., Lena Briscoe, Personal Representative of the Estate of Christopher Eugene Richardson v. Ports America Baltimore, Inc., et al. v. Ports of America Baltimore, Inc., et al.
- No. 89 Chaz Kinichi Bazzle v. State of Maryland
- No. 87 Robert S. Cochran, Jr., et al. v. Griffith Energy Services, Inc., et al.

**Friday, February 3, 2012**

- AG 9 Attorney Grievance Commission of Maryland v. Adrian Van Nelson, II
- No. 82 Washington Home Remodelers, Inc. v. State of Maryland, Office of the Attorney General, Consumer Protection Division
- No. 85 HNS Development, LLC v. People's Counsel for Baltimore County, et al.
- No. 83 Peter Paul Toland, Jr. v. Akiko Futagi

**Monday, February 6, 2012**

- AG 1 Attorney Grievance Commission of Maryland v. Barry S. Brown
- AG 90 Attorney Grievance Commission of Maryland v. Harvey (2009 T.) Malcolm Nusbaum
- No. 69 Jessica Port v. Virginia Anne Cowen
- No. 88 McKenzie A. Nicolas v. State of Maryland

**Tuesday, February 7, 2012**

- AG 70 Attorney Grievance Commission of Maryland v. Louis (2010 T.) Peter Tanko, Jr.
- No. 71 Building Materials Corporation of America d/b/a GAF Materials Corporation v. Board of Education of Baltimore County
- No. 67 Maryland Board of Public Works, et al. v. K. Hovnanian's Four Seasons at Kent Island, LLC
- No. 90 Vanessa Fisher v. Eastern Correctional Institution

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 February 7, 2012, the Court will recess until March 1, 2012.

BESSIE M. DECKER  
Clerk

[12-01-38]

## NOTICE TO MEMBERS OF THE MARYLAND BAR

The following banks have been approved by the Attorney Grievance Commission of Maryland to receive escrow accounts of attorneys under the Chapter 600 Rules on Attorney Trust Accounts (formerly BU Rules) effective January 1, 1989. If your bank does not appear on this list, we suggest you contact it immediately.

(Revised January 3, 2012)

### APPROVED INSTITUTIONS

Access National Bank  
Advance Bank  
Alliance Bank  
American Bank  
Baltimore County Savings Bank, FSB  
BankAnnapolis  
Bank of America  
Bank of Delmarva  
Bank of the Eastern Shore  
Bank of Georgetown  
Bank of Glen Burnie  
Bank of Ocean City  
Bay Bank  
Bay Vanguard Federal Savings Bank  
Blue Ridge Bank  
BB&T Bank  
Burke & Herbert Bank & Trust Company  
Business Bank  
Calvin B. Taylor Banking Company of Berlin, MD  
Capital Bank  
Capital One Bank  
Carrollton Bank  
Cecil Bank  
Centra Bank  
Centreville National Bank of Maryland  
CFG Community Bank  
Chesapeake Bank & Trust Company  
Chesapeake Bank of Maryland  
Citibank, F.S.B.  
ColomboBank  
Columbia Bank  
CommerceFirst Bank  
Community Bank of Tri-County  
Community First Bank  
Congressional Bank  
County First Bank  
Damascus Community Bank  
Denton Bank & Trust  
EagleBank  
Eastern Savings Bank  
Easton Bank & Trust  
Essex Bank  
Farmers Bank of Willards  
Farmers & Merchants Bank  
Fidelity & Trust Bank  
First Citizens Bank & Trust Company  
First Mariner Bank  
First Shore Federal Savings & Loan Association

First United Bank & Trust  
 First Virginia Community Bank  
 Frederick County Bank  
 Graystone Bank  
 Hamilton Federal Bank  
 Harbor Bank of Maryland  
 Harford Bank  
 Harvest Bank of Maryland  
 Hebron Savings Bank  
 Hopkins Federal Savings Bank  
 Howard Bank  
 HSBC National Bank  
 Industrial Bank  
 Jefferson Security Bank  
 John Marshall Bank  
 Madison Square Federal Savings Bank  
 MainStreet Bank  
 M & T Bank  
 Middletown Valley Bank  
 Mid State Federal Savings & Loan Association  
 Monument Bank  
 National Bank of Cambridge  
 National Capital Bank of Washington  
 NBRF Financial Bank  
 National Penn Bank  
 New Windsor State Bank  
 Northwest Savings Bank  
 OBA Bank  
 Old Line Bank  
 Orrstown Bank  
 Patapsco Bank  
 Peoples Bank  
 PNC Bank  
 Premier Bank  
 Presidential Bank  
 Prince George's Federal Savings Bank  
 Provident State Bank  
 Queenstown Bank of Maryland  
 Regal Bank & Trust  
 Revere Bank  
 Sandy Spring Bank  
 Severn Savings Bank, FSB  
 Shore Bank  
 Sonabank  
 Sovereign Bank  
 Standard Bank  
 SunTrust Bank  
 Susquehanna Bank  
 Sykesville Federal Savings Association  
 Talbot Bank of Easton, Maryland  
 TD Bank  
 United Bank  
 Vigilant Federal Savings Bank  
 Virginia Commerce Bank  
 WashingtonFirst Bank  
 Wells Fargo Bank  
 Woodsboro Bank

The following bank has either terminated their agreement, merged with another bank, or had their agreement terminated since the previous list was published.

Wachovia Bank

[12-01-40]

## NOTICE OF AMENDMENTS TO RULES OF THE BOARD, RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

The State Board of Law Examiners amended Board Rule 5 Examination Format, Scoring, and Passing Standard. These amendments to the Board Rules are adopted pursuant to Rule 20 of the Rules Governing Admission to the Bar of Maryland adopted by the Court of Appeals of Maryland on June 28, 1990.

The amended Board Rule 5(c)(iv) changes the written test raw score equation such that the Multistate Performance Test (MPT) is weighted to 1.5 times the weight of a standard Maryland essay question instead of 2 times the weight as the rule currently reads.

Following are the amended rules marked to show additions and deletions [ ].

### Board Rule 5

#### Rule 5. Examination Format, Scoring, and Passing Standard

##### *c. Written Test: Board's Essay Test and the Multistate Performance Test (MPT)*

(i) The other part of the Maryland Bar Examination is the Written Test, which comprises the Board's Essay Test and one MPT question. The Board will prepare and grade the Board's Essay test. The MPT is published by the NCBE and graded by the Board.

(ii) The Board's Essay test will consist entirely of questions requiring essay answers. Questions will not be labeled by subject matter. Single questions may involve two or more subject matters from the list in Board Rule 4.

(iii) The format and specifications for the MPT are determined by the NCBE.

(iv) The raw score for the Written Test will be calculated as follows:

Written Test raw score = Sum of Board's Essay test raw scores + (MPT raw score x 1.5 [2])

(v) The Written Test raw score will be converted to the same scale of measurement as that used on the MBE to adjust for possible differences in average question difficulty across administrations of the examination.

## COURT OF SPECIAL APPEALS

### SCHEDULE FOR FEBRUARY 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 2012

Wednesday, February 1, 2012

Courtroom No. 1

No. 02727/10	Romanda Southall vs. State of Maryland
No. 00268/11*	Kurt Linnemann vs. Alison Sheaffer f/k/a Alison Linnemann
No. 02859/10	Moustafa El Masry vs. Mona Yasmin Essam Nasser et al.
No. 02405/10	Gregory Pringle vs. Montgomery County Council et al.
No. 02166/10	Virgil Lee Coulter et ux. vs. Ray E. Miller et al.
No. 02467/10	Fitzgerald Oldsmobile Cadillac, Inc. d/b/a Fitzgerald Suzuki vs. American Suzuki Motor Corporation

\*8-207(a)

Courtroom No. 2

- No. 01380/10 Annapolis Roads Property Owners Association et al. vs. Thomas C. Lindsay, Sr. et al.  
 No. 01450/10 Joseph S. Rogers etc. vs. John C. Pyles et al.  
 No. 01332/10 State Highway Administration vs. Meadowland Properites, LLC et al.  
 No. 02506/10 Michael A. DiNapoli et al. vs. Kent Island, LLC. et al.  
 No. 02613/10 Paul Wharton et ux. vs. Wells Fargo Bank, N.A. etc.  
 No. 02317/10 Michael Saunders vs. The Dackman Company et al.

**Thursday, February 2, 2012**Courtroom No. 1

- No. 01234/11\* In Re: Brianna O.  
 No. 00515/11 Adrian Francis Lewis vs. State of Maryland  
 No. 00403/10 Gordon Michael Ayres et ux. vs. John S. Burson, Substitute Trustee et al.  
 No. 02351/10 Deirdre Hammer et al. vs. Board of Municipal and Zoning Appeals et al.  
 No. 02773/10 Yiannis Yiallourous et al. vs. John Tolson  
 No. 02919/09 Capital Care Environmental Services, Inc. et al. vs. Kenneth J. MacFadyen et al.

\*8-207(a)

Courtroom No. 2

- No. 02771/10 Kohl's Department Stores, Inc. vs. BL Quarterfield Associates, LLC et al.  
 No. 03034/09 Devon Harrod vs. State of Maryland  
 No. 00005/11 Board of Appeals, Department of Labor, Licensing & Regulation vs. Alden L. Coke  
 No. 00513/11 Robert Mitchell Acker vs. State of Maryland  
 No. 02332/10 Sheila A. Outlen vs. Thomas A. Outlen  
 No. 01863/10 Debora J. Beyth et al. vs. Mark H. Wittstadt et al.

**Friday, February 3, 2012**Courtroom No. 1

- No. 01824/09 Benjamin Morgan Hawkes vs. State of Maryland  
 No. 02741/10 Ana Sorto vs. State of Maryland  
 No. 02552/10 Aberdeen Proving Ground Federal Credit Union vs. Billy G. Hunt, Sr. et ux.  
 No. 00944/11\* In Re: Tatiana L.  
 No. 02443/10 Rodney C. Pitts, Jr. vs. State of Maryland  
 No. 02726/10 Robert M. Bice vs. State of Maryland

\*8-207(a)

Courtroom No. 2

- No. 00741/10 Winston Martin Holding Group, LLC vs. Jason Fenwick  
 No. 02354/10 Stanley Matyasik vs. Allegany County Department of Social Services  
 No. 02139/10 New Trend, LLC et al. vs. Dominion Financial Services, LLC et al.  
 No. 03029/10 State of Maryland vs. Dante Lamont Dingle  
 No. 02393/10 Brothers Services Co., et al. vs. Ryland Group Inc.  
 No. 01848/10 New Trend, LLC et al. vs. David H. Cohen et al.

**Monday, February 6, 2012**Courtroom No. 1

- No. 03056/10 In Re: Gregory T.

- No. 02854/10 National Auto Inspections, LLC d/b/a Carchex vs. AA Auto Warranty, LLC d/b/a AA Auto Warranty d/b/a AAAuto Warranty.com et al.  
 No. 00727/11\* Anita L. Webb vs. Daniel M. Salley  
 No. 00232/11 Tuan Hajireen vs. State of Maryland  
 No. 02758/10 Kenneth Thompson et ux. vs. Robert Hunt et al.  
 No. 02339/10 Gregg Daniel Bacon vs. Paul Arey et al.

\*8-207(a)

Courtroom No. 2

- No. 01850/10 Natalie Morgan et al. vs. Greater Baltimore Urban League et al.  
 No. 00246/11 In Re: Davonta F.  
 No. 01966/10 County Council of Dorchester County, Maryland vs. Bay Organics, LLC  
 No. 02023/10 Elvin Anthony Allender vs. State of Maryland  
 No. 00014/11 Prince George's County Department of Corrections vs. Kimberly Mitchell  
 No. 02747/10 Anthony Falls vs. ICI, Inc. et al.  
 No. 02191/10 Suffolk Construction Company, Inc. et al. vs. Madison Mechanical, Inc.

**Tuesday, February 7, 2012**Courtroom No. 1

- No. 01841/10 Guillermo Aguilera-Tovar vs. State of Maryland  
 No. 02292/10 James Moore vs. Todd E. Jefferson, Jr.  
 No. 02716/10 Troy Traylor vs. State of Maryland  
 No. 02463/10 Corey Brooks vs. State of Maryland  
 No. 02648/10 Suzanne Stamp vs. Mayor and City Council of Baltimore et al.

Courtroom No. 2

- No. 01683/10 Maryland Insurance Administration ex rel vs. Tiffany Burton et al.  
 No. 02533/10 Douglas K. Kelly et al. vs. James Gardiner et al.  
 No. 00395/11 Patrick W. Born vs. State of Maryland  
 No. 00538/11 James Catler et al. vs. Arent Fox, LLP et al.  
 No. 02128/10 Amanda Gregg vs. Bryan Gregg  
 No. 01153/11 Brian Luntz vs. State of Maryland  
 No. 01781/10 Jean Ngoc Huynh et al. vs. Falls Farm Homes Corporation Inc.

**Wednesday, February 8, 2012**Courtroom No. 1

- No. 02050/10 Kim Edmonds vs. Prince George's County Department of Social Services  
 No. 00013/11 Mildred Windsor vs. State Retirement and Pension System of Maryland  
 No. 00509/11 Sean Fennell vs. State of Maryland  
 No. 01917/10 Darryn Sydnor et ux. vs. Tamara Bilbrue et al.  
 No. 02602/10 Bruce M. Swinford et al. vs. Pulte Home Corporation  
 No. 00279/10 Community Development Co., LP vs. The Anointed Hair Design Studio, Inc.

Courtroom No. 2

- No. 02855/10 Steven D. Burnett vs. Cereta Dolores Spencer Burnett  
 No. 02620/10 Ernest Thomas vs. Housing Authority of Baltimore City  
 No. 00228/11 Timothy Scott vs. State of Maryland  
 No. 00603/11 George John Bereska, Jr. vs. State of Maryland  
 No. 02315/10 John L. Webb, Sr. et ux. vs. G. Philip Nowak et ux.

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No. 02142/10 Darryl K. Washington et ux. vs. Burkhardt Zorn, et al.

## Thursday, February 9, 2012 Courtroom No. 1

No. 02102/10 Christina D. Thomas et al. vs. Rowhouses, Inc. et al.

No. 00652/11 Joshua LaFrance vs. State of Maryland

No. 01512/10 Clifton Leroy Phair, Jr. vs. Department of Human Resources, Baltimore City Office of Child Support Enforcement ex rel. Michelle Garnett

No. 01687/10 West View Shores Environmental Preservation Association, Inc. vs. West View Shores Civic Association Inc. et al.

No. 01598/11\* In Re: Juliana B.

No. 00780/11\* Pamela Novosel vs. Charles Parks

\*8-207(a)

## Courtroom No. 2

No. 02314/10 Jeffrey C. Smith et al. vs. Harborview Homeowners Association, Inc. et al.

No. 02608/10 James A. Wathen vs. St. Mary's County Sheriff's Department Retirement Plan et al.

No. 02441/10 Rodney Spence, Jr. vs. State of Maryland

No. 02316/10 Washington Metropolitan Area Transit Authority vs. Jan Williams

No. 02039/10 Marjorie Gayle Hendrix vs. Charles Robert Burns et ux.

No. 02857/09 Andrew Agustos Mohan vs. State of Maryland

## Friday, February 10, 2012 Courtroom No. 1

No. 02546/10 Katherine T. Tiong vs. State of Maryland

No. 01716/10 Brian Johnson vs. State of Maryland

No. 02673/10 Montgomery County, Maryland vs. Maryland Economic Development Corp.

No. 01133/11 Paul Durham, Jr. vs. State of Maryland

No. 02968/10 Michael David Gordon vs. State of Maryland

No. 01764/10\*\* Darnell Fields vs. State of Maryland

No. 01770/10\*\* Clayton Colkley vs. State of Maryland

\*\*Consolidated Cases

## Monday, February 13, 2012 All cases submitted on brief Courtroom No. 1

No. 00182/11 David Schwinger vs. Juliann Koch f/k/a Juliann Schwinger

No. 02483/10 Cervante Pearson vs. State of Maryland

No. 00274/11 Joseph Lamar Johnson vs. State of Maryland

No. 02959/10 Dajuan Fenner vs. State of Maryland

No. 02992/10 In Re: Byron W.

No. 01074/10 David Wayne Cook vs. State of Maryland

No. 02551/10 Fernando A. Lindsay vs. State of Maryland

No. 02473/10 Solita Harrington vs. Kaiser Foundation Health Plan of Mid-Atlantic States Inc. et al.

## Courtroom No. 2

No. 00409/11\* Jacqueline S. Donohue vs. Michael H. Donohue

No. 00147/11 Kelby Johnson a/k/a Tony Davis vs. State of Maryland

No. 01267/10 John Anthony Supensky vs. State of Maryland

No. 02442/10 Dennis F. Williams vs. State of Maryland

No. 00152/11  
No. 02024/10  
No. 02111/10  
No. 00160/11  
No. 02245/10

\*8-207(a)

Jerome Lyles vs. State of Maryland  
Shawn McCord vs. State of Maryland  
Jeremiah Quinn McCall vs. State of Maryland  
Tashawn Joe vs. State of Maryland  
Shaun Seacrist Reilly vs. State of Maryland

## Tuesday, February 14, 2012 All cases submitted on brief Courtroom No. 1

No. 00112/11

No. 02961/10

No. 01737/10

No. 02322/10

No. 00207/11

No. 03079/10

No. 02051/06

No. 03037/10

No. 00150/11

No. 01350/11\*

No. 02434/10

No. 01065/10

No. 00174/11

No. 02550/10

No. 01393/10

No. 00488/11

No. 02499/10

\*8-207(a)

No. 02496/10

No. 02693/10

No. 02621/10

No. 02916/10\*

No. 02476/10

No. 02739/10

No. 02889/10

No. 01699/10

No. 02910/10

No. 00144/11

\*8-207(a)

No. 01698/09

No. 00323/11

No. 02950/10

No. 01832/10

No. 02576/10

No. 00051/11

No. 02699/10

No. 02972/10

Robert Horowitz et ux. vs. McLean School of Maryland, Inc.

Rayan Edward Thomas vs. State of Maryland

Terry Cannon, Jr. vs. State of Maryland

Abdoulaye Tall vs. Fair Collections & Outsourcing et al.

Adam C. Gutloff vs. State of Maryland

In Re: Trevon M.

Kenneth Martin Stachowski, Jr. vs. State of Maryland

Curtis Nathaniel Long vs. State of Maryland

## Courtroom No. 2

James Jones vs. State of Maryland

In Re: Jasmyn C. and Tuesday P.

In Re: Earl F.

Wanda Nouet vs. State of Maryland

Robert Burley vs. State of Maryland

Paul Ernest Joseph vs. State of Maryland

Ronnie Delonte Kelly vs. State of Maryland

Denita Lenae Harrell vs. State of Maryland

Franklin Harrell vs. State of Maryland

Gregory L. Brown vs. State of Maryland

Antwoine Leach vs. State of Maryland

Franklin Boston vs. State of Maryland

William M. Thompson vs. Katrina Thompson

Domenic Tavon Rabey vs. State of Maryland

Ahman Driver vs. State of Maryland

Christine Buettner vs. State of Maryland

Liston G. Noble, Sr. vs. Governor Martin O'Malley

Dennis Williams vs. State of Maryland

Gregory L. Brown vs. State of Maryland

## Courtroom No. 2

David Brooks vs. Maryland Health Insurance Plan

Russell Smith vs. Michael J. Stouffer

Commissioner

Dominic Williams vs. State of Maryland

Terrence Lamont Williams vs. State of Maryland

Sterling Laprince Dotson vs. State of Maryland

Jamar Obrian Brown vs. State of Maryland

Jeffrey Brown vs. State of Maryland

Nolan B. Douglas, Jr. 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 February 2012, the Court will recess until March 2012.

LESLIE D. GRADET  
Clerk

**ADMINISTRATIVE ORDER**

Pursuant to Maryland Rule 8-522(a), I hereby direct that oral argument in the month of February 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 February, 2012.

Chief Judge's signature appears on  
original Administrative Order

Dated: December 19, 2011

[12-01-39]

# 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 08

## DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure

Authority: Natural Resources Article, §§4-220 and 4-701, Annotated Code of Maryland

#### Notice of Extension of Emergency Status

[11-187-E-1]

The Joint Committee on Administrative, Executive, and Legislative Review has granted an extension of emergency status to amendments to Regulations .02 and .05 — .07 under **COMAR 08.02.13 Fishing Licenses — Point Assignment, License Revocation and Suspension Schedule and Criteria, and Hearing Procedure**.

**Emergency status has been extended to: June 20, 2012.**

**Emergency action was published in: 38:16 Md. R. 941 (July 29, 2011).**

JOHN R. GRIFFIN  
Secretary of Natural Resources



# 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 09

### DEPARTMENT OF LABOR, LICENSING, AND REGULATION

#### Subtitle 23 BOARD FOR PROFESSIONAL ENGINEERS

##### 09.23.04 Fees

Authority: Business Regulation Article, §§2-106.1 and 2-106.2; Business Occupations and Professions Article, §§14-208, 14-209, 14-306, and 14-316; Annotated Code of Maryland

#### Notice of Final Action

[11-287-F]

On December 8, 2011, the Board for Professional Engineers adopted amendments to Regulation **.03** under **COMAR 09.23.04 Fees**. This action, which was proposed for adoption in 38:21 Md. R. 1294—1295 (October 7, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

HOWARD C. HARCLERODE  
Chair

Maryland Board for Professional Engineers

## Title 10

### DEPARTMENT OF HEALTH AND MENTAL HYGIENE

#### Subtitle 10 LABORATORIES

##### 10.10.11 Biological Agents Registry Program

Authority: Health-General Article, §§17-601—17-605, Annotated Code of Maryland

#### Notice of Final Action

[11-308-F]

On December 22, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.02—, .05, .07—, .16, .19, and .23** under **COMAR 10.10.11 Biological Agents Registry Program**. This action, which was proposed for adoption in 38:23 Md. R. 1430—1433 (November 4, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 15 FOOD

### 10.15.03 Food Service Facilities

Authority: Health-General Article, §§21-304, 21-309.1, and 21-309.2, Annotated Code of Maryland

#### Notice of Final Action

[11-310-F]

On December 22, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.02, .14, .23, .27, .28, and .33** under **COMAR 10.15.03 Food Service Facilities**. This action, which was proposed for adoption in 38:23 Md. R. 1433-1435 (November 4, 2011), has been adopted as proposed.

**Effective Date: February 3, 2012.**

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 34 BOARD OF PHARMACY

### 10.34.25 Delivery of Prescriptions

Authority: Health Occupations Article, §12-205(a)(3)(ii), Annotated Code of Maryland

#### Notice of Final Action

[11-301-F]

On December 29, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulations **.01** and **.02**, the repeal of existing Regulations **.03** and **.06**, and new Regulation **.03** under **COMAR 10.34.25 Delivery of Prescriptions**. This action, which was proposed for adoption in 38:22 Md. R. 1365—1367 (October 21, 2011), has been adopted with the nonsubstantive changes below.

**Effective Date: March 1, 2012.**

#### Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Repeal of Existing Regulation **.06**: Notice of the Department's intent to repeal Regulation **.06** was inadvertently left out of the Notice of Proposed Action. The new language in Regulation **.03** repeats what is in the existing Regulation **.06**; therefore, this repeal is a nonsubstantive change because Regulation **.06** is duplicative and unnecessary.

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 34 BOARD OF PHARMACY

### 10.34.32 Pharmacist Administration of Vaccinations

Authority: Health Occupations Article, §§12-101, 12-102(b), 12-508, and 12-6A-10, Annotated Code of Maryland

#### Notice of Final Action

[11-313-F]

On December 29, 2011, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .03 under **COMAR 10.34.32 Pharmacist Administration of Vaccinations**. This action, which was proposed for adoption in 38:23 Md. R. 1435—1436 (November 4, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 38 BOARD OF PHYSICAL THERAPY EXAMINERS

### 10.38.10 Disciplinary Sanctions, Monetary Penalties, and Civil Fines

Authority: Health Occupations Article, §1-606, Annotated Code of Maryland

#### Notice of Final Action

[11-311-F]

On December 29, 2011, the Secretary of Health and Mental Hygiene adopted the repeal of existing Regulations .01—.06 under **COMAR 10.38.10 Monetary Penalties** and adopted new Regulations .01—.07 under a new chapter, **COMAR 10.38.10 Disciplinary Sanctions, Monetary Penalties, and Civil Fines**. This action, which was proposed for adoption in 38:23 Md. R. 1436—1439 (November 4, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 44 BOARD OF DENTAL EXAMINERS

### 10.44.31 Sanctioning Guidelines

Authority: Health Occupations Article, §1-606, Annotated Code of Maryland

#### Notice of Final Action

[11-303-F]

On December 22, 2011, the Secretary of Health and Mental Hygiene adopted new Regulations .01—.06 under a new chapter, **COMAR 10.44.31 Sanctioning Guidelines**. This action, which was proposed for adoption in 38:22 Md. R. 1367—1373 (October 21, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Title 11 DEPARTMENT OF TRANSPORTATION

### Subtitle 14 MOTOR VEHICLE ADMINISTRATION — VEHICLE INSPECTIONS

#### Notice of Final Action

[11-307-F]

On December 20, 2011, the Administrator of the Motor Vehicle Administration and the Secretary of State Police adopted amendments to:

(1) Regulations .01, .03, .04, .06, .07, .10, .11, and .14 — .16 under **COMAR 11.14.01 General Inspection**;

(2) Regulations .01, .06, .12, .14, and .17 under **COMAR 11.14.02 Safety Standards for Passenger Cars, Taxicabs, Light Trucks, Vans, Multipurpose Passenger Vehicles, and Type II School Vehicles**; and

(3) Regulations .14, .16, and .19 under **COMAR 11.14.04 Safety Standards for Trucks, Truck Tractors, Commercial Buses, and Type I School Vehicles**.

This action, which was proposed for adoption in 38:23 Md. R. 1440—1458 (November 4, 2011), has been adopted with the nonsubstantive changes shown below.

**Effective Date: February 1, 2012.**

#### Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

COMAR 11.14.01.10D: Change the reference from “§§D(2) and (3)” to “§D(1) and (2)”, this is a technical correction to reference the correct regulation sections.

COMAR 11.14.01.10D: Remove the bracket and deletion of “and”, to restore part of the text removed that clarifies that the licensee and the supervisor permit only registered inspection mechanics to perform inspections and only within the designated inspection area except as provided in §§D(1) and (2) of this regulation.

COMAR 11.14.02.14: Add “.” to correct the punctuation.

COMAR 11.14.02.14B(3)(c): Remove “—” and insert “.” to correct punctuation and make consistent with proceeding text format.

COMAR 11.14.02.14D(6)(a): Remove “. The post manufacture window tint medical exemption form will then” and insert “which shall” to make language consistent with language under 11.14.04.16D(a).

COMAR 11.14.02.14F(2): Remove “.” and insert “.” to correct punctuation and make consistent with proceeding text format.

COMAR 11.14.04.16B(3)(a): Remove “—” and insert “.”, to correct punctuation and make consistent with text format.

COMAR 11.14.04.16B(3)(b): Remove “—” and insert “.” to correct punctuation and make consistent with text format.

COMAR 11.14.04.16B(3)(d): Remove “—” and insert “.” to correct punctuation and make consistent with text format.

COMAR 11.14.04.16D: Remove “Manufacturer” and insert “Manufacture” to make language consistent with language under 11.14.02.14D.

COMAR 11.14.04.16F(2), Reject Vehicle If(b): Remove “.” and insert “.” to correct punctuation and make consistent with text format.

### 11.14.01 General Inspection

Authority: Transportation Article, §§12-104(b), 23-101—23-109, and 24-106.1, Annotated Code of Maryland

#### .10 Obligations of Authorized Inspection Stations, Maryland Manufacturers, Second-Stage Manufacturers, and Dealers.

A.—C. (proposed text unchanged)

D. *Except as provided in [[§§ D(2) and (3)]] §D(1) and (2) of this regulation, the licensee and the supervisor shall permit only registered inspection mechanics to perform inspections [ ] and [ ] only within the designated inspection area.*

(1)—(2) (proposed text unchanged)

E.—L. (proposed text unchanged)

### 11.14.02 Safety Standards for Passenger Cars, Taxicabs, Light Trucks, Vans, Multipurpose Passenger Vehicles, and Type II School Vehicles

Authority: Transportation Article, §§12-104(b), 23-101—23-105, and 24-106.1, Annotated Code of Maryland

#### .14 Vehicle Glazing.

A. (proposed text unchanged)

B. *Proper Marking and Operation.*

Procedures:	Reject Vehicle If:
(1) — (2) (proposed text unchanged)	(1) — (2) (proposed text unchanged)
(3) Side Windows, <i>Emergency Window Exits, and Roof Vent/Emergency Exits</i> (school vehicles only). (a) — (b) (proposed text unchanged) (c) <i>Roof Vent/Emergency Exit [—]</i> . (i) — (iii) (proposed text unchanged).	(3) (proposed text unchanged)

C. (proposed text unchanged)

D. *Post Manufacture Window Tinting.*

Procedures:	Reject Vehicle If:
(1) — (5) (proposed text unchanged)	(1) — (5) (proposed text unchanged)

(6) *Medical Exemption.* (Applicable only to vehicles noted in §D(2) of this regulation.) *Transportation Article, §22-406, Annotated Code of Maryland, provides an exemption for a person who must be protected from the sun for medical reasons from having a light transmittance of at least 35 percent on regulated windows equipped with post manufacture window tint. The law requires the owner to have, in the vehicle at the time the vehicle is stopped by a police officer, a written certification that details the owner's medical need for tinted windows, from a physician licensed to practice medicine in the State. A vehicle owner whose vehicle is undergoing an inspection, or has been issued a safety equipment repair order for defect #61 "TINT", and indicates to the authorized inspection station their compliance with a medical exemption, shall be referred to the Automotive Safety Enforcement Division of the Department of State Police for examination of the vehicle owner's medical documentation and the vehicle's post manufacture window tint. If the owner meets the requirements specified in Transportation Article, §22-406, Annotated Code of Maryland, for the medical exemption and the vehicle is compliant with all post manufacture window tinting*

*regulations in this chapter, excluding the light transmittance requirement of regulated windows equipped with post manufacture window tint, the Division, when applicable, shall be authorized to:*

(a) *Issue a post manufacture window tint medical exemption form to be provided to the authorized inspection station performing an inspection of the vehicle[. The post manufacture window tint medical exemption form will then]] which shall permit the registered inspection mechanic to exempt the vehicle's windows equipped with post manufacture window tint from meeting the light transmittance requirement; or*

(b) (proposed text unchanged)

E. (proposed text unchanged)

F. *Glazing Damage.*

Procedures:	Reject Vehicle If:
(1) (proposed text unchanged)	(1) (proposed text unchanged)
(2) <i>Windshield[[:]]. Inspect windshield for modification and any cracks, nicks, pits, chips, star breaks, half moons or bull's-eye fractures, discoloration, sharp edges, and wiper blade scratches.</i>	(2) (proposed text unchanged)

### 11.14.04 Safety Standards for Trucks, Truck Tractors, Commercial Buses, and Type I School Vehicles

Authority: Transportation Article, §§12-104(b), 23-101—23-105, and 24-106.1, Annotated Code of Maryland

#### .16 Vehicle Glazing.

A. (proposed text unchanged)

B. *Proper Marking and Operation.*

Procedures:	Reject Vehicle If:
(1) — (2) (proposed text unchanged)	(1) — (2) (proposed text unchanged)
(3) Side Windows, <i>Emergency Window Exits, and Roof Vent/Emergency Exits</i> (school vehicles only): [Determine whether each full side window can be opened readily to provide at least a 9 x 22 inch emergency opening. Also check closing.] (a) <i>Side Windows[[:]].</i> (i) — (ii) (proposed text unchanged) (b) <i>Side Emergency Windows (if equipped) [—]</i> . (i) — (iii) (proposed text unchanged) (c) (proposed text unchanged) (d) <i>Roof Vent/Emergency Exit [—]</i> . (i) — (iii) (proposed text unchanged)	(3) (proposed text unchanged)

C. (proposed text unchanged)

*D. Post [[Manufacturer]] Manufacture Window Tinting.*

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
(1) — (5) (proposed text unchanged)	(1) — (5) (proposed text unchanged)

(6) (proposed text unchanged)

*E. (proposed text unchanged)*

*F. Glazing Damage.*

<i>Procedures:</i>	<i>Reject Vehicle If:</i>
(1) (proposed text unchanged)	(1) (proposed text unchanged)
(2) (proposed text unchanged)	(2) <i>Windshield:</i> (a) (proposed text unchanged) (b) <i>Driver's Side</i> [[.]]; (i) — (iv) (proposed text unchanged) (c) (proposed text unchanged)

JOHN T. KUO

Administrator

Motor Vehicle Administration

MARCUS L. BROWN

Secretary of State Police

## Title 13A STATE BOARD OF EDUCATION

### Subtitle 16 CHILD CARE CENTERS

#### Notice of Final Action

[11-324-F]

On January 3, 2012, the Interim State Superintendent of Schools adopted amendments to:

(1) Regulation .02 under **COMAR 13A.16.01 Scope and Definitions**;

(2) Regulation .01 under **COMAR 13A.16.02 License Application and Maintenance**;

(3) Regulation .06 under **COMAR 13A.16.07 Child Protection**; and

(4) Regulations .01 and .02 under **COMAR 13A.16.18 Administrative Hearings**.

This action, which was proposed for adoption in 38:24 Md. R. 1540—1541 (November 18, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

BERNARD J. SADUSKY, ED.D.

Interim State Superintendent of Schools

## Title 14 INDEPENDENT AGENCIES

### Subtitle 01 STATE LOTTERY AGENCY

#### Notice of Final Action

[11-319-F]

On December 22, 2011, the Maryland State Lottery Agency adopted amendments to:

(1) Regulation .04 under **COMAR 14.01.11 Video Lottery Facility Operation License**; and

(2) Regulation .03 under **COMAR 14.01.18 Violations, Civil Penalties, and Sanctions**.

This action, which was proposed for adoption in 38:23 Md. R. 1459—1460 (November 4, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

STEPHEN L. MARTINO

Director

State Lottery Agency

### Subtitle 01 STATE LOTTERY AGENCY

#### Notice of Final Action

[11-320-F]

On December 22, 2011, the Maryland State Lottery Agency adopted amendments to Regulation .08 under **COMAR 14.01.11 Video Lottery Operation License**.

The Maryland State Lottery Agency has withdrawn amendments to:

(1) Regulation .47 under **COMAR 14.01.14 Video Lottery Facility Minimum Internal Control Standards**; and

(2) Regulations .03, .04, .08, and .09 and new Regulation .11 under **COMAR 14.01.16 Voluntary Exclusion and Responsible Gaming**.

This action, which was proposed for adoption in 38:23 Md. R. 1460 — 1462 (November 4, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

STEPHEN L. MARTINO

Director

State Lottery Agency

## **Title 20 PUBLIC SERVICE COMMISSION**

### **Subtitle 90 TAXICABS**

#### **Notice of Final Action**

[11-272-F]

On December 22, 2011, the Public Service Commission adopted amendments to:

(1) Regulation **.19** under **COMAR 20.90.02 Control and Operation of Taxicabs in Baltimore City and Baltimore County**; and

(2) Regulation **.17** under **COMAR 20.90.03 Control and Operation of Taxicabs in the City of Cumberland and the City of Hagerstown**.

This action, which was proposed for adoption in 38:20 Md. R. 1245—1247 (September 23, 2011), has been adopted as proposed.

**Effective Date: January 23, 2012.**

TERRY J. ROMINE  
Executive Secretary  
Public Service Commission

## **Title 29 DEPARTMENT OF STATE POLICE**

### **Subtitle 02 MOTOR VEHICLES**

#### **29.02.01 Vehicle Inspection**

Authority: Transportation Article, §23-105, Annotated Code of Maryland

#### **Notice of Final Action**

[11-318-F]

On December 21, 2011, the Secretary of State Police adopted amendments to Regulations **.01**, **.02**, **.11**, and **.14** under **COMAR 29.02.01 Vehicle Inspection**. This action, which was proposed for adoption in 38:23 Md. R. 1465—1468 (November 4, 2011), has been adopted as proposed.

**Effective Date: February 1, 2012**

MARCUS L. BROWN  
Secretary of State Police

## **Subtitle 06 FIRE PREVENTION COMMISSION**

### **29.06.04 Fees for Fire Prevention Services**

Authority: Public Safety Article, §6-206, Title 6, Subtitle 3, and Title 9, Subtitle 7, Annotated Code of Maryland

#### **Notice of Final Action**

[11-282-F]

On December 21, 2011, the Secretary of State Police adopted amendments to Regulations **.03—****.07** under **COMAR 29.06.04 Fees for Fire Prevention Services**. This action, which was proposed for adoption in 38:21 Md. R. 1310—1313 (October 7, 2011), has been adopted as proposed.

**Effective Date: April 1, 2012.**

MARCUS L. BROWN  
Secretary of State Police

# 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 03 COMPTROLLER OF THE TREASURY

### Notice of Proposed Action

[12-015-P]

The Comptroller of the Treasury proposes to amend:

- (1) Regulations **.02** and **.05** under **COMAR 03.01.02 Tax Payment — Immediately Available Funds**;
- (2) Regulation **.01** under **COMAR 03.04.01 General Regulations**; and
- (3) Regulation **.06** under **COMAR 03.04.02 Individual**.

### Statement of Purpose

The purpose of this action is to update regulations to conform with statutory changes.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

The proposed action has no economic impact.

### Economic Impact on Small Businesses

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

### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

### Opportunity for Public Comment

Comments may be sent to Rhea R. Reed, Director, Revenue Administration Division, Comptroller of the Treasury, 110 Carroll Street, Annapolis, MD 21411, or call 410-260-7445, or email to reed@comp.state.md.us, or fax to 410-974-3456. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

## Subtitle 01 OFFICE OF THE COMPTROLLER

### 03.01.02 Tax Payments — Immediately Available Funds

Authority: Tax-General Article, §§2-103, 13-104, and 13-105, Annotated Code of Maryland

#### .02 Requirements for Payment by Immediately Available Funds.

- A. — B. (text unchanged)
- C. Payment by immediately available funds applies to the payment of:

- (1) — (2) (text unchanged)
- (3) [Sales] *Except as provided for in §I of this regulation, sales and use tax;*
- (4) — (7) (text unchanged)
- D. — H. (text unchanged)
- I. A taxpayer may not make payment using ACH credit for the payment of sales and use tax on sales of alcoholic beverages.*

#### .05 Miscellaneous Filing and Reporting Provisions.

A. A person making a tax payment using the ACH credit, ACH debit, direct debit, or wire transfer method shall file the following returns:

- (1) For Maryland individual income tax withholding:
- (a) — (b) (text unchanged)
- (c) Amended Employer's Return of Income Tax Withheld using Form MW506A (COM/RAD-062) *or for accelerated filers using MW506AM (COM/RAD-312);*
- (2) — (3) (text unchanged)
- B. A person making tax payments using the ACH credit, ACH debit, direct debit, or wire transfer method may not file the corresponding returns or reports if the payment was for any of the following:
- (1) Employer's Return of Income Tax Withheld Form MW506 (COM/RAD-041) *or for accelerated filers Form MW506M (COM/RAD-311);*
- (2) — (4) (text unchanged)
- C. (text unchanged)

# Subtitle 04 INCOME TAX

## 03.04.01 General Regulations

Authority: Tax-General Article, §§2-103, [10-704.3,] 10-704.10, 10-822, and 10-911, Annotated Code of Maryland

### .01 Withholding of Tax at Source.

A. (text unchanged)

B. Withholding Exemption Certificate.

(1) Who Shall File. Except as provided for in §C(1)—[(3)] (4) of this regulation, an employee shall file with the employer at the time of employment, a withholding exemption certificate if:

(a) (text unchanged)

(b) The employee satisfies the conditions for tax exempt status as set forth in §C(2) [or], (3), or (4) of this regulation, and the employee wants to claim exemption from the withholding taxes.

(2) — (17) (text unchanged)

C. — D. (text unchanged)

E. Year-End Reconciliation Return of Monthly, Quarterly, Annual, and Periodic Returns and Employer Withholding Returns.

(1) (text unchanged)

(2) On or before February 28 of each year, the employer or payor shall file with the Comptroller the following forms, returns, and information:

(a) — (b) (text unchanged)

(c) An employer is required to provide W-2 information on magnetic media, or other machine-readable or electronic format approved by the Comptroller, if the total number of W-2 statements equals or exceeds:

(i) [150 for calendar year 2006] 25; or

2006; or]

[(iii)] (ii) The federal threshold for filing on magnetic media, if the federal threshold is lower than [100] 25.

(d) — (f) (text unchanged)

F. — G. (text unchanged)

## 03.04.02 Individual

Authority: Tax-General Article, §§2-103, 10-102.1, and 10-823, Annotated Code of Maryland

### .06 Maryland Adjusted Gross Income of a Nonresident Individual.

A. — B. (text unchanged)

C. Subtractions from Federal Adjusted Gross Income. To the extent included in computing federal adjusted gross income, the following are subtracted from the federal adjusted gross income of a nonresident individual to determine Maryland adjusted gross income:

(1) Income derived from:

(a) — (g) (text unchanged)

(h) Salary, wages, or other compensation received as:

(i) An active member of the armed forces[.];

or];

(iii) A commissioned officer of the United States Public Health Service;

(iv) A commissioned officer of the National Oceanic and Atmospheric Administration; or

(v) The spouse of a servicemember that is an active member of the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the United States Public Health Service, who is present in this State solely to be with the servicemember that is present in this State in compliance with military orders;

(2) — (3) (text unchanged)

D. (text unchanged)

RHEA R. REED

Director

Revenue Administration Division

# Title 08

## DEPARTMENT OF NATURAL RESOURCES

### Subtitle 02 FISHERIES SERVICE

#### 08.02.01 General

Authority: Natural Resources Article, §4-701, Annotated Code of Maryland

#### Notice of Proposed Action

[12-002-P]

The Secretary of Natural Resources proposes to amend Regulation .05 under COMAR 08.02.01 General.

#### Statement of Purpose

The purpose of this action is to modify the number of commercial fishing license authorization targets. Modifications to the authorization targets reflect the number of tidal fish license conversions and the number of licenses the Department purchased from license holders. The number and type of authorizations relinquished and those purchased by the Department provide the basis for changes to the license authorization target levels. Specific authorizations that had no conversions remain unchanged.

The tidal fish license conversions occurred during the 2010/2011 license renewal period and are correct as of May 22, 2011. There were 21 upgrades to an unlimited tidal fish license (TFL). The authorizations relinquished in order to upgrade to the TFL consisted of 6 resident fishing guide (FGR), 12 finfish-hook and line (HLI), 8 unlimited finfish harvester (FIN), 21 limited crab harvester (LCC), 1 clam harvester (CLM), and 15 oyster harvester (OYH).

The license buy backs occurred during the period December 4, 2010, through November 30, 2011. During that period the Department purchased 22 LCC, 9 crab harvester—300 pots (CB3), and 82 TFL authorizations from license holders.

The proposed action also creates a section for license buy backs. This section states that the target will be reduced for any authorization purchased back from a license holder by the Department.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action has an economic impact on the agency.

Revenue (R+/R-)

#### II. Types of Economic Impact.

Expenditure (E+/E-) Magnitude

A. On issuing agency:

(1) License Conversions NONE

NONE

(2) License Buy Backs (R-)

\$27,050

B. On other State agencies: NONE

## PROPOSED ACTION ON REGULATIONS

C. On local governments: NONE

Benefit (+)  
Cost (-)                      Magnitude

D. On regulated industries or trade groups: NONE

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

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

A(1). Modifying the authorization target number of licenses will not increase the total number of licenses or income. Authorization target numbers will be adjusted to reflect a conversion of each authorized activity into a comprehensive Unlimited Tidal Fish License.

A(2). The Department purchased 22 LCC, 9 CB3, and 82 TFL authorizations from license holders from December 4, 2010, through November 30, 2011. There is a potential economic impact to the Department because of the decrease in authorizations available. The potential loss of revenue from license sales or renewals is \$27,050 (\$50 per LCC, \$150 per CB3, and \$300 per TFL).

#### 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 2011 License Targets, Regulatory Staff, Department of Natural Resources Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to fisheriespubliccomment@dnr.state.md.us, or fax to 410-260-8310. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

### .05 Targets for the Number of Tidal Fish License Authorizations and Apprenticeship Permits.

A. The targets for the number of tidal fish license authorizations issued by the Department are the number of authorizations issued between September 1, 1998, and March 31, 1999, including adjustments made annually according to specifications listed in §B of this regulation, listed by the following categories:

Abbreviation	Authorization	Number
FGR	Fishing Guide Resident	[480] 474
FGN	Fishing Guide Nonresident	56
HLI	Finfish—Hook and Line	[294] 282
FIN	Unlimited Finfish Harvester	[269] 261
LCC	Limited Crab Harvester	[3,125] 3,082
CB3	Crab Harvester—300 Pots	[258] 249
CLM	Clam Harvester	[15] 14
OYH	Oyster Harvester	[743] 728
ODB	Oyster Dredge Boat	3
CTL	Conch, Turtles, and Lobster Harvester	10
TFL	Unlimited Tidal Fish	[2,135] 2,074

B. The targets for the number of tidal fish licenses may be modified based on:

(1) — (3) (text unchanged)

(4) Target species, size, number, weight, incidental catch, total biomass, annual harvest, mortality rates, and other factors which are necessary and appropriate; [and]

(5) The number of license conversions made in accordance with Natural Resources Article, §4-701(k), Annotated Code of Maryland[.]; and

(6) *The number of authorizations purchased back from license holders by the Department.*

C. — H. (text unchanged)

I. Limited Crab Harvester.

[(1) The target for tidal fish authorizations for the limited crab harvester (LCC) may be reduced by the number of LCC authorizations purchased back from license holders by the Department and by the number of licenses frozen as described in COMAR 08.02.03.14F.

(2) Notwithstanding Natural Resources Article, §4-701(k), Annotated Code of Maryland, an individual may not use a limited crab harvester authorization that has a frozen or male only status, as described in COMAR 08.02.03.14F, as one of the required authorizations to upgrade to an unlimited tidal fish authorization unless by April 6, 2010, that individual possesses a limited crab harvester authorization that has a frozen or male only status and:

[(a)] (1) (text unchanged)

[(b)] (2) Has entered into the process of acquiring at least two additional commercial fishing authorizations, as described in Natural Resources Article, §4-701(d), Annotated Code of Maryland, through:

[(i)] (a) — [(ii)] (b) (text unchanged)

[(c)] (3) One additional commercial fishing authorization, as described in Natural Resources Article, §4-701(d), Annotated Code of Maryland, and has entered into the process of acquiring at least one additional commercial fishing authorization through:

[(i)] (a) — [(ii)] (b) (text unchanged)

JOHN R. GRIFFIN  
Secretary of Natural Resources

## Subtitle 07 FORESTS AND PARKS

### 08.07.07 Licensed Tree Experts

Authority: Natural Resources Article, §§5-415—5-423, Annotated Code of Maryland

#### Notice of Proposed Action

[12-003-P-I]

The Department of Natural Resources proposes to amend Regulation .02 under **COMAR 08.07.07 Licensed Tree Experts**.

#### Statement of Purpose

The purpose of this action is to amend the Incorporation by Reference section to reflect the most current versions of the existing incorporated documents.

#### 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 Marian Honeczy, Supervisor, Urban and Community Forestry, MD DNR Forest Service, 580 Taylor Ave., E-1, Annapolis, MD 21401, or call 410-260-8511, or email to [mhoneyczy@dnr.state.md.us](mailto:mhoneczy@dnr.state.md.us), or fax to 410-260-8595. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**Editor's Note on Incorporation by Reference**

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, (1) American National Standard for Arboricultural Operations—Safety Requirements, ANSI Z133.1—2006; (2) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Management—Standard Practices (Pruning), ANSI A300 (Part 1)—2008 Pruning Revision of ANSI A300 (Part 1)—2001; (3) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Management—Standard Practices (Soil Management a. Modification, b. Fertilization, and c. Drainage), ANSI A300 (Part 2)—2011 Soil Management a. Modification, b. Fertilization, and c. Drainage; (4) American National Standard—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Supplemental Support Systems), ANSI A300 (Part 3)—2006 Revision of ANSI A300 (Part 3)—2000; (5) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Management—Standard Practices (Lightning Protection Systems), ANSI A300 (Part 4)—2008 Lightning Protection Systems Revision of ANSI A300 (Part 4)—2002; (6) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Management of Trees and Shrubs During Site Planning, Site Development, and Construction), ANSI A300 (Part 5)—2005 Management; (7) American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Transplanting), ANSI A300 (Part 6)—2005 Transplanting; (8) American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Integrated Vegetation Management a. Electric Utility Rights-of-way), ANSI A300 (Part 7)—2006 IVM; and (9) American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Management—Standard Practices (Tree Risk Assessment a. Tree Structure Assessment) ANSI A300 (Part 9)—2011 Tree Risk Assessment a. Tree Structure Assessment have been declared documents generally available to the public and appropriate for incorporation by reference. For this reason, they will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of these documents are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). These documents may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

**.02 Incorporation by Reference.**

A. (text unchanged)

B. Documents Incorporated.

[(1) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, ANSI A300 (Part 1)—2001 Pruning, (American National Standards Institute, May 22, 2001).

(2) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard

Practices, ANSI A300 (Part 2)—2004 Fertilization, (American National Standards Institute, March 24, 2004).

(3) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, ANSI A300 (Part 3)—2000 (Support Systems a. Cabling, Bracing, and Guying) (American National Standards Institute, May 25, 2000).

(4) American National Standard for Arboricultural Operations—Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements, ANSI Z133.1—2000, (American National Standards Institute, October 19, 2000).

(5) American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices, ANSI A300 (Part 4)—2002 Lightning Protection Systems, (American National Standards Institute, August 30, 2002).

(6) American National Standard for Tree Care Operations—Tree Shrub and Other Woody Plant Maintenance—Standard Practices (Management of Trees and Shrubs During Site Planning, Site Development, and Construction), ANSI A300 (Part 5)—2005 Management, (American National Standards Institute, March 9, 2005).

(7) American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Transplanting), ANSI A300 (Part 6)—2005 Transplanting, (American National Standards Institute, April 29, 2005).

(8) American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Integrated Vegetation Management a. Electric Utility Rights-of-way), ANSI A300 (Part 7)—2006 IVM, (American National Standard Institute, February 21, 2006). ]

(1) *American National Standard for Arboricultural Operations—Safety Requirements, ANSI Z133.1—2006;*

(2) *American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Pruning), ANSI A300 (Part 1)—2008 Pruning Revision of ANSI A300 (Part 1)—2001;*

(3) *American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Soil Management a. Modification, b. Fertilization, and c. Drainage), ANSI A300 (Part 2)—2011 Soil Management a. Modification, b. Fertilization, and c. Drainage;*

(4) *American National Standard—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Supplemental Support Systems), ANSI A300 (Part 3)—2006 Revision of ANSI A300 (Part 3)—2000;*

(5) *American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Lightning Protection Systems), ANSI A300 (Part 4)—2008 Lightning Protection Systems Revision of ANSI A300 (Part 4)—2002;*

(6) *American National Standard for Tree Care Operations—Tree, Shrub and Other Woody Plant Maintenance—Standard Practices (Management of Trees and Shrubs During Site Planning, Site Development, and Construction), ANSI A300 (Part 5)—2005 Management;*

(7) *American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Transplanting), ANSI A300 (Part 6)—2005 Transplanting;*

(8) *American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Integrated Vegetation Management a. Electric Utility Rights-of-way), ANSI A300 (Part 7)—2006 IVM; and*

(9) *American National Standard for Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices (Tree Risk Assessment a. Tree Structure Assessment) ANSI*

A300 (Part 9)—2011 Tree Risk Assessment a. Tree Structure Assessment.

JOHN R. GRIFFIN  
Secretary of Natural Resources

# **Title 09**

## **DEPARTMENT OF LABOR, LICENSING, AND REGULATION**

### **Subtitle 20 BOARD OF PLUMBING**

#### **09.20.01 State Plumbing Code**

Authority: Business Occupations and Professions Article, §§12-205 and 12-207, Annotated Code of Maryland

#### **Notice of Proposed Action** [12-016-P]

The State Board of Plumbing proposes to adopt new Regulation **.03** under **COMAR 09.20.01 State Plumbing Code**. This action was considered by the State Board of Plumbing at a public meeting held on November 17, 2011, notice of which was published in 38:23 Md. R. 1481 (November 4, 2011), pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

#### **Statement of Purpose**

The purpose of this action is to provide standards for the implementation of Business Occupations and Professions Article, §12-605.1, Annotated Code of Maryland, which becomes effective on January 1, 2012. This section requires that those installing or repairing plumbing that is intended to dispense water for human consumption use only lead-free materials.

#### **Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

#### **Estimate of Economic Impact**

The proposed action has no economic impact.

#### **Economic Impact on Small Businesses**

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

#### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

#### **Opportunity for Public Comment**

Comments may be sent to Brenda Clark, Administrator, State Board of Plumbing, 500 N. Calvert Street, Third Floor, Baltimore, MD 21202, or call 410-230-6164, or email to [bclark@dldr.state.md.us](mailto:bclark@dldr.state.md.us), or fax to 410-333-6314. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

#### **Open Meeting**

Final action on the proposal will be considered by the State Board of Plumbing during a public meeting to be held on February 16, 2012, at 500 N. Calvert Street, Baltimore, MD 21202.

#### **.03 Limit on Lead Content.**

##### **A. Definitions.**

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

##### **(2) Terms Defined.**

(a) "Lead-free" means:

(i) Containing not more than a weighted average of 0.25 percent lead when used with respect to the wetted surface of pipes, pipe fitting, plumbing fittings, and fixtures; and

(ii) Not containing more than 0.2 percent lead when used with respect to solder and flux.

(b) "NSF" means the standards of the National Sanitation Foundation.

##### **B. Weighted Average Lead Content Formula.**

(1) The weighted average lead content of a lead-free pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product. The lead content of the material used to produce wetted components shall be used to determine compliance with lead-free requirements. For lead content of materials that are provided as a range, the maximum content of the range shall be used.

(2) The use of platings, coatings, or acid wash treatments may not be used to meet the 0.25 percent weighted average lead content requirements set forth in Business Occupations and Professions Article, §§12-101(h-1)(4) and 12-101(q)(4) and(5), Annotated Code of Maryland.

C. Materials used to dispense water intended for human consumption through drinking or cooking, including piping, faucets, and valves as set forth in §§F and G of this regulation, shall be lead-free, containing not more than a weighted average of 0.25 percent lead with respect to the wetted surface as defined in §A(2)(a)(ii) of this regulation.

##### **D. Soldered Joints.**

(1) Solder and flux for soldered joints in potable water piping shall be lead-free, containing not more than 0.2 percent lead, as defined in §A(2)(a)(ii) of this regulation.

(2) Flux shall be recommended by the manufacturer for making soldered joints in lead-free potable water supply system piping.

##### **E. Components.**

(1) Drinking water system components shall comply with the lead leachate requirements of NSF 61.

(2) Potable water supply system components shall comply with NSF 61, Annex G, or NSF 372.

(3) Potable water supply system components that are not required to be lead-free shall contain not more than 8 percent lead in accordance with Section 3.4.6 of the State Plumbing Code.

F. Potable water end-use devices and potable water supply system piping that are intended to dispense water for human consumption through drinking or cooking include, but are not limited to:

(1) Kitchen sink faucet;

(2) Residential bathroom sink faucets;

(3) Drinking fountain faucets;

(4) Kitchen hot water dispensers;

(5) Water supply to:

(a) Ice makers;

(b) Potable water heaters;

(c) Commercial grocer or supermarket misting systems used for produce;

(d) Commercial kitchen cooking equipment; and

(e) *Production equipment for processed food containing water; and*

(6) *Any other end-use device or piping that is intended to dispense or convey water for human consumption.*

G. *Piping components that shall be lead-free when used with lead-free end-use devices and piping that are required to be lead-free include, but are not limited to:*

- (1) *Main service shut-off valves;*
- (2) *Water service backflow prevention devices;*
- (3) *Water meters;*
- (4) *Pressure booster pumps;*
- (5) *Pressure reducing valves;*
- (6) *Strainers;*
- (7) *Water filters;*
- (8) *Check valves;*
- (9) *Control valves;*
- (10) *Vacuum breakers;*
- (11) *Water hammer arrestors;*
- (12) *Master hot water mixing valves;*
- (13) *In-line tempering valves;*
- (14) *Hot water recirculating pumps;*
- (15) *Branch piping shut off valves;*
- (16) *Balancing valves;*
- (17) *Fixture shut off valves;*
- (18) *Solenoid valves;*
- (19) *Tankless water heaters; and*
- (20) *Any other piping component associated with an end-use device or water supply piping that is required to be lead-free.*

H. *Materials Not Required to Be Lead-Free.*

(1) *Pipes, pipe fittings, plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption are not required to be lead-free.*

(2) *Potable water end-use devices and water supply system components not anticipated to dispense or convey water to be used for human consumption and not required to be lead-free, including the associated supply piping of such devices and components, include, but are not limited to:*

- (a) *Tub faucets or fillers;*
- (b) *Shower fixtures, including:*
  - (i) *Valves;*
  - (ii) *Heads; and*
  - (iii) *Adapters;*
- (c) *Flush valves for:*
  - (i) *Water closets;*
  - (ii) *Urinals; and*
  - (iii) *Bidets;*
- (d) *Shut off valves for clothes washers;*
- (e) *Lavatory faucets in public restrooms;*
- (f) *Laundry sink faucets;*
- (g) *Service sink faucets;*
- (h) *Faucets for laboratory applications;*
- (i) *Hose bibbs;*
- (j) *Trap seal priming devices;*
- (k) *Backflow prevention devices that supply nonpotable applications;*

- (l) *Fire hose valves;*
- (m) *Water hammer arrestors;*
- (n) *The water supply to:*
  - (i) *Dishwashers;*
  - (ii) *Whirlpools;*
  - (iii) *Spas;*
  - (iv) *Therapy pools;*

(v) *Swimming pools;*

(vi) *Boilers;*

(vii) *Heating hot water generators;*

(viii) *Humidifiers; and*

(ix) *Irrigation systems;*

(o) *Food production equipment that does not contact the food; and*

(p) *Any other end-use device or water supply piping that is not anticipated to dispense or convey water that is to be used for human consumption.*

MICHAEL J. KASTNER, JR.  
Chair  
State Board of Plumbing

## Subtitle 32 UNEMPLOYMENT INSURANCE

### 09.32.01 Obligations of Employers

Authority: Labor and Employment Article, §§8-206 and 8-305, Annotated Code of Maryland

#### Notice of Proposed Action

[12-017-P]

The Secretary of Labor, Licensing, and Regulation proposes to repeal existing Regulation .18-1 under **COMAR 09.32.01 Obligations of Employers**.

#### Statement of Purpose

The purpose of this action is to delete provisions related to messenger service businesses that are obsolete in light of recent statutory amendments in Ch. 625, Acts of 2011, effective June 1, 2011, that set forth the requirements the Secretary must find to be satisfied that work performed by certain messenger service drivers is not covered employment.

#### 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 Sarah Harlan, Assistant Attorney General, Department of Labor, Licensing and Regulation, 500 North Calvert Street, Baltimore, Maryland 21202, or call 410-230-6120, or email to [sharlan@dllr.state.md.us](mailto:sharlan@dllr.state.md.us), or fax to 410-333-6503. Comments will be accepted through February 15, 2012. A public hearing has not been scheduled.

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

## Subtitle 32 UNEMPLOYMENT INSURANCE

### 09.32.01 Obligations of Employers

Authority: Labor and Employment Article, §§8-205(b) and 8-305, Annotated Code of Maryland

#### Notice of Proposed Action [11-388-P]

The Secretary of Labor, Licensing, and Regulation proposes to adopt new Regulation .18-3 under **COMAR 09.32.01 Obligations of Employers**.

#### Statement of Purpose

The purpose of this action is to implement Ch. 188, Acts of 2009, effective October 1, 2009, specifically Labor and Employment Article, §8-205(b), Annotated Code of Maryland, which requires the Secretary of the Department of Labor, Licensing, and Regulation to adopt regulations that provide guidance and specific examples of how the test to establish whether an employer-employee relationship exists applies to the home health services industry.

#### 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 Sarah Harlan, Assistant Attorney General, Department of Labor, Licensing, and Regulation, 500 North Calvert Street, Baltimore, Maryland 21202, or call 410-230-6120, or email to [sharlan@dllr.state.md.us](mailto:sharlan@dllr.state.md.us), or fax to 410-333-6503. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

#### .18-3 Home Health Care Illustrations.

A. The illustrations in this regulation provide guidance for the home health care industry in the application of Labor and Employment Article, § 8-205, Annotated Code of Maryland and do not apply to any other State or federal labor law.

##### B. Illustration 1.

(1) Extra Loving Care ("ELC") is a Nursing Referral Service Agency ("NRSA") licensed by the Maryland Department of Health and Mental Hygiene ("DHMH") pursuant to COMAR 10.07.07. It has a registry of certified nursing assistants ("CNAs"), geriatric nursing assistants ("GNAs") and licensed practical nurses ("LPNs"). The company verifies that all workers do not have a criminal background and are properly licensed before placing them on the registry.

(2) Before placing a worker on its registry, ELC requires that the worker attend mandatory training and receive a list of rules and policies to follow in clients' homes. ELC assigns available workers on its registry to clients. ELC sets the workers' schedules and requires documentation of the work performed, such as time sheets or notes.

(3) ELC determines the workers' rates of pay and the workers cannot negotiate pay rates directly with ELC's clients. Clients pay ELC and ELC deducts its fee and pays the workers. If a client is dissatisfied with a worker, the client contacts ELC directly. Each

worker must sign an agreement with ELC that restricts his or her ability to enter into employment agreements with ELC's clients, past or present.

(4) The workers on ELC's registry are employees of ELC.

##### C. Illustration 2.

(1) Loving Care ("LC") is a Nursing Referral Service Agency ("NRSA") licensed by the Maryland Department of Health and Mental Hygiene ("DHMH") pursuant to COMAR 10.07.07. It has a registry of certified nursing assistants ("CNAs"), geriatric nursing assistants ("GNAs") and licensed practical nurses ("LPNs"). The company verifies that all workers do not have a criminal background and are properly licensed before placing them on the registry.

(2) LC provides its clients with the names and contact information for available workers on its registry. Once contacted, a worker may then set and adjust their work hours and may negotiate their rates of pay directly with the client, unless otherwise established by a third party payor. The workers on LC's registry, in conjunction with the client, determine the client's needs and use their own tools and equipment to carry out their services. Workers are not required to report hours to LC, although some workers maintain notes for their own records.

(3) Workers on LC's registry carry their own workers' compensation insurance and/or professional liability insurance coverage. Workers have their own independent businesses that are demonstrated by Federal Employer Identification Numbers ("FEINs"), tax returns, business cards, invoices, advertising and/or other indicia of operating an independently established business. Workers are responsible for maintaining necessary licensures and certifications, however, LC performs periodic credential checks to confirm that workers' licenses and certifications are current.

(4) The workers on LC's registry invoice clients directly and are paid directly by the client. The workers are then responsible for remitting any referral fee directly to LC. LC only deviates from this payment system in limited circumstances when an alternative method of payment is necessitated by a third party payor or other legal arrangement established for the benefit of the care recipient. If dissatisfied with a worker, the client informs the worker directly. The workers are not bound by a non-solicitation provision.

(5) The workers on LC's registry are independent contractors.

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

## Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 09 MEDICAL CARE PROGRAMS

#### 10.09.12 Disposable Medical Supplies and Durable Medical Equipment

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-129, Annotated Code of Maryland

#### Notice of Proposed Action [12-005-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01 and .04 under **COMAR 10.09.12 Disposable Medical Supplies and Durable Medical Equipment**.

**Statement of Purpose**

The purpose of this action is to require disposable medical supply and durable medical equipment providers to document face-to-face encounters with Medicaid recipients within 6 months prior to ordering disposable medical supplies and durable medical equipment and to update definitions.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

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

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to 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; TTY:800-735-2258, or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(14) (text unchanged)

(15) *“Physical therapy program” means an established program that outlines the prescribed equipment and treatment, along with frequency, duration, and goals or expected outcome of the recipient.*

[(15)] (16) (text unchanged)

[(16)] (17) *“Prescriber” means a physician, dentist, podiatrist, physician’s assistant, clinical nurse specialist, or nurse practitioner licensed in the state in which the prescriber’s practice is maintained who has examined the recipient.*

[(17)] (18) *“Prescriber order” means a document on the prescriber’s letterhead or prescription form which details the:*

(a)—(b) (text unchanged)

(c) Estimated quantity of the item; [and]

(d) Length of time of need [.];

(e) *Date of face-to-face encounter and how the health status of the recipient at the time of the face-to-face encounter is related to the items prescribed; and*

(f) *Prescriber’s signature.*

[(18)] (19)—[(22)] (23) (text unchanged)

**.04 Covered Services.**

A.—D. (text unchanged)

E. Documentation Required.

(1) Items in §A of this regulation are covered only when adequate documentation is obtained by the provider and kept on file as part of the permanent business records of the provider. This documentation includes, but is not limited to the:

(a) Signed and dated prescriber order *including documentation that a face-to-face encounter occurred within 6 months before ordering services;*

(b)—(c) (text unchanged)

(2)—(3) (text unchanged)

F. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE  
PROGRAMS**

**10.09.12 Disposable Medical Supplies and  
Durable Medical Equipment**

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-129,  
Annotated Code of Maryland

**Notice of Proposed Action**

[12-007-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .07 under **COMAR 10.09.12 Disposable Medical Supplies and Durable Medical Equipment**.

**Statement of Purpose**

The purpose of this action is to decrease Maryland Medicaid’s reimbursement for disposable medical supplies and durable medical equipment from 98 percent to 90 percent of Medicare’s reimbursement rate, effective January 1, 2012.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action will reduce the Department’s expenditures for fee-for-service disposable medical supplies and durable medical equipment by \$1,449,710 during FY 2012.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	\$1,449,710
B. On other State agencies:	NONE	
C. On local governments:	NONE	

	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$1,449,710
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. and D. The projected decrease in Medicaid expenditure for disposable medical supplies and durable medical equipment during the period of January 1, 2012 through June 30, 2012 is \$17,758,947 based upon fee-for-service payments at 98 percent of Medicare’s rate. The proposed action will reduce reimbursement to 90 percent of Medicare’s rate, resulting in Program savings of \$1,449,710.

**Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows. Medicaid reimbursement for disposable medical supplies and durable medical equipment will be reduced by this proposal. Revenue to small businesses for the provision of disposable medical supplies and durable medical equipment will also be reduced.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [regs@dhmh.state.md.us](mailto:regs@dhmh.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.07 Payment Procedures.**

A.—C. (text unchanged)

D. Effective [October 1, 2009] *January 1, 2012*, the Department shall pay providers [98] 90 percent of the current Medicare rate for prosthetic devices. For prosthetic devices for which Medicare has not established a rate, the Department shall pay providers the manufacturer's suggested retail price of the item, less 26.5 percent. The payment shall include all fitting, dispensing, and follow-up care.

E. (text unchanged)

F. The Department shall reimburse providers for the purchase of covered services at the lowest of the provider's customary charge or:

(1) For items for which Medicare has established a rate:

(a) Disposable medical supplies and durable medical equipment at [98] 90 percent of the current Medicare purchase reimbursement rate; and

(b) For medical equipment for which Medicare has established a capped rental rate, the purchase price shall be [ten] 9 times the current Medicare monthly rental rate [less 2 percent]; or

(2) (text unchanged)

G. The Department shall reimburse providers for the monthly rental of covered services as follows:

[(1) For items for which Medicare has established a capped rental rate, 100 percent of the current Medicare rental rate less 2 percent;]

[(2)] (1) For items for which Medicare has established a purchase rate [only, 10], 9 percent of the current Medicare purchase reimbursement rate [less 2 percent]; and

[(3)] (2) (text unchanged)

H.—Y. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

**Subtitle 09 MEDICAL CARE  
PROGRAMS**

**10.09.18 Oxygen and Related Respiratory  
Equipment Services**

Authority: Health-General Article, §§2-104(b), 15-103, [and] 15-105, and 15-129, Annotated Code of Maryland

**Notice of Proposed Action**

[12-006-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .04 under **COMAR 10.09.18 Oxygen and Related Respiratory Equipment**.

**Statement of Purpose**

The purpose of this action is to require providers of oxygen and related respiratory equipment to document face-to-face encounters with Medicaid recipients within 6 months prior to ordering oxygen services, supplies, and equipment.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

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

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to 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; TTY:800-735-2258, or email to [regs@dhmh.state.md.us](mailto:regs@dhmh.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.04 Covered Services.**

A.—E. (text unchanged)

F. The items in §A(1)—(5) of this regulation are covered when they are ordered in writing, by a physician, *including documentation that a face-to-face encounter occurred within 6 months before ordering prescribed services*, as follows:

(1)—(3) (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.18 Oxygen and Related Respiratory Equipment Services

Authority: Health-General Article, §§2-104(b), 15-103, [and] 15-105, and 15-129, Annotated Code of Maryland

#### Notice of Proposed Action

[12-004-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .07 under **COMAR 10.09.18 Oxygen and Related Respiratory Equipment Services**.

#### Statement of Purpose

The purpose of this action is to decrease Maryland Medicaid reimbursement for oxygen and related respiratory equipment from 98 percent to 90 percent of Medicare's reimbursement rate, effective January 1, 2012.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action will reduce the Department's expenditures for fee-for-service oxygen and related respiratory equipment and supplies by \$81,554.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	\$81,554
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	
		Magnitude
D. On regulated industries or trade groups:	(-)	\$81,554
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. and D. The projected Medicaid expenditure for oxygen and related respiratory equipment and supplies during the period of January 1, 2012 through June 30, 2012 is \$999,041 based upon fee-for-service payments at 98 percent of Medicare's rate. The proposed action will reduce reimbursement to 90 percent of Medicare's rate, resulting in Program savings of \$81,554.

#### Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Medicaid reimbursement for oxygen and related respiratory equipment and supplies will be reduced by this proposal. Revenue to small businesses for the provision of oxygen and related respiratory equipment and supplies will also be reduced.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [regs@dnhm.state.md.us](mailto:regs@dnhm.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

#### .07 Payment Procedures.

A.—C. (text unchanged)

D. The Department shall reimburse providers for the purchase of covered services at the lowest of the provider's customary charge:

(1) For items that Medicare has established a rate:

(a) Effective [October 1, 2009] *January 1, 2012*, the Department shall pay providers [98] *90* percent of the current Medicare rate for oxygen and respiratory equipment and supplies, which shall include all fitting, dispensing, and follow-up care; and

(b) For respiratory equipment for which Medicare has established a capped rental rate, the purchase price shall be [ten] *9* times the current Medicare monthly rental rate [less 2 percent]; and

(2) (text unchanged)

E.—P. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 09 MEDICAL CARE PROGRAMS

### 10.09.32 Targeted Case Management for HIV- Infected Individuals

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

#### Notice of Proposed Action

[12-008-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01—.06 under **COMAR 10.09.32 Targeted Case Management for HIV-Infected Individuals**.

#### Statement of Purpose

The purpose of this action is to update language within the HIV Targeted Case Management regulations to ensure consistency with the provision of case management services across the Department and to develop an incremental reimbursement system that is cost neutral with current projected funding.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and

Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [regs@dhmh.state.md.us](mailto:regs@dhmh.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Case manager" means a [medical professional] *physician, nurse, or social worker* (refer to Regulation .02 of this chapter) employed by the HIV ongoing case management provider and chosen by the participant or the participant's legally authorized representative.

(3)—(4) (text unchanged)

(5) "HIV diagnostic evaluation services" means a [multidisciplinary] *bio-psychosocial* assessment [or reassessment] of a participant and development or revision of an individualized plan of care by a multidisciplinary team convened by an approved HIV diagnostic evaluation services provider.

(6) (text unchanged)

(7) "HIV-infected individual" means a person determined as positive for human immunodeficiency virus (HIV) infection by the enzyme-linked immunosorbent assay (ELISA) and confirmed by the Western Blot, or another generally accepted diagnostic [test] *testing algorithm* for HIV infection.

(8) "*HIV ongoing case management*" means the activities involved in developing, revising, implementing, and monitoring the plan of care, as performed by a case manager through an approved HIV ongoing case management provider.

[(8)] (9) (text unchanged)

[(9)] (9) "HIV symptomatic" means that the individual meets the requirements for being reported as HIV-infected or as having acquired immune deficiency syndrome, according to COMAR 10.06.01.]

(10) "*HIV-targeted case management*" means the provision of HIV diagnostic evaluation services and HIV ongoing case management.

[(10)] (11) (text unchanged)

[(11)] "Medical professional" means a physician or nurse.]

[(11-1)] (12) (text unchanged)

[(12)] "Multidisciplinary assessment or reassessment" means the functions performed by the multidisciplinary team, including a multidisciplinary psychosocial evaluation, a needs assessment, and the development or revision of a plan of care.]

(13) "Multidisciplinary team" means the [group] members convened by the HIV diagnostic evaluation services provider to perform a [multidisciplinary] *bio-psychosocial* assessment [or reassessment] of the participant and develop or revise an individualized plan of care.

(14)—(17) (text unchanged)

(18) "Plan of Care" means [the written, individualized care plan developed and revised by the HIV diagnostic evaluation services provider's multidisciplinary team as part of the multidisciplinary assessment or reassessment] *a goal-directed treatment plan developed and revised by the HIV diagnostic evaluation service provider's multidisciplinary team that is based on the bio-psychosocial assessment.*

(19)—(23) (text unchanged)

**.02 Licensing Requirements.**

A. (text unchanged)

B. [.] (text unchanged)

C. (text unchanged)

**.03 Conditions for Participation.**

A. (text unchanged)

B. Specific requirements for participation in the Program as a provider of services covered under this chapter are that the provider shall [meet all of the following:

(1) Maintain a file] *maintain a record* on each participant which meets the Program's requirements and which includes [for each contact made by the case manager]:

(1) *Verification of the participant's HIV-infected status;*

(2) *Verification of the participant's eligibility for services;*

(3) *A signed consent form by the participant to participate in HIV ongoing case management;*

(4) *The completed bio-psychosocial assessment;*

(5) *The completed plan of care signed by all members of the multidisciplinary team;*

(6) *Documentation for each contact made by the case manager including:*

(a)—(e) (text unchanged)

[(2)] Document, on periodic reporting forms or printouts specified by the Department, the covered services provided to participants.]

(7) *A signed case closure form when HIV ongoing case management services are ended.*

C. Specific requirements for participation in the Program as an HIV diagnostic evaluation services provider are that the provider shall:

(1) Be a physician or a health or social services entity which employs or has a written agreement with [medical professionals] *physicians, nurses, or social workers* for provision of its diagnostic evaluation services who are experienced or trained in the provision of services to HIV-infected individuals[.];

(2) Have a written plan for the implementation of HIV diagnostic evaluation services[.];

(3) Be available to participants at least 8 hours a day, 5 days a week, except on State holidays[.];

(4) Have existing policies and procedures concerning the performance of HIV diagnostic evaluation services[.];

(5) Develop procedures to expedite *bio-psychosocial* assessments [and reassessments] when necessary[.];

[(6)] Present a qualified recipient with the option of receiving HIV diagnostic evaluation services and HIV ongoing case management services. If the recipient elects to receive HIV ongoing case management, the provider shall ask the recipient to select from among a list of qualified HIV ongoing case management providers.

(7) Make arrangements for the case manager chosen by the participant to participate as a member of the multidisciplinary team, assisting with performance of the multidisciplinary assessment and with development of the plan of care.

(8) Convene a multidisciplinary team for each participant, to perform the multidisciplinary assessment or reassessment and develop or revise an individualized plan of care on a form designated by the Department. The team shall be composed of the participant or the participant's legally authorized representative or representatives, a medical professional, and a social worker. The professionals on the team shall include the case manager and at least 1 qualified representative of the diagnostic evaluation services provider. The multidisciplinary team may also include the participant's attending physician, current service providers, and specialty physicians as necessary and appropriate.

(9) Inform the participant or the participant's legally authorized representative or representatives of the recommendations for the plan of care in the multidisciplinary assessment or reassessment and of the availability of the needed services.

(10) Reassess a participant when the participant's chosen case manager recommends, and the participant's chosen HIV diagnostic



evaluation provider agrees, that a significant change in the participant's status necessitates a review or revision of the plan of care. This reassessment may be limited to those needs which have changed since the last assessment or reassessment. A participant's full range of needs shall be reassessed annually by the multidisciplinary team.

(11) Have a written agreement with any entity approved as an HIV ongoing case management provider which a participant may choose as the provider of HIV ongoing case management. The agreement shall permit the case manager chosen by the participant to participate as a member of the multidisciplinary team, to have access to the plan of care, and to request a reassessment as necessary.

(12) Have access to specialty physicians experienced and trained in provision of services to HIV-infected individuals, for consultation as necessary concerning a participant's medical assessment and the medical services recommended in the plan of care.

(13) Submit to the Program at the end of each quarter the lesser of the actual number of plans of care completed that quarter for participants or a sample of ten plans of care, with all information identifying the participant removed, so the plans may be reviewed for conformance with requirements of this chapter.]

*(6) Have access to specialty physicians experienced and trained in the provision of services to HIV-infected individuals for consultation, as necessary, concerning a participant's medical assessment and the medical services recommended in the plan of care.*

*(7) Present a qualified recipient with the option of receiving HIV diagnostic evaluation services and HIV ongoing case management services. If the recipient elects to receive HIV ongoing case management, the provider shall ask the recipient to select from a list of qualified HIV ongoing case management providers.*

*(8) Establish a written agreement with any entity approved as an HIV ongoing case management provider which a participant selects as his or her case manager and agrees to allow the case manager chosen by the participant to:*

*(a) Participate as a member of the multidisciplinary team;*

*(b) Assist with performance of the bio-psycho-social assessment;*

*(c) Assist with the development and revision of the plan of care; and*

*(d) Monitor the participant's need for a revised bio-psycho-social assessment.*

*(9) Convene a multidisciplinary team for each participant, to perform the bio-psycho-social assessment and develop or revise an individualized plan of care. The team shall be composed of:*

*(a) The participant;*

*(b) The participant's legally authorized representative or representatives;*

*(c) Any additional representatives chosen by the participant, if desired;*

*(d) A representative from the HIV diagnostic evaluation services provider which may include any of the following as necessary and appropriate:*

*(i) The participant's primary care physician;*

*(ii) Nurse;*

*(iii) Current service provider or providers;*

*(iv) Specialty physician; or*

*(v) Social worker; and*

*(e) The participant's case manager. If employed by the HIV diagnostic evaluation services provider, the case manager may also act as the representative from the provider.*

*(10) Inform the participant or the participant's legally authorized representative or representatives of:*

*(a) Recommendations for the plan of care in the bio-psycho-social assessment; and*

*(b) Availability of needed services.*

*(11) Have the capacity to conduct, at minimum, an annual bio-psycho-social assessment of the participant, unless an earlier assessment is recommended by the case manager or multidisciplinary team.*

D. Specific requirements for participation in the Program as an HIV ongoing case management provider are that the provider shall:

(1) Be a health or social services entity employing registered nurses, [licensed] social workers, or physicians, who are [experienced and] trained and have at least 1 year experience in the provision of services [to HIV-infected individuals] as a case manager. Experience may have been acquired as volunteer work or field placement;

(2) Have a written agreement:

(a) (text unchanged)

(b) Which permits the case manager to participate as a member of the multidisciplinary team, to have access to the plan of care, and to request [a reassessment] a bio-psycho-social assessment and plan of care revision as necessary;

(3) Have a written plan for the implementation of HIV ongoing case management services [consistent with Departmental guidelines];

(4) (text unchanged)

(5) Provide HIV ongoing case management services to participants who:

(a) Are assessed by an HIV diagnostic evaluation services provider[.];

(b) Are recommended for HIV ongoing case management services in the plan of care[.]; and

(c) (text unchanged)

(6) (text unchanged)

(7) Have established alternatives for managing participants' medical and social crises during off-hours[,] that will be specified in participants' individualized plans of care;

(8) Have [at least 1 face-to-face contact] the capacity to meet with the participant face-to-face [during each 6-month period];

[(9) Submit to the Program, when starting to bill for HIV ongoing case management services rendered to a participant, a form designated by the Department which identifies the completion date of a plan of care consistent with the requirements of this chapter.];

[(10)] (9)—[(11)] (10) (text unchanged)

#### **.04 Covered Services.**

The Program covers the following services when they have been documented as medically necessary:

##### **A. HIV Diagnostic Evaluation Services.**

(1) These services shall include, as a unit of service, performance of a [multidisciplinary] bio-psycho-social assessment [or reassessment] and development or revision of a recommended plan of care, as well as all other necessary covered services described in §A(2) of this regulation.

[(2) A multidisciplinary team shall perform the multidisciplinary assessment or reassessment by:

(a) Reviewing relevant medical and other records, with the participant's or legal representative's written consent;

(b) Consulting with the participant's attending physician and current providers of medical, social, or other support services, as appropriate;

(c) Conducting a face-to-face assessment of the participant, preferably at the participant's residence, to determine the participant's general physical and psychological condition, as well as the participant's environmental, social, and functional status and full range of service needs;

# PROPOSED ACTION ON REGULATIONS

(d) Consulting, as appropriate, with the participant or the participant's legally authorized representative or representatives; and

(e) Developing a written, individualized plan of care which reflects both the needed and available services being recommended for delivery.

(3) The plan of care shall be recorded on a form approved by the Department and shall include:

(a) A description of the participant's present medical and psychological condition, including diagnoses and prognosis;

(b) Current and recommended medications and treatments;

(c) Recommended diet;

(d) Recommended care environment, taking into consideration available alternatives;

(e) Evaluation of the participant's medical, social, counseling, functional, financial, housing, and other needs;

(f) Evaluation of the degree of the participant's ability to perform the activities of daily living;

(g) Type, frequency, and duration of services required, to include what is needed and what is available;

(h) Signatures of the participant or the participant's legally authorized representative, the case manager, and the other members of the multidisciplinary team, to indicate their participation in development or revision of the plan of care;

(i) An off-hours plan for the HIV ongoing case management provider to manage medical and social crises that may arise, which specifies, as necessary, emergency contacts; and

(j) Other appropriate items.]

(2) *A bio-psychosocial assessment shall be completed within 6 weeks of the participant's referral for case management services. The assessment shall be performed by the HIV diagnostic evaluation services provider representative on the multidisciplinary team and include:*

*(a) A review of relevant medical and other records, with the participant's or legal representative's written consent;*

*(b) A consult with the participant's attending physician and current providers of medical, social, or other support services, as appropriate;*

*(c) A face-to-face assessment of the participant, preferably at the participant's residence, to determine:*

*(i) Medical, psychiatric, and substance abuse history, including current medications;*

*(ii) Nutritional status;*

*(iii) Emotional and behavioral status;*

*(iv) Health care coverage;*

*(v) Living situation;*

*(vi) Personal support systems;*

*(vii) Employment and income status;*

*(viii) Health education;*

*(ix) Social support; and*

*(x) Any additional service needs;*

*(d) A consult, as appropriate, with the participant or the participant's legally authorized representative or representatives; and*

*(e) All areas listed on the Department's approved sample bio-psychosocial assessment form.*

(3) *Documentation of the results of the assessment shall be kept in the participant's record.*

(4) *The multidisciplinary team will develop a written, individualized plan of care which reflects both the needed and available services being recommended for delivery.*

(5) *The plan of care shall:*

*(a) Be participant-centered and goal-oriented;*

*(b) Be developed and written in collaboration with the participant and other members of the multidisciplinary team;*

*(c) Incorporate findings from the bio-psychosocial assessment;*

*(d) Incorporate findings and recommendations from the multidisciplinary team;*

*(e) Establish a plan for after-hours crises, including medical and social crises, and other emergency situations;*

*(f) Document the proposed frequency of contact with a minimum of 1 face-to-face meeting every 6 months; and*

*(g) Address all areas listed on the Department's approved sample plan of care form.*

B. HIV Ongoing Case Management Services.

[(1) These services shall include, as a unit of service, a monthly telephone call to the participant and all other necessary covered services described in §B(3) of this regulation.

(2) The HIV ongoing case management provider may also be reimbursed for the case manager's participation as a member of the multidisciplinary team, convened to review the participant's case by the diagnostic evaluation services provider.

(3) The case manager shall assist with the multidisciplinary assessment or reassessment and with development or revision of the plan of care by:

(a) Conducting a face-to-face assessment of the participant's psychosocial status and health care needs and briefing the multidisciplinary team on the findings;

(b) Participating in the development or revision of an individualized plan of care for the participant;

(c) Encouraging the participant's or legal representative's participation in the multidisciplinary team process; and

(d) Linking the participant with any services needed on an emergency basis before the plan of care or revision is finalized.

(4) The case manager assumes responsibility for the case, functioning as the case manager chosen by the participant, participating as a member of the multidisciplinary team convened by the HIV diagnostic evaluation services provider, taking charge of the HIV ongoing case management, acting as a point of contact for the case, and implementing and monitoring the plan of care recommended by the HIV diagnostic evaluation services provider's multidisciplinary team and approved by the participant.

(5) HIV ongoing case management services shall be provided to participants who select these services and who are recommended in the plan of care as needing HIV ongoing case management.

(6) Covered services provided by the case manager shall include:

(a) Acting as a point of contact for the case to ensure a continuum of care.

(b) Serving as a member of the HIV diagnostic evaluation services provider's multidisciplinary team when multidisciplinary assessments or reassessments are performed for the case manager's clients.

(c) Implementing the plan of care by advising the participant about available services and service providers, by making referrals to and arrangements with service providers selected by the participant, and by assisting the participant in gaining access to services for which the participant is eligible and which the participant chooses, to include:

(i) The full range of Medical Assistance services; and

(ii) Other available support services such as medical, social, housing, financial, and counseling.

(d) Providing the participant with any necessary counseling concerning government entitlement programs, health, social, educational, psychological, financial, housing, and other resources.

(e) Coordinating implementation of the plan of care with the participant's family or other persons providing care.

(f) Following up promptly after referral to service providers to ensure that the services are being received and are sufficient in quantity and quality to meet the client's needs.

(g) Monitoring the services provided and the service delivery to verify that the services were received and to determine whether they are appropriate in quantity and quality. Monitoring shall include, but not be limited to:

(i) Monthly telephone contact with the participant and other contacts as necessary with the family, caregivers, and service providers;

(ii) Home visits with the participant; and

(iii) Review of relevant records, with the participant's written consent.

(h) Coordinating service provision and resolving conflict between service providers or between a service provider and the participant.

(i) Participating in crisis assistance planning and counseling for the participant.

(j) Assessing the client and the relevant records as necessary to determine the client's current status and progress and whether any revision is needed in the plan of care or in the provision of services.

(k) Referring the client back for reassessment by the HIV diagnostic evaluation services provider at least annually, and anytime during the year as determined necessary by the case manager and the participant's chosen HIV diagnostic evaluation services provider, when a significant change in the participant's condition or circumstances requires a reassessment or update to the plan of care.

(l) Determining the client's continuing need and desire for ongoing case management services not later than 60 days after the service begins and at least every 6 months after that.]

(1) *The case manager shall assist with the bio-psychosocial assessment and with development or revision of the plan of care by:*

(a) *Conducting a face-to-face assessment of the participant's psychosocial status and health care needs and briefing the multidisciplinary team on the findings;*

(b) *Participating in the development or revision of an individualized plan of care for the participant;*

(c) *Encouraging the participant's and representative's participation in the multidisciplinary team process; and*

(d) *Linking the participant with any services needed on an emergency basis before the plan of care or revision is finalized.*

(2) *The HIV ongoing case management provider may be reimbursed for the case manager's participation as a member of the multidisciplinary team, convened to review the participant's case by the HIV diagnostic evaluation services provider.*

(3) *The case manager:*

(a) *Participates as a member of the multidisciplinary team convened by the HIV diagnostic evaluation services provider;*

(b) *Assumes responsibility for providing case management services to the participant;*

(c) *Acts as a point of contact for the case; and*

(d) *Implements and monitors the plan of care recommended by the HIV diagnostic evaluation services provider's multidisciplinary team and approved by the participant.*

(4) *HIV ongoing case management services shall be provided to participants who:*

(a) *Are recommended in the plan of care as needing case management; and*

(b) *Who elect to receive case management services.*

(5) *The plan of care shall be implemented as follows:*

(a) *The case manager shall make initial contact with the participant to assure that medical and support referrals were completed and followed-up on;*

(b) *The case manager shall maintain regular contact that will occur at intervals agreed on by the participant and case manager in the plan of care;*

(c) *The case manager or HIV ongoing case management provider, when necessary, shall respond to participant-initiated non-emergency contact within 2 working days;*

(d) *The participant or the participant's representative or representatives shall be offered a copy of the plan of care;*

(e) *The case manager shall document every direct and indirect contact, including assessing the progress of implementation of the plan of care in the participant's record;*

(f) *The case manager shall assist the participant with each action plan to reach the goals outlined in the plan of care;*

(g) *The case manager shall advise the participant about available services and service providers, by making referrals to and arrangements with service providers selected by the participant, and by assisting the participant in gaining access to services for which the participant is eligible and which the participant chooses, to include:*

(i) *The full range of Medical Assistance services; and*

(ii) *Other available support services such as medical, social, housing, financial, and counseling;*

(h) *The case manager shall provide the participant with any necessary counseling concerning:*

(i) *Government entitlement programs;*

(ii) *Health programs;*

(iii) *Social programs;*

(iv) *Educational programs;*

(v) *Psychological programs;*

(vi) *Financial programs;*

(vii) *Housing programs; and*

(viii) *Other resources;*

(i) *The case manager shall follow up with referral sources; and*

(j) *The case manager shall examine the actual service delivery against the plan of care.*

(6) *The case manager shall monitor and evaluate the participant's plan of care as follows:*

(a) *Review and check the status of each activity outlined in the plan of care;*

(b) *Modify the action plan or goals to accommodate the participant's changing needs or changes in service availability;*

(c) *Monitor the plan of care at regular intervals that have been predetermined at the time of the plan of care or more often depending on participant need;*

(d) *Evaluate the plan of care, in collaboration with the participant, at least every 6 months, with input from any members of a multidisciplinary team who have been involved with the participant's care.*

(7) *The case manager shall document the following in the participant's record regarding case closure:*

(a) *Participant notification, including date of closure, reason, and explanation of closure;*

(b) *Participant's notification of right to re-enter services at a later time;*

(c) *Documentation of coordination and referral to a new provider if desired by the participant; and*

(d) *Documentation of a participant's non-response to case manager attempts to reach the participant over a 6-month period of time with at least 3 attempts to contact the participant.*

#### **.05 Limitations.**

A.—C. (text unchanged)

D. HIV-targeted case management may not be:

(1) (text unchanged)

(2) Provided as an administrative function [necessary for the proper and efficient operation of the State's Medical Assistance plan];

(3)—(4) (text unchanged)

E. Reimbursement may not be made for HIV-targeted case management services if the participant is [receiving comparable case management services under another Program authority.]:

(1) *Eligible to receive services under the Maryland Medicaid Managed Care Program, as defined in COMAR 10.09.62; or*

(2) *Receiving comparable case management services under:*

(a) *The Rare and Expensive Case Management Program, as defined in COMAR 10.09.69; or*

(b) *Under another Program authority.*

F. (text unchanged)

#### **.06 Payment Procedures.**

##### **A. Request for Payment.**

(1) Requests for payment of HIV-targeted case management services rendered shall be submitted by an approved provider according to procedures [established by the Department. Payment requests which are not properly prepared or submitted may not be processed, but shall be returned unpaid to the provider] *as set forth in COMAR 10.09.36.04.*

(2)—(3) (text unchanged)

##### **B. (text unchanged)**

##### **C. Payments shall be made:**

[(1) Only to a qualified provider for covered services rendered to a participant, as specified in these regulations;

(2) Only to one provider for a specific type of HIV-targeted case management services rendered to a participant during a specified time period; and

(3) According to the following fee-for-service schedule for HIV-targeted case management:

##### **Description Fee Per Unit of Service**

(a) One completed multidisciplinary or assessment or reassessment performed by an HIV diagnostic evaluation services provider. This plan of care or revision shall be signed by all members of the multidisciplinary team. Only in unusual, participant-related circumstances approved by the Program would signature by the participant or legally authorized representative not be required — \$200;

(b) Participation by the case manager in one completed multidisciplinary assessment or reassessment, as specified in Regulation .04B(2) of this chapter. The ongoing case management provider may be reimbursed for only one unit of service before the start of monthly ongoing case management. This service and monthly ongoing case management may not be reimbursed for the same period of time — \$100;

(c) Monthly ongoing case management. Not more than one unit of service may be reimbursed per calendar month following the completion of a multidisciplinary assessment or reassessment by a qualified provider of diagnostic evaluation services — \$100.]

(1) *Only to 1 provider for a specific type of HIV-targeted case management services rendered to a participant during a specified time period;*

(2) *To an HIV ongoing case management provider that shall be reimbursed in 15-minute increments, which is equal to 1 unit of service. Reimbursement for HIV ongoing case management may not exceed 96 units of service per year following the date of service for the HIV diagnostic evaluation services; and*

(3) *To a provider of HIV-targeted case management services that may not exceed the following fee schedule:*

(a) *For the completion of a bio-psychosocial assessment and development or revision of the plan of care performed by an HIV diagnostic evaluation services provider — \$200;*

(b) *For the participation by the case manager in the completion of the bio-psychosocial assessment and development or revision of the plan of care, as specified in Regulation .04B of this chapter up to 6 units of service at a rate of \$17.86 per unit of service*

(c) *For HIV ongoing case management, up to 96 units of service, at a rate of \$17.86 per unit of service, may be reimbursed per year following completion of the bio-psychosocial assessment and development or revision of the plan of care by a qualified provider of HIV diagnostic evaluation services.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder**

Authority: Health-General Article, §§2-104(b), 15-103, 15-105, and 15-130, Annotated Code of Maryland

#### **Notice of Proposed Action**

[12-009-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulations **.01**, **.02**, **.04**—**.08**, **.21**, and **.24** under **COMAR 10.09.56 Home and Community-Based Services Waiver for Children with Autism Spectrum Disorder**.

#### **Statement of Purpose**

The purpose of this action is to add and revise definitions, specific provider requirements, limitations, and sanctions.

#### **Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

#### **Estimate of Economic Impact**

**I. Summary of Economic Impact.** The adoption of the regulations is expected to have minimal or no economic impact on Autism providers and is not quantifiable.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	non-quantifiable
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

D. Some individuals who supervise direct care workers may require additional training.

**Economic Impact on Small Businesses**

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

**Impact on Individuals with Disabilities**

The proposed action has an impact on individuals with disabilities as follows:

The proposed action will change provider training and conditions of participation requirements which will help to improve service delivery, therefore positively impacting individuals with developmental disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.01 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(6) (text unchanged)

(7) “Developmentally disabled” means a condition, as specified in 42 CFR §435.1010 for persons with related conditions, resulting in a severe, chronic disability which meets all of the following conditions:

(a) Is attributable to:

(i) (text unchanged)

(ii) A condition such as autism, except for mental illness, which is found to be closely related to [mentally retarded] *intellectual disability* because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of [mentally retarded] *intellectually disabled* individuals, and requires treatment or services similar to those required for [mentally retarded] *intellectually disabled* individuals;

(b)—(d) (text unchanged)

(8)—(11) (text unchanged)

(12) “[ICF-MR] *ICF-ID* level of care” means an assessment that an individual needs the level of services provided in an intermediate care facility for the [mentally retarded] *intellectually disabled* and persons with related conditions [(ICF-MR)] (*ICF-ID*), including active treatment.

(13)—(14) (text unchanged)

(15) “Intermediate care facility for the [mentally retarded] *intellectually disabled* and persons with related conditions [(ICF-MR)] (*ICF-ID*)” means an institution [covered by the Program under COMAR 10.09.10, in accordance with 42 CFR §435.1009, as being an institution or distinct part of an institution] *licensed by the Department under COMAR 10.07.20* that:

(a) Is primarily for the diagnosis, treatment, or rehabilitation of the [mentally retarded] *intellectually disabled* or persons with related conditions; and

(b) (text unchanged)

(16)—(32) (text unchanged)

C. (text unchanged)

**.02 Participant Eligibility.**

A. Medical Eligibility for the Autism Waiver.

(1) To be medically eligible for the services covered under the chapter, an applicant shall be certified by the licensed psychologist or certified school psychologist, who is a member of the participant’s multidisciplinary team and is employed by the local Infants and Toddlers Program or local school system, to need [ICF-MR] *ICF-ID* level of care, as part of the multidisciplinary team process and using the form for determination of eligibility for level of care in an intermediate care facility for the [mentally retarded] *intellectually disabled* and persons with related conditions [(ICF-MR)] (*ICF-ID*).

(2) Every 12 months, or more frequently if determined necessary by the service coordinator or multidisciplinary team due to a significant change in the participant’s condition or needs, a participant’s medical need for [ICF-MR] *ICF-ID* level of care shall be reevaluated by the licensed psychologist or certified school psychologist on the multidisciplinary team, as part of the multidisciplinary team process and using the form for determination of eligibility for level of care in an [ICF-MR] *ICF-ID*.

(3) The form certifying [ICF-MR] *ICF-ID* level of care shall be signed by the:

(a)—(b) (text unchanged)

B. Technical Eligibility for the Autism Waiver. An applicant or participant shall be determined by the multidisciplinary team to meet the waiver’s technical eligibility-criteria if the individual:

(1)—(3) (text unchanged)

(4) Uses at least one waiver service monthly, *not including family training*, unless otherwise authorized by the Maryland State Department of Education;

(5)—(8) (text unchanged)

(9) Chooses, or the parent or parents of a minor child chooses on the child’s behalf, to receive Autism Waiver services as an alternative to services in an [ICF-MR] *ICF-ID*, and documents that choice on the consent form for Autism Waiver services; and

(10) (text unchanged)

C.—D. (text unchanged)

**.04 Conditions for Participation — General.**

To provide Autism Waiver services, the provider:

A.—D. (text unchanged)

E. Shall assure that direct care workers who render services under this chapter:

(1)—(2) (text unchanged)

(3) Work under the ongoing supervision of an appropriately qualified professional employee of the provider[;] *who has training in:*

(a) *Abuse, neglect, exploitation; and*

(b) *Positive behavioral interventions and appropriate use of restraints;*

(4)—(5) (text unchanged)

(6) Have *volunteer or employment* experience working with children with autism spectrum disorder or other developmental disabilities as a service provider or as a family member *for a minimum of 100 hours*.

F. Shall be required to have a professional on-call at all times, and employ or contract with certain professionals for consultation as needed when providing:

(1) (text unchanged)

(2) Intensive individual support services; *and*

(3) Therapeutic integration services; [and]

[(4)Supported employment services;]

G.—AA. (text unchanged)

BB. With the exception of environmental accessibility adaptations providers *and residential habilitation providers*, shall submit to the

service coordinator monthly service tracking forms for each participant served within 20 calendar days of the end of each month;

CC. [Shall] *With the exception of environmental accessibility adaptations providers, shall attend at least one Autism Waiver training conducted by the State each year and shall participate in:*

(1)—(2) (text unchanged)

(3) All statewide Autism Waiver trainings during any year in which the provider is under recommendation for disenrollment from the waiver or has had Medicaid payments suspended; [and]

DD. Shall satisfactorily complete all aspects of the Autism Waiver provider applications process[.];

EE. *Shall notify the Program within 15 days of occurrence of any change to contact information;*

FF. *Shall maintain communications with the program by maintaining a working telephone and answering machine, facsimile machine, and e-mail account;*

GG. *Shall have status as a Maryland Medicaid Autism Waiver provider, including the Medicaid provider number, terminated if no services have been provided for 24 consecutive months; and*

HH. *Shall comply with all administrative policies, procedures, transmittals, and guidelines issued by the Department or its designee.*

#### **.05 Specific Conditions for Participation — Residential Habilitation Services.**

To provide the services covered under Regulation .11 of this chapter, the provider agency shall:

A.—P. (text unchanged)

Q. [Provide to the service coordinator, every 6 months, summaries for all participants regarding the participants] *Maintain and make available for review by the State, documentation of the 6- month review and update of each participant's status relative to each goal in the residential habilitation individual plan.*

#### **.06 Specific Conditions for Participation — Intensive Individual Support Services.**

To provide the service covered under Regulation .15 of this chapter, the provider shall:

A.—D. (text unchanged)

E. Assure supervision of direct care workers by a:

(1)—(6) (text unchanged)

(7) Individual with a masters or doctorate degree in special education or a related field and at least 5 years experience in providing training or consultation in the area of autism spectrum disorder *or other developmental disabilities;*

F.—L. (text unchanged)

M. [Provide to the service coordinator, every 6 months, summaries for all participants regarding participants] *Maintain and make available for review by the State, documentation of the 6- month review and update of each participant's status relative to each goal in the intensive individual support services treatment plan.*

#### **.06-1 Specific Conditions for Participation — Therapeutic Integration Services.**

To provide one or more of the services covered under Regulation .14 of this chapter, the provider shall:

A.—O. (text unchanged)

P. [Provide to the service coordinator, every 6 months, summaries for all participants regarding participants] *Maintain and make available for review by the State, documentation of the 6- month review and update of each participant's status relative to each goal in the therapeutic integration treatment plan.*

#### **.07 Specific Conditions for Participation — Respite Care.**

A. (text unchanged)

B. A professional who provides respite care services or supervises a direct care worker rendering the services shall be:

(1)—(2) (text unchanged)

(3) A qualified developmental disabilities professional in accordance with COMAR [10.09.26.01B(26)] *10.09.26.01B(28);*

(4)—(5) (text unchanged)

[C. A respite care provider, including the supervisor, shall have at least 1 year of experience or training in providing services to children with autism spectrum disorder or other developmental disabilities.]

[D.] C.—[E.] D. (text unchanged)

#### **.08 Specific Conditions for Participation — Family Training.**

A.—B. (text unchanged)

[C. The provider shall provide documented evidence of integration of the training program with IEP or IFSP, education, and other waiver and community-based services received by participants.]

[D.] C.—[F.] E. (text unchanged)

[G.] F. The provider shall [provide to the service coordinator, every 6 months, summaries for all families regarding participants] *maintain and make available for review by the State, documentation of the 6-month review and update the status relative to each goal in the family training plan.*

#### **.21 Limitations.**

A.—I. (text unchanged)

J. *The Program does not reimburse for any autism waiver services for a participant whose residential placement in a 24-hour, 365-day residential program is funded with non-Medicaid federal, State, or local government funds.*

#### **.24 Cause for Suspension or Removal and Imposition of Sanctions.**

A. Cause for suspension or removal and imposition of sanctions is set forth in COMAR 10.09.36.08.

B. *In addition to the sanctions specified at COMAR 10.09.36.08, the Department may limit:*

- (1) *The number of participants served by the provider; and*
- (2) *The number and type of services provided.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## **Subtitle 09 MEDICAL CARE PROGRAMS**

### **Notice of Proposed Action**

[12-010-P]

The Secretary of Health and Mental Hygiene proposes to amend:

(1) Regulations .19 and .19-3 under **COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations;** and

(2) Regulation .14 under **COMAR 10.09.76 Primary Adult Care Program.**

### **Statement of Purpose**

The purpose of this action is to implement the May 1, 2011 HealthChoice capitation rates due to budget reduction measures, the mid-year adjustment to the CY2011 MCO's HealthChoice and PAC capitation rates, implement the calendar year 2012 HealthChoice and PAC capitation rates and to increase the rural access incentive.

### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** This impact includes the May 1, 2011 legislative rate reduction of \$19,000,000, the mid-year regulatory increase of \$10,000,000 and the overall CY 12 rate decrease for the HealthChoice and PAC programs of \$12,000,000. In addition the rural access incentive will be increased from \$5,000,000 in CY 2010 to \$12,000,000 in CY 2011. The net results of these changes will be an overall decrease of \$14,000,000. The mid-year increase is a result of changes for Inpatient and outpatient hospital rates, GME, Substance abuse, ER, a decrease for the DC hospitals and a reduction in physician fees. The CY 12 decrease reflects MCO trends.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E-)	\$14,000,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$14,000,000

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. Base data for the mid-year rate increase is the audited calendar year 2008 MCO reported expenditures and 2009 expenditures for the CY 12 rate decrease.

D. There will be a negative impact on the MCOs due to the overall rate decrease. See IIA above. However, there will be a positive impact on the MCOs who participate statewide due to the increased incentive amount.

**Economic Impact on Small Businesses**

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

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulations and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston St., Room 512, Baltimore, Maryland 21201, or call 410-767-6499, TTY:800-735-2258, or email to regs@dnhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

## 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations

Authority: Insurance Article, §15-112, 15-605, and 15-1008; Health-General Article, §2-104, 15-102.3, and 15-103; Annotated Code of Maryland

### .19 MCO Reimbursement.

A. (text unchanged)

B. Capitation Rate-Setting Methodology.

(1)—(3) (text unchanged)

(4) Except to the extent of adjustments required by §D of this regulation or by Regulations .19-1—.19-4 of this chapter, the Department shall make payments monthly at the rates specified in the following tables:

[(a)—(c)] (tables proposed for repeal)

(a) Rate Table for Families and Children.

Effective May 1, 2011—June 30, 2011

Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
Under age 1				
Birth Weight				
1500 grams or less	Both	\$7,884.36	\$6,463.94	\$7,045.65
Under age 1				
Birth Weight				
over 1500 grams	Both	\$406.12	\$332.96	\$362.92
1—5	Male	\$179.32	\$147.01	\$160.24
	Female	\$153.24	\$125.63	\$136.94
6—14	Male	\$89.29	\$73.21	\$79.79
	Female	\$83.60	\$68.54	\$74.71

**PROPOSED ACTION ON REGULATIONS**

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	15—20	Male	\$145.63	\$119.39	\$130.14
		Female	\$170.62	\$139.88	\$152.47
	21—44	Male	\$391.95	\$321.34	\$350.26
		Female	\$417.35	\$342.16	\$372.95
	45—64	Male	\$705.66	\$578.53	\$630.60
		Female	\$625.08	\$512.47	\$558.59
<i>ACG—adjusted cells</i>					
ACG 100, 200, 300, 400, 500, 600, 700, 900, 1000, 1100, 1200, 1300, 1600, 1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731, 1732, 1800, 1900, 2000, 2100, 2200, 2300, 2400, 2500, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3800, 4210, 5100, 5110, 5200, 5230, 5310, 5339	RAC 1F	Both	\$277.53	\$225.17	\$244.67
ACG 800, 1740, 1741, 1742, 1750, 1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100, 4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810, 5340	RAC 2F	Both	\$369.93	\$ 300.14	\$ 326.13
ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771, 1772, 2600, 4320, 4520, 4820	RAC 3F	Both	\$499.24	\$405.05	\$440.13
ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020, 5040	RAC 4F	Both	\$735.52	\$596.74	\$648.43
ACG 4430, 4730, 4930, 5030, 5050	RAC 5F	Both	\$839.34	\$680.97	\$739.96
ACG 4940, 5060	RAC 6F	Both	\$1,555.85	\$1,262.30	\$1,371.64
ACG 5070	RAC 7F	Both	\$1,986.84	\$1,611.98	\$1,751.61
ACG 100, 200, 300, 500, 600, 1100, 1600, 2000, 2400, 3400, 5100, 5110, 5200	RAC 1G	Both	\$87.42	\$ 70.93	\$ 77.07
ACG 400, 700, 900, 1000, 1200, 1300, 1710, 1711, 1712, 1800, 1900, 2100, 2200, 2300, 2800, 2900, 3000, 3100, 5310	RAC 2G	Both	\$121.61	\$98.66	\$107.21
ACG 1720, 1721, 1722, 1731, 1732, 1730, 2500, 3200, 3300, 3500, 3800, 4210, 5230, 5339	RAC 3G	Both	\$149.98	\$121.68	\$132.22
ACG 800, 1740, 1741, 1742, 1750, 2700, 3600, 1750, 1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100, 4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810, 5340	RAC 4G	Both	\$211.11	\$171.28	\$186.11
ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771, 1772, 2600, 4320, 4520, 4620, 4820	RAC 5G	Both	\$316.15	\$256.50	\$278.72
ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020, 5040	RAC 6G	Both	\$386.40	\$313.56	\$340.72
ACG 4430, 4730, 4930, 4940, 5030, 5050, 5060, 5070	RAC 7G	Both	\$767.29	\$622.52	\$676.44
SOBRA Mothers			\$687.30	\$563.48	\$614.19
Persons with HIV	ALL	Both	\$601.90	\$601.90	\$601.90

(b) Rate Table for Disabled Individuals.  
Effective May 1, 2011—June 30, 2011

Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
Under Age 1	Both	\$3,178.15	\$3,178.15	\$3,178.15
1—5	Male	\$871.43	\$871.43	\$871.43
	Female	\$827.67	\$827.67	\$827.67
6—14	Male	\$216.00	\$216.00	\$216.00
	Female	\$278.13	\$278.13	\$278.13
15—20	Male	\$213.16	\$213.16	\$213.16
	Female	\$318.56	\$318.56	\$318.56
21—44	Male	\$1,256.74	\$1,030.33	\$1,123.06
	Female	\$1,440.95	\$1,181.36	\$1,287.67
45—64	Male	\$2,156.13	\$1,767.69	\$1,926.77
	Female	\$1,833.62	\$1,503.28	\$1,638.56



ACG—adjusted cells

ACG 100, 200, 300, 1100, 1300, 1400, 1500, 1600,  
1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731,  
1732, 1900, 2400, 2600, 2900, 3400, 5100, 5110,  
5200, 5310  
ACG 400, 500, 700, 900, 1000, 1200, 1740, 1741,  
1742, 1750, 1751, 1752 1800, 2000, 2100, 2200,  
2300, 2500, 2700, 2800, 3000, 3100, 3200, 3300,  
3500, 3900, 4000, 4310, 5330  
ACG 600, 1760, 1761, 1762, 3600, 3700, 4100, 4320,  
4410, 4710, 4810, 4820  
ACG 3800, 4210, 4220, 4330, 4420, 4720, 4910,  
5320  
ACG 800, 4430, 4510, 4610, 5040, 5340  
ACG 1770, 1771, 1772, 4520, 4620, 4830, 4920,  
5050  
ACG 4730, 4930, 5010  
ACG 4940, 5020, 5060  
ACG 5030, 5070  
Persons with AIDS  
Persons with HIV

RAC 10	Both	\$293.83	\$238.39	\$259.04
RAC 11	Both	\$359.15	\$291.39	\$316.63
RAC 12	Both	\$698.33	\$566.57	\$615.65
RAC13	Both	\$754.35	\$612.02	\$665.03
RAC14	Both	\$1,006.78	\$816.83	\$887.58
RAC15	Both	\$1,278.48	\$1,037.26	1,127.11
RAC16	Both	\$1,509.44	\$1,224.65	\$1,330.73
RAC17	Both	\$1,870.23	\$1,517.37	\$1,648.80
RAC 18	Both	\$3,217.15	\$2,610.50	\$2,836.62
All	Both	\$2,976.57	\$2,097.24	\$2,097.24
All	Both	\$1,581.09	\$1,581.09	\$1,581.09

(c) Rate Table for Supplemental Payment for Delivery/Newborn.  
Effective May 1, 2011—June 30, 2011

	Age	Gender	Baltimore City	Montgomery, and Prince George's Counties	Rest of State
<i>Supplemental Payment Cells</i>					
Delivery/Newborn—all births except live birth weight 1,500 grams or less	All	Both	\$12,995.98	\$10,621.89	\$11,577.78
Delivery/Newborn—live birth weight 1,500 grams or less	All	Both	\$71,328.55	\$71,328.55	\$71,328.55

(d) Rate Table for Families and Children.  
Effective July 1, 2011 — December 31, 2011

Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
Under age 1 Birth Weight 1500 grams or less	Both	\$7,933.81	\$6,415.42	\$7,068.72
Under age 1 Birth Weight over 1500 grams	Both	\$408.69	\$330.47	\$364.13
1—5	Male	\$179.93	\$145.49	\$160.31
	Female	\$153.74	\$124.32	\$136.97
6—14	Male	\$89.78	\$72.60	\$79.99
	Female	\$84.06	\$67.97	\$74.89
15—20	Male	\$146.39	\$118.37	\$130.42
	Female	\$171.36	\$138.57	\$152.68
21—44	Male	\$393.94	\$318.55	\$350.98
	Female	\$419.12	\$338.90	\$373.42
45—64	Male	\$709.71	\$573.88	\$632.32
	Female	\$628.14	\$507.93	\$559.65

ACG—adjusted cells

ACG 100, 200, 300, 400, 500, 600, 700, 900, 1000,  
1100, 1200, 1300, 1600, 1710, 1711, 1712, 1720,  
1721, 1722, 1730, 1731, 1732, 1800, 1900, 2000,

RAC 1F	Both	\$278.33	\$222.84	\$244.66
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**PROPOSED ACTION ON REGULATIONS**

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2100, 2200, 2300, 2400, 2500, 2800, 2900, 3000,  
3100, 3200, 3300, 3400, 3500, 3800, 4210, 5100,  
5110, 5200, 5230, 5310, 5339

ACG 800, 1740, 1741, 1742, 1750, 2700, 3600, 1750,  
1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100,  
4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810,  
5340

RAC 2F Both \$370.19 \$296.39 \$325.41

ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771,  
1772, 2600, 4320, 4520, 4620, 4820

RAC 3F Both \$499.48 \$399.90 \$439.06

ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020,  
5040

RAC 4F Both \$736.02 \$589.28 \$646.98

ACG 4430, 4730, 4930, 5030, 5050

RAC 5F Both \$838.88 \$671.63 \$737.40

ACG 4940, 5060

RAC 6F Both \$1,558.23 \$1,247.57 \$1,369.73

ACG 5070

RAC 7F Both \$1,989.18 \$1,592.60 \$1,748.54

ACG 100, 200, 300, 500, 600, 1100, 1600, 2000,  
2400, 3400, 5100, 5110, 5200

RAC 1G Both \$87.67 \$70.19 \$77.06

ACG 400, 700, 900, 1000, 1200, 1300, 1710, 1711,  
1712, 1800, 1900, 2100, 2200, 2300, 2800, 2900,  
3000, 3100, 5310

RAC 2G Both \$121.77 \$97.49 \$107.04

ACG 1720, 1721, 1722, 1730, 1731, 1732, 2500,  
3200, 3300, 3500, 3800, 4210, 5230, 5339

RAC 3G Both \$150.19 \$120.24 \$132.02

ACG 800, 1740, 1741, 1742, 1750, 2700, 3600, 1750,  
1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100,  
4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810,  
5340

RAC 4G Both \$211.26 \$169.14 \$185.71

ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771,  
1772, 2600, 4320, 4520, 4820

RAC 5G Both \$316.77 \$253.61 \$278.45

ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020,  
5040

RAC 6G Both \$386.53 \$309.47 \$339.77

ACG 4430, 4730, 4930, 4940, 5030, 5050, 5060,  
5070

RAC 7G Both \$768.63 \$615.39 \$675.65

SOBRA Mothers

\$691.07 \$558.81 \$615.72

Persons with HIV

ALL Both \$601.07 \$601.07 \$601.07

(e) Rate Table for Disabled Individuals.

Effective July 1, 2011—December 31, 2011

Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
Under Age 1 1—5	Both	\$3,178.11	\$3,178.11	\$3,178.11
	Male	\$869.91	\$869.91	\$869.91
	Female	\$823.97	\$823.97	\$823.97
6—14	Male	\$215.70	\$215.70	\$215.70
	Female	\$277.79	\$277.79	\$277.79
15—20	Male	\$213.06	\$213.06	\$213.06
	Female	\$318.36	\$318.36	\$318.36
21—44	Male	\$1,260.98	\$1,019.65	\$1,123.49
	Female	\$1,446.75	\$1,169.87	\$1,289.00
45—64	Male	\$2,162.94	\$1,748.99	\$1,927.09
	Female	\$1,840.11	\$1,487.94	\$1,639.46

ACG—adjusted cells

ACG 100, 200, 300, 1100, 1300, 1400, 1500, 1600,  
1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731,  
1732, 1900, 2400, 2600, 2900, 3400, 5100, 5110,  
5200, 5310

RAC 10 Both \$295.34 \$236.45 \$259.61

ACG 400, 500, 700, 900, 1000, 1200, 1740, 1741,  
1742, 1750, 1751, 1752 1800, 2000, 2100, 2200,  
2300, 2500, 2700, 2800, 3000, 3100, 3200, 3300,  
3500, 3900, 4000, 4310, 5330

RAC 11 Both \$360.43 \$288.57 \$316.82

**PROPOSED ACTION ON REGULATIONS**

**43**

ACG 600, 1760, 1761, 1762, 3600, 3700, 4100, 4320, 4410, 4710, 4810, 4820	RAC 12	Both	\$700.73	\$561.02	\$615.96
ACG 3800, 4210, 4220, 4330, 4420, 4720, 4910, 5320	RAC13	Both	\$756.65	\$605.80	\$665.12
ACG 800, 4430, 4510, 4610, 5040, 5340	RAC14	Both	\$1,009.41	\$808.16	\$887.30
ACG 1770, 1771, 1772, 4520, 4620, 4830, 4920, 5050	RAC15	Both	\$1,282.04	\$1,026.44	\$1,126.95
ACG 4730, 4930, 5010	RAC16	Both	\$1,513.88	\$1,212.06	\$1,330.74
ACG 4940, 5020, 5060	RAC17	Both	\$1,874.59	\$1,500.85	\$1,647.81
ACG 5030, 5070	RAC 18	Both	\$3,225.77	\$2,582.65	\$2,835.54
Persons with AIDS	All	Both	\$2,975.50	\$2,096.07	\$2,096.07
Persons with HIV	All	Both	\$1,580.10	\$1,580.10	\$1,580.10

(f) Rate Table for Supplemental Payment for Delivery/Newborn.  
Effective July 1, 2011—December 31, 2011

	Age	Gender	Baltimore City	Montgomery and Prince George's Counties	Rest of State
<i>Supplemental Payment Cells</i>					
Delivery/Newborn—all births except live birth weight 1,500 grams or less	All	Both	\$13,030.94	\$10,537.05	\$11,610.06
Delivery/Newborn—live birth weight 1,500 grams or less	All	Both	\$71,368.93	\$71,368.93	\$71,368.93

(g) Rate Table for Families and Children  
Effective January 1, 2012—December 31, 2012

	Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
Under age 1 Birth Weight 1500 grams or less		Both	\$6,647.12	\$5,525.00	\$5,955.50
Under age 1 Birth Weight over 1500 grams		Both	\$399.11	\$331.74	\$357.59
1—5		Male	\$176.69	\$146.86	\$158.30
		Female	\$156.16	\$139.91	\$129.79
6—14		Male	\$96.53	\$80.24	\$86.49
		Female	\$94.37	\$78.44	\$84.55
15—20		Male	\$132.68	\$110.28	\$118.87
		Female	\$172.66	\$143.51	\$154.70
21—44		Male	\$299.06	\$248.57	\$267.94
		Female	\$413.62	\$343.80	\$370.58
45—64		Male	\$597.71	\$496.81	\$535.52
		Female	\$614.95	\$511.14	\$550.96

ACG—adjusted cells

ACG 100, 200, 300, 400, 500, 600, 700, 900, 1000, 1100, 1200, 1300, 1600, 1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731, 1732, 1800, 1900, 2000, 2100, 2200, 2300, 2400, 2500, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3800, 4210, 5100, 5110, 5200, 5230, 5310, 5339	RAC 1F	Both	\$249.28	\$212.87	\$224.46
ACG 800, 1740, 1741, 1742, 1750, 2700, 3600, 1750, 1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100, 4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810, 5340	RAC 2F	Both	\$342.24	\$292.26	\$308.17
ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771, 1772, 2600, 4320, 4520, 4620, 4820	RAC 3F	Both	\$440.67	\$376.31	\$396.80

**PROPOSED ACTION ON REGULATIONS**

**44**

ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020, 5040	RAC 4F	Both	\$708.00	\$604.60	\$637.52
ACG 4430, 4730, 4930, 5030, 5050	RAC 5F	Both	\$926.93	\$791.55	\$834.65
ACG 4940, 5060	RAC 6F	Both	\$1,100.50	\$939.77	\$990.95
ACG 5070	RAC 7F	Both	\$2,076.33	\$1,773.08	\$1,869.62
ACG 100, 200, 300, 500, 600, 1100, 1600, 2000, 2400, 3400, 5100, 5110, 5200	RAC 1G	Both	\$86.88	\$74.19	\$78.23
ACG 400, 700, 900, 1000, 1200, 1300, 1710, 1711, 1712, 1800, 1900, 2100, 2200, 2300, 2800, 2900, 3000, 3100, 5310	RAC 2G	Both	\$113.89	\$97.26	\$102.56
ACG 1720, 1721, 1722, 1731, 1732, 1730, 2500, 3200, 3300, 3500, 3800, 4210, 5230, 5339	RAC 3G	Both	\$147.84	\$126.25	\$133.12
ACG 800, 1740, 1741, 1742, 1750, 2700, 3600, 1750, 1751, 1752, 2700, 3600, 3700, 3900, 4000, 4100, 4220, 4310, 4410, 4510, 4610, 4710, 4720, 4810, 5340	RAC 4G	Both	\$205.85	\$175.79	\$185.36
ACG 1400, 1500, 1750, 1761, 1762, 1770, 1771, 1772, 2600, 4320, 4520, 4820	RAC 5G	Both	\$289.82	\$247.49	\$260.97
ACG 4330, 4420, 4830, 4910, 4920, 5010, 5020, 5040	RAC 6G	Both	\$354.97	\$303.12	\$319.63
ACG 4430, 4730, 4930, 4940, 5030, 5050, 5060, 5070	RAC 7G	Both	\$673.45	\$575.09	\$606.40
SOBRA Mothers			\$701.29	\$582.90	\$628.32
Persons with HIV	ALL	Both	\$651.30	\$651.30	\$651.30

(h) Rate Table for Disabled Individuals.  
Effective January 1, 2012—December 31, 2012

	Age/RAC	Gender	PMPM Baltimore City	PMPM Allegany, Frederick, Garrett, Montgomery, Prince George's and Washington Counties	PMPM Rest of State
	Under Age 1	Both	\$3,952.77	\$3,952.77	\$3,952.77
	1—5	Male	\$924.97	\$924.97	\$924.97
		Female	\$816.46	\$816.46	\$816.46
	6—14	Male	\$212.97	\$212.97	\$212.97
		Female	\$297.15	\$297.15	\$297.15
	15—20	Male	\$226.68	\$226.68	\$226.68
		Female	\$362.57	\$362.57	\$362.57
	21—44	Male	\$1,257.20	\$1,044.97	\$1,126.39
		Female	\$1,348.71	\$1,121.03	\$1,208.38
	45—64	Male	\$1,967.44	\$1,635.31	\$1,762.73
		Female	\$1,698.79	\$1,412.01	\$1,522.03
ACG—adjusted cells					
ACG 100, 200, 300, 1100, 1300, 1400, 1500, 1600, 1710, 1711, 1712, 1720, 1721, 1722, 1730, 1731, 1732, 1900, 2400, 2600, 2900, 3400, 5100, 5110, 5200, 5310	RAC 10	Both	\$246.90	\$210.84	\$222.32
ACG 400, 500, 700, 900, 1000, 1200, 1740, 1741, 1742, 1750, 1751, 1752 1800, 2000, 2100, 2200, 2300, 2500, 2700, 2800, 3000, 3100, 3200, 3300, 3500, 3900, 4000, 4310, 5330	RAC 11	Both	\$328.12	\$280.20	\$295.45
ACG 600, 1760, 1761, 1762, 3600, 3700, 4100, 4320, 4410, 4710, 4810, 4820	RAC 12	Both	\$630.12	\$538.09	\$567.39
ACG 3800, 4210, 4220, 4330, 4420, 4720, 4910, 5320	RAC13	Both	\$693.79	\$592.46	\$624.72
ACG 800, 4430, 4510, 4610, 5040, 5340	RAC14	Both	\$902.21	\$770.44	\$812.40
ACG 1770, 1771, 1772, 4520, 4620, 4830, 4920, 5050	RAC15	Both	\$1,235.81	\$1,055.32	\$1,112.78
ACG 4730, 4930, 5010	RAC16	Both	\$1,486.05	\$1,269.01	\$1,338.11

ACG 4940, 5020, 5060	RAC17	Both	\$1,784.33	\$1,523.73	\$1,606.70
ACG 5030, 5070	RAC 18	Both	\$3,069.38	\$2,621.09	\$2,763.81
Persons with AIDS	All	Both	\$2,693.06	\$1,814.67	\$1,814.67
Persons with HIV	All	Both	\$1,663.41	\$1,663.41	\$1,663.41

(i) Rate Table for Supplemental Payment for Delivery/Newborn.  
Effective January 1, 2012—December 31, 2012

	Age	Gender	Baltimore City	Montgomery and Prince George's Counties	Rest of State
<i>Supplemental Payment Cells</i>					
Delivery/Newborn—all births except live birth weight 1,500 grams or less	All	Both	\$13,668.97	\$11,361.48	\$12,246.75
Delivery/Newborn—live birth weight 1,500 grams or less	All	Both	\$78,520.47	\$78,520.47	\$78,520.47

[(d)] (j)—[(g)] (m) (text unchanged)

(5) (text unchanged)

C.—D. (text unchanged).

### **.19-3 MCO [Statewide Rural Enrollment Supplemental Payments] Rural Access Incentive.**

A. Eligibility for [Statewide] Rural [Enrollment Supplemental Payment] *Access Incentive*.

(1) On the payment dates specified in §B(2) of this regulation, the Department shall make [a Statewide rural enrollment supplemental] *an incentive* payment to any MCO that has been approved for participation and has decided to operate without restricted enrollment in all [local access areas within the following number of State jurisdictions:

(a) Effective January 1, 2009, 21 out of 24;

(b) Effective July 1, 2009, 22 out of 24; and

(c) Effective January 1, 2010, 24 out of 24] 23 *Maryland counties and Baltimore City*.

(2) MCOs are eligible to receive a [Statewide supplemental payment or payments] *Rural Access Incentive* if the following conditions are met:

(a) — (b) (text unchanged)

B. [Statewide Supplemental Payment for Rural Enrollment] *Payment of Rural Access Incentives*.

(1) The Department shall make [a supplemental] *an incentive* payment or payments reflecting the number of an MCO's enrollees living in one of the counties specified in §B(3) of this regulation.

(2) Amount of [Statewide Rural Enrollment Supplemental Payment] *Rural Access Incentive*.

(a) For the June [2010] 2011 payments to MCOs meeting the requirements specified in §A of this regulation from January 1 through June 30, [2010] 2011, the Department shall pay [\$2,500,000] \$6,000,000 divided by the total number of HealthChoice enrollees, *in the qualifying MCOs*, in counties specified in §B(3) of this regulation and paid for in May [2010] 2011 prospectively for that MCO's June [2010] 2011 enrollment, multiplied by the number of that MCO's enrollees in those counties.

(b) For the December [2010] 2011 payments to MCOs meeting the requirements specified in §A of this regulation from July 1 through December 31, [2010] 2011, the Department shall pay [\$2,500,000] \$6,000,000 divided by the total number of HealthChoice enrollees, *in the qualifying MCOs* in counties specified in §B(3) of this regulation and paid for in November [2010] 2011 prospectively for that MCO's December [2010] 2011 enrollment, multiplied by the number of that MCO's enrollees in those counties.

(3) (text unchanged)

[C. The rates described in §§A and B of this regulation are exclusive of the Statewide supplemental funds referenced in COMAR 10.09.65.03B(g)(v).]

### **10.09.76 Primary Adult Care Program**

Authority: Health-General Article, §15-101 and 15-103, Annotated Code of Maryland

#### **.14 Payments.**

A. MCO Capitation. The Department shall pay an MCO a fixed monthly capitation rate for each of its PAC enrollees, at the rates specified in the following table effective [January 1, 2010]:

(1) *July 1, 2011:* Per Month Per Member

Age 19—44 Male [\$139.83] \$166.47

Age 19—44 Female [\$169.93] \$170.99

Age 45+ Male [\$200.94] \$215.88

Age 45+ Female [\$231.97] \$225.83

(2) *January 1, 2012:* PMPM City PMPM Rest of State

Age 19—44 Male \$186.94 \$160.95

Age 19—44 Female \$206.46 \$177.77

Age 45+ Male \$229.89 \$197.94

Age 45+ Female \$241.65 \$208.06

B.—G. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 12 ADULT HEALTH

### 10.12.01 Surgical Abortion Facilities

*Authority: Health-General Article, §20-209, Annotated Code of Maryland*

#### Notice of Proposed Action

[12-019-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.20 under a new chapter, **COMAR 10.12.01 Surgical Abortion Facilities**.

#### Statement of Purpose

The purpose of this action is to regulate surgical abortion sites. The Department's authority to regulate surgical abortion sites is set forth in Health General Article, §20-209, Annotated Code of Maryland. The law both limits the State's authority to interfere with the decision of a woman to terminate a pregnancy, and provides that the State may adopt regulations that:

- (1) Are both necessary and the least intrusive method to protect the life or health of the woman; and
- (2) Are not inconsistent with established medical practice.

Sites to be included in these regulations are outpatient facilities that perform surgical abortions as a regular service, except if otherwise licensed and regulated by the Department.

Surgical abortions, as with other medical procedures, must be performed by a licensed physician and are subject to State regulation through the Board of Physicians. The proposed regulations of surgical abortion facilities will supplement State regulation of licensed physicians and other health professionals.

Most abortions are performed safely and without complication. Most sites providing surgical abortions in Maryland are accredited for quality by a national nonprofit accrediting body. The Department proposes these regulations to strengthen quality and safety assurances of surgical abortion facilities and to allow the Department to act in the instance of a violation of the standard of care for surgical abortions.

The proposed regulations address deficiencies identified in recent Maryland cases. A review of the Board of Physicians public orders from 1991 revealed five physicians were disciplined for violating the standards of care governing abortions. According to the disciplinary records, women died or were seriously injured in each case. Women were harmed by improper administration or monitoring of general anesthesia under the care of three of the five physicians. In addition to those disciplinary actions, in August and September, 2010, the Board directed charging documents to three additional physicians for performing abortions in a manner inconsistent with standards of practice at a site in Elkton, Maryland.

These proposed regulations will provide protections and address deficiencies identified in these cases. For instance, these regulations establish surgical abortion facility requirements for professional credentialing, facility administration, administration of anesthesia, emergency services, quality assurance, inspection and sanctions including suspension of site license for noncompliance.

These proposed regulations were developed through a deliberative and inclusive process. The Department researched laws of other states as well as public records of the Maryland Board of Physicians. Clinical experts in the fields of gynecology, anesthesiology, obstetrics, and outpatient surgery were consulted. Department staff met with advocacy groups with a wide range of views. Draft regulations were posted on the Department's website for public comment from July 29, 2011 through August 19, 2011. Approximately 69 comments were received. The Department is grateful to those who contributed their comment throughout the development of these regulations. All comments were closely examined.

The following is a summary of the substantive categories of comment received during this public comment period and the Department's assessment and decision.

#### SCOPE OF CHAPTER.

Comment: The regulations should apply to all locations where surgical abortions are performed regardless of frequency.

Response: The regulations cover facilities where surgical abortions are performed as a regular service on a routine basis. The regulations do not cover other medical offices where a surgical abortion may occasionally be performed as an infrequent but medically necessary element of patient care within a medical practice of internal or family medicine, obstetrics and gynecology or other practice. The reason is that physicians generally may perform procedures that are medically necessary but rare as part of their professional practice.

Comment: Why not require surgical abortion facilities to conform to all of the Ambulatory Surgical Center (ASC) regulations?

Response: Most surgical abortion sites do not meet the formal definition of an ambulatory surgical center and thus cannot be incorporated into those existing regulations. However, these proposed regulations are based on the framework of the ASC regulations and provide appropriate safety standards, modified in specific areas where the nature and circumstances of surgical abortion procedures differ from other procedures.

Comment: Why regulate abortions and not other kinds of surgical procedures, for example plastic surgery, which may be performed in sites that are not licensed by the Department?

Response: The Maryland law authorizing these regulations applies specifically to abortion procedures. The Department will consider requesting authority for other types of facilities as circumstances warrant.

#### RADIOLOGY.

Comment: Radiologic services, and specifically sonography, were not addressed or required.

Response: Regulation .12 Laboratory Services was changed to add "and Radiologic" in title and within text of the regulation. The decision as to what radiological services are necessary to be performed is a matter to be determined by the facility's physician or physicians.

#### SCOPE OF SUSPENSION.

Comment: If a facility's license for abortion is suspended by the State, must the entire facility close?

Response: Regulation .17D(2) added "surgical abortion" to define the services specifically suspended if a surgical facility license were suspended. Generally speaking, unrelated services would not have to be suspended.

#### CONFIDENTIALITY.

Comment: The regulations need to strengthen patient confidentiality protections.

Response: The following new regulations were added:

- Regulation .04 Inspections by the Department requires the Department to keep patient information confidential in accordance with State and federal laws.

- Regulation .13 Medical Records requires the facility to transfer a patient's record with a patient's consent, except to the extent that information in a record is necessary for a patient's care in an emergency transfer.

- Regulation .04 Inspections by the Department was added to expressly require Department staff to be held to the requirements for medical review committees as described in Health Occupations Article, §1-401, Annotated Code of Maryland.

**PENALTIES.**

Comment: The penalties for violations should be increased.

Response: Regulation .19 Penalties was amended to allow the Secretary to impose an administrative penalty of up to \$1,000 for a violation of any provision of this chapter.

**ANESTHESIA.**

Comment: Requirements for anesthesia should be the same as requirements in the Ambulatory Surgical Center (ASC) regulations.

Response: Regulation .08A Anesthesia Services was amended to reflect language that expands the original ASC regulation to include categories of anesthesia/sedation. This section was also modified as to who could administer anesthesia. Regulation .08B was added to address "if more than an unsupplemented local anesthetic is needed to accomplish a surgical procedure:

(1) There shall be a pre-anesthesia evaluation performed by one of the individuals listed in §A of this regulation; and

(2) The anesthetic risk to the patient shall be documented in the patient's medical record."

**FEES.**

Comment: Why are there no fees for a surgical abortion license?

Response: Fees were inadvertently omitted from the draft regulations. Regulation .03 adds an application and renewal fee.

The Department anticipates that this new chapter will become effective July 1, 2012.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** These new regulations require an applicant to submit to the Department a nonrefundable fee of \$1,500 for an initial license and a nonrefundable fee of \$1,500 every 3 years thereafter for a license renewal. In addition, a licensee may be assessed an administrative penalty of up to \$1,000 for a violation of any provision of this chapter.

II. Types of Economic Impact.	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$19,500 every 3 years
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+)	Magnitude
	Cost (-)	
D. On regulated industries or trade groups:	(-)	\$19,500 every 3 years
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

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

A. and D. The Department anticipates approximately 13 facilities to apply for an initial license within the first year. (13 x \$1,500 = \$19,500) In addition, administrative penalties may be assessed;

however, this impact cannot be quantified because it is unknown how many violations will occur.

**Economic Impact on Small Businesses**

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

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to regs@dhhm.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.01 Definitions.**

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

B. Terms Defined.

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

(2) "Facility" means a surgical abortion facility.

(3) Health Professional.

(a) "Health professional" means an individual who is licensed, certified, or otherwise authorized under Health Occupations Article, Annotated Code of Maryland, to provide health care services.

(b) "Health professional" does not include a physician.

(4) "Physician" means an individual licensed to practice medicine in this State under Health Occupations Article, Title 14, Annotated Code of Maryland.

(5) "Regular service" means that surgical abortion procedures are performed on site on a routine basis.

(6) "Surgical abortion facility" means an outpatient facility that provides surgical termination of pregnancy as a regular service except if the facility is regulated by the Department under:

(a) Health General Article, Title 19, Subtitle 2, Annotated Code of Maryland;

(b) Health General Article, Title 19, Subtitle 3A, Annotated Code of Maryland; or

(c) Health General Article, Title 19, Subtitle 3B, Annotated Code of Maryland.

**.02 License Required.**

A. A person may not establish or operate a surgical abortion facility without obtaining a license from the Secretary.

B. License Period. A license is valid for 3 years from the date of issuance, unless suspended or revoked by the Secretary.

C. A license issued under this chapter is not transferable.

**.03 Licensing Procedures.**

A. A person desiring to operate a facility shall:

(1) Be in compliance with all applicable federal and State laws and regulations;

(2) File an application as required and provided by the Department; and

(3) Submit a written description of its quality assurance program as required by Regulation .16 of this chapter.

B. In addition to meeting all of the requirements of Regulation .03A and F of this chapter, the applicant or licensee shall submit a nonrefundable fee of \$1,500 with an application for:

(1) An initial license; or

(2) A license renewal.

C. Based on information provided to the Department by the applicant and the Department's own investigation, the Secretary shall:

- (1) Approve the application unconditionally;
- (2) Approve the application conditionally; or
- (3) Deny the application if the applicant:
  - (a) Has been found liable for or has been convicted of:
    - (i) Fraud or a felony that relates to Medicaid or Medicare; or
    - (ii) A crime involving moral turpitude; or
  - (b) Does not comply with the requirements of this chapter.

D. Denial of License for Prior Revocation or Consent to Surrender License.

- (1) The Secretary may deny a license to:
  - (a) A corporate applicant if the corporate entity has an owner, director, or officer:
    - (i) Whose conduct caused the revocation of a prior license; or
    - (ii) Who held the same or similar position in another corporate entity which had its license revoked;
  - (b) An individual applicant:
    - (i) Whose conduct caused the revocation of a prior license; or
    - (ii) Who held a position as owner, director, or officer in a corporate entity which had its license revoked; or
  - (c) An individual or corporate applicant that has consented to surrender a license as a result of a license revocation action.
- (2) The Secretary shall also consider the factors identified in Regulation .19B of this chapter when deciding whether to deny a license.

E. A person aggrieved by a decision of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .20 of this chapter.

F. Renewal of License.

- (1) At least 60 days before a license expires, the licensee shall submit to the Secretary:
  - (a) A renewal application; and
  - (b) The fee as specified in §B of this regulation.
- (2) The Secretary shall renew the license for an additional 3-year period for a licensee that meets the requirements of this chapter.

#### **.04 Inspections by the Department.**

A. Open for Inspection. A licensed facility or an entity proposing to operate such a facility shall be open during normal business hours, or any other times that the facility is serving patients, for inspection by the Department and by any other agency designated by the Department to:

- (1) Verify compliance with this chapter; and
- (2) Investigate a complaint concerning patient care and safety as described in §B of this chapter.

B. Complaints.

- (1) In response to a complaint, the Department may:
  - (a) Require the facility to perform and submit its own investigation; or
  - (b) In its discretion, conduct an on-site investigation of a complaint.
- (2) In order to determine whether an on-site investigation as described in §B(1)(b) of this regulation is appropriate, the factors the Department shall consider include, but are not limited to:
  - (a) Whether the complainant has first-hand knowledge of the alleged incident;
  - (b) The facility's regulatory history, including the number of verified prior complaints;

(c) Whether the Department has recently inspected the facility, and whether the incident would have been observed during the prior review; and

(d) The nature of the complaint, including degree of potential serious harm to patients.

(3) If the complaint concerns the performance of a physician, health professional, or standards of practice, the Department shall refer the complaint to the board that licenses, certifies, or otherwise authorizes the physician or health professional to provide services under Health Occupations Article, Annotated Code of Maryland.

(4) The Department shall:

(a) Comply with the requirements for medical review committees as described in Health Occupations Article, §1-401, Annotated Code of Maryland; and

(b) Keep patient information confidential in accordance with State and federal laws.

C. Noncompliance. If the Department determines that a facility fails to meet any provision of this chapter, the Department shall:

- (1) Advise the facility of the exact nature of the violation; and
- (2) Require that the facility specify what corrective action it is taking and monitor the facility to ensure that it takes corrective action.

D. Records and Reports. The facility shall make its records and reports available to the Department on site at the facility during an inspection.

#### **.05 Administration.**

A. Administrator.

(1) Each facility shall have an administrator, who is responsible for the daily operation of the facility, including but not limited to:

(a) Consulting with the staff to develop and implement the facility's policies and procedures in accordance with §C of this regulation;

(b) Organizing and coordinating the administrative functions of the facility;

(c) Coordinating the provision of services that the facility provides;

(d) Training the staff on the facility's policies and procedures and applicable federal, State, and local laws and regulations; and

(e) Ensuring that all personnel:

(i) Receive orientation and have experience sufficient to demonstrate competency to perform assigned patient care duties, including proper infection control practices;

(ii) Are licensed or certified by an appropriate occupational licensing board to practice in this State, if required by law; and

(iii) Perform or delegate duties and responsibilities in accordance with standards of practice as defined by the Health Occupations Article, Annotated Code of Maryland.

(2) The administrator shall ensure that:

(a) The facility's policies and procedures as described in §C of this regulation are:

(i) Reviewed by staff at least annually and are revised as necessary; and

(ii) Available at all times for staff inspection and reference; and

(b) All appropriate personnel implement all policies and procedures as adopted.

B. Medical Director.

(1) The surgical abortion facility shall have a medical director who:

(a) Is responsible for the overall medical care that is provided by the facility;



(b) Advises and consults with the staff of the facility on all medical issues relating to services provided by the facility; and  
(c) Develops protocols for the management of surgical patients and emergency situations.

(2) The medical director shall ensure that the protocols referenced in §B(1)(c) of this regulation are:

- (a) Available on site at all times for reference; and
- (b) Reviewed annually and revised as necessary.

(3) The medical director shall be a physician licensed to practice in Maryland.

C. Policies and Procedures. The facility shall have policies and procedures concerning the following:

(1) The scope and delivery of services provided by the facility either directly or through contractual arrangements;

(2) Personnel practices, including but not limited to:

(a) Procedures for the accountability of personnel involved in patient care;

(b) Job descriptions on file for all personnel; and

(c) Procedures to ensure personnel are free from communicable diseases;

(3) Postoperative recovery, if applicable;

(4) The transfer or referral of patients who require services that are not provided by the facility;

(5) Infection control for patients and staff;

(6) Pertinent safety practices, including the control of fire and mechanical hazards;

(7) Preventive maintenance for equipment to ensure proper operation and safety; and

(8) The services and procedures specified in Regulations .07—.12 of this chapter.

#### **.06 Personnel.**

A. *Qualifications of Physicians and Staff.* A facility shall ensure that all physicians and other health professionals who are employees or contractual staff have been appropriately trained and licensed or certified under the Health Occupations Article, Annotated Code of Maryland.

B. *Credentialing of Physicians.* The facility shall collect, review, and document the following information concerning a physician licensed under Health Occupations Article, Title 14, Annotated Code of Maryland:

(1) The physician's education;

(2) The professional experience of the physician, including:

(a) Any board certification or specialty training of the physician; and

(b) Any post-graduate training;

(3) Any license or registration to practice a health occupation ever held by the physician, including DEA registration;

(4) Any hospital where the physician was appointed or employed during the last 10 years, including:

(a) The name of the hospital,

(b) The term of appointment or employment; and

(c) Privileges held and any disciplinary action taken, including suspension, revocation, limitation, or voluntary surrender;

(5) The physician's professional liability insurance for the last 5 years, including:

(a) The physician's present carrier;

(b) The physician's current limits of coverage;

(c) The physician's current types of coverage; and

(d) Restrictions on the physician's coverage;

(6) Any claim that has been made against the physician in the practice of a health occupation in the last 5 years, and the status of the claim;

(7) Any physical or mental condition that currently impairs the physician's ability to exercise privileges;

(8) Any complaint or report, permitted to be disclosed by law, which has been filed with any state licensing or disciplinary body, or comparable body of the armed forces; and

(9) Data provided by the National Practitioner Data Bank.

C. For a physician who has privileges in a licensed Maryland hospital, the administrator may verify, through the hospital, the credentials described in §B of this regulation.

D. The administrator shall establish a procedure for the biennial reappointment of a physician which includes:

(1) An update of the information required in §B of this regulation; and

(2) An assessment of the physician's performance pattern based on an analysis of:

(a) Complaints filed with the facility;

(b) Malpractice claims filed;

(c) Utilization, quality, and risk data;

(d) Adherence to policies, bylaws, and procedures; and

(e) Physician practice patterns as reviewed through the facility's quality assurance program.

E. *Credentialing of Health Professionals.*

(1) *Direct Hires.*

(a) The facility shall collect, review, and verify evidence of the following information for all licensed or certified health professionals that are employed by the facility:

(i) A current license or certificate to practice in this State; and

(ii) Malpractice insurance, if required by the facility.

(b) The administrator shall approve the delineation of services to be provided by the health professional.

(2) *Nondirect Hires.* When a licensed physician uses a health professional to provide services at the facility, and that person is not employed by the facility, the licensed physician who employs the health professional is responsible for verifying the information required in §E(1) of this regulation.

#### **.07 Surgical Abortion Services.**

A. *Surgical abortion procedures* shall be performed in a safe manner by a physician credentialed by the facility under Regulation .06 of this chapter.

B. An administrator shall develop and implement policies, procedures, and protocols for the provision of surgical abortion services including but not limited to:

(1) Personnel;

(2) Pre-operative testing and examinations;

(3) Surgical procedures;

(4) Post-anesthesia care and observation;

(5) Discharge planning;

(6) Emergency services;

(7) Informed consent; and

(8) Safety.

C. Before conducting a surgical procedure, a physician or other qualified health professional shall conduct a history and physical examination.

D. If the assessments required by §C of this regulation are performed before the day of surgery, on the day of surgery a physician or qualified health professional shall reassess and document on the patient's medical record any change in the patient's clinical status that could have an effect on the surgical procedure to be performed and the anesthesia to be used.

E. *Discharge.* Before discharge from the facility, the patient shall be evaluated by a physician or an appropriately trained health professional. This evaluation shall be documented in the patient's record.

**.08 Anesthesia Services.**

A. Anesthetics, including moderate sedation, deep sedation, or general anesthesia shall be administered by:

- (1) A physician qualified to administer anesthesia; or
- (2) A certified registered nurse anesthetist in accordance with:
  - (a) Health Occupations Article, §8-205, Annotated Code of Maryland; and
  - (b) COMAR 10.27.06.

B. If more than an unsupplemented local anesthetic is needed to accomplish a surgical procedure:

- (1) There shall be a pre-anesthesia evaluation performed by one of the individuals listed in §A of this regulation; and
- (2) The anesthetic risk to the patient shall be documented in the patient's medical record.

**.09 Emergency Services.**

A. Basic Life Support. Licensed personnel employed by the facility shall have certification in basic life support. A licensed staff individual trained in basic life support shall be on duty whenever there is a patient in the facility.

B. The facility shall have:

- (1) A registered nurse available on site for emergency treatment whenever there is a patient in the facility; and
- (2) At least one physician available by phone 24 hours a day to respond to emergency situations.

C. When sedation or general anesthesia is administered, the facility shall have at least the following emergency equipment available to the procedure rooms:

- (1) Oxygen;
- (2) Mechanical ventilatory assistance including airways and manual breathing bag;
- (3) Automated external defibrillator (AED);
- (4) Equipment to monitor blood pressure, pulse, and oxygen levels;
- (5) Suction equipment; and
- (6) Emergency medical equipment and supplies specified by the medical staff.

D. When general anesthesia is administered, a facility shall have available in the procedure room:

- (1) Laryngoscopes;
- (2) Endotracheal tubes; and
- (3) Cardiac monitoring equipment.

**.10 Hospitalization.**

A. The surgical abortion facility shall have an effective procedure for the transfer of patients to a nearby hospital when care beyond the capabilities of the facility is required.

B. Procedures for emergency transfer to a hospital shall include, at a minimum:

- (1) Written protocols and procedures related to emergency transfer procedures;
- (2) A mechanism for notifying the hospital of a pending emergency case;
- (3) A mechanism for arranging appropriate transportation to the hospital;
- (4) Protocols for transmitting a copy of the patient's medical record to the hospital; and
- (5) Appropriate training for staff in the facility's written protocols and procedures.

**.11 Pharmaceutical Services.**

A. The surgical abortion facility shall:

- (1) Provide drugs under the direction of an authorized prescriber; and

(2) Develop and implement policies and procedures for pharmacy services in accordance with accepted professional practice.

B. Administration of Drugs.

- (1) Staff shall prepare and administer drugs according to established policies and acceptable standards of practice.
- (2) Staff shall report adverse drug reactions to the licensee's medical director or physician.
- (3) Orders given orally for drugs shall be followed by a written order which is signed by the authorized prescriber.

**.12 Laboratory and Radiologic Services.**

A. The administrator shall develop and implement policies and procedures for obtaining routine and emergency laboratory and radiological services to meet the needs of the patient. Policies and procedures shall include:

- (1) Turn-around time;
- (2) Review of laboratory reports; and
- (3) Documentation of laboratory results.

B. Laboratory facilities shall be:

- (1) Approved under the Clinical Laboratory Improvement Act (CLIA); and
- (2) Licensed by the State under COMAR 10.10.03.

C. The facility shall include in the patient's medical records:

- (1) Laboratory reports; and
- (2) Radiological findings.

**.13 Medical Records.**

A. The facility shall maintain a complete, comprehensive, and accurate medical record for a patient.

B. A patient's medical record shall include at least the following:

- (1) Patient identifier;
- (2) Significant medical history and results of a physical examination;
- (3) Documentation of care or services provided;
- (4) Evidence of consent; and
- (5) Discharge diagnosis.

C. The facility shall:

- (1) Send a copy of the medical record with the patient on:
  - (a) Referral to another physician or other licensed health professional; or
  - (b) Transfer to a hospital;

(2) Except to the extent that information in a record is necessary for a patient's care in an emergency transfer, transfer a patient's record only with a patient's consent;

(3) If appropriate, use the medical record when instructing the patient and the family; and

(4) Comply with all disclosure requirements as set forth in Health-General Article, Title 4, Subtitle 3, Annotated Code of Maryland.

**.14 Patients' Rights and Responsibilities**

The administrator shall ensure that the facility develops and implements written policies and procedures concerning patients' rights and responsibilities, including but not limited to:

A. The opportunity to participate in planning their medical treatment; and

B. Confidentiality of medical records and the right to approve or refuse release of records to any individual outside the facility, except as provided by federal or State law.

**.15 Physical Environment.**

A. The administrator shall ensure that the facility has a safe, functional, and sanitary environment for the provision of surgical services.

B. A procedure room shall be designed and equipped to ensure that surgical abortion procedures conducted can be performed in a manner that ensures the safety of all individuals in the area.

C. The facility shall have a separate recovery room and waiting area.

D. The facility shall meet the requirements for handling, treatment, and disposal of special medical wastes as provided in COMAR 10.06.06.

**.16 Quality Assurance Program.**

A. The administrator shall ensure that the facility develops and maintains a quality assurance program which includes:

(1) Monitoring and evaluation of the quality of patient care; and

(2) Identification, evaluation, and resolution of care problems.

B. The facility shall conduct ongoing quality assurance activities and document the activities on a continuous basis, but not less than quarterly.

C. The administrator shall ensure that the facility develops a quality control procedure to monitor and document the safety and performance of all biomedical equipment.

D. The facility shall document the following information for all quality assurance activities:

- (1) A description of identified problems;
- (2) Findings;
- (3) Conclusions;
- (4) Recommendations;
- (5) Actions taken;
- (6) Results; and
- (7) Follow-up.

**.17 Emergency Suspension.**

A. The Secretary may immediately suspend a license on a finding that the public health, safety, or welfare 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 the licensee's 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 immediately suspended, the licensee shall:

- (1) Immediately return the license to the Department; and
- (2) Stop providing surgical abortion procedures immediately.

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 .20 of this chapter.

F. Hearing.

(1) The Office on Administrative Hearings shall:

(a) Conduct a hearing as set forth in Regulation .20 of this chapter; and

(b) Issue a proposed decision within 10 business days of the close of the hearing record.

(2) Exceptions may be filed by an aggrieved person pursuant to COMAR 10.01.03.

G. Final Decision.

(1) The Secretary shall make a final decision in accordance with COMAR 10.01.03.

(2) If the Secretary's final decision does not uphold the emergency suspension, the licensee may resume operation.

**.18 Revocation of License.**

A. The Secretary, for cause shown, shall notify the licensee of the Secretary's decision to revoke the facility's license. The revocation shall be stayed if a hearing is requested.

B. The Secretary may revoke a license if the licensee:

(1) Has been convicted of:

(a) Fraud or a felony that relates to Medicaid or Medicare; or

(b) A crime involving moral turpitude; or

(2) Does not comply with the requirements of this chapter.

C. The Secretary shall consider the factors identified in Regulation .19B of this chapter when deciding whether to revoke a license.

D. The Secretary shall notify the licensee in writing of the following:

(1) The effective date of the revocation;

(2) The reason for the revocation;

(3) The regulations with which the licensee has failed to comply that form the basis for the revocation;

(4) That the licensee is entitled to a hearing, if requested, and to be represented by counsel;

(5) That the facility shall stop providing services on the effective date of the revocation if the licensee does not request a hearing;

(6) That the revocation shall be stayed if a hearing is requested; and

(7) That the licensee is required to surrender the license to the Department if the revocation is upheld.

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 .20 of this chapter.

**.19 Penalties.**

A. Administrative Penalty. The Secretary may impose an administrative penalty of up to \$1,000 for a violation of any provision of this chapter.

B. When considering whether to impose an administrative penalty and the amount of the penalty, the Secretary shall consider the following factors:

(1) The number, nature, and seriousness of the violation or violations;

(2) The extent to which the violation or violations are part of an ongoing pattern during the preceding 24 months;

(3) The degree of risk, caused by the violation or violations, to the health, life, or safety of the patients of the facility;

(4) The efforts made by, and the ability of, the licensee to correct the violation or violations in a timely manner; and

(5) Such other factors as justice may require.

C. A person aggrieved by the action of the Secretary under §A of this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .20 of this chapter.

**.20 Hearings.**

A. A request for a hearing shall be filed with the Office of Administrative Hearings, with a copy to the Office of Health Care Quality of the Department, 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:

(1) State Government Article, §§10-201—10-227, Annotated Code of Maryland;

(2) COMAR 28.02.01; and

(3) COMAR 10.01.03.

C. The burden of proof is as set forth 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 COMAR 28.02.01.*

*E. The aggrieved person may file exceptions as set forth in COMAR 10.01.03.35.*

*F. The Secretary shall issue a final decision in accordance with COMAR 10.01.03.35.*

JOSHUA M SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY

### 10.28.02 Continuing Education Requirements

Authority: Health Occupations Article, §§11-205 and 11-309, Annotated Code of Maryland

#### Notice of Proposed Action

[12-013-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .05 under **COMAR 10.28.02 Continuing Education Requirements**. This action was considered by the Board of Examiners in Optometry at a public meeting held on November 16, 2011, notice of which was given by publication in 38:22 Md. R. 1389 (October 21, 2011), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to allow licensees of the Board of Examiners in Optometry to obtain 2 continuing education credit hours for attending an open meeting of the Board, to require the Board to issue a certificate as proof of attendance, and to prohibit a licensee from obtaining more than 4 hours of continuing education credit per renewal cycle for attending an open meeting of the Board.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to [regs@dhmh.state.md.us](mailto:regs@dhmh.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

#### .05 Course Credit.

A. (text unchanged)

B. Credit may be approved for the following:

(1)—(8) (text unchanged)

(9) Courses in optometric ethics, Maryland optometric jurisprudence, or both, as approved by the Board, up to a maximum of 4 hours per renewal cycle; [and]

(10) Pro bono work providing patient eye care as outlined in §I of this regulation; *and*

(11) Public board meeting attendance as outlined in §J of this regulation.

C.—I. (text unchanged)

J. Public Board Meeting Attendance.

(1) Licensees may receive 2 credit hours for attending in its entirety an open session meeting of the Board of Examiners in Optometry.

(2) The Board shall issue to the licensee a certificate of proof of attendance.

(3) A licensee may not earn more than 4 credit hours in this area per renewal cycle.

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 38 BOARD OF PHYSICAL THERAPY EXAMINERS

#### Notice of Proposed Action

[12-011-P]

The Secretary of Health and Mental Hygiene proposes to amend

(1) Regulation .04 under **COMAR 10.38.01 General Regulations**; and

(2) Regulation .03 under **COMAR 10.38.06 Foreign-Educated Licensure Requirements**.

This action was considered at a public meeting held on November 15, 2011, notice of which was given on the Board's website, [www.dhmh.state.md.us/bphte](http://www.dhmh.state.md.us/bphte), since January 1, 2011, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to allow the Board of Physical Therapy Examiners to send license renewal notices by email, if a licensee chooses to receive the notices by email. The Board would be required to send a notice at least 1 month in advance of the license's expiration and would be required to send a notice by postal mail if the email is returned as undeliverable.

#### 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@dhmh.state.md.us](mailto:regs@dhmh.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

### 10.38.01 General Regulations

Authority: Health Occupations Article, §13-311, Annotated Code of Maryland

#### .04 Issuance of Licenses.

A. (text unchanged)

B. Renewal of Physical Therapist or Physical Therapist Assistant License.

(1) (text unchanged)

[(2)] (2) The Board shall mail applications for renewal at least one month prior to the expiration date.]

[(3)] (2)—[(4)] (3) (text unchanged)

C. Method of Renewal Notification.

(1) *Except as otherwise provided in §C(2) of this regulation, the Board shall mail notices for renewal at least 1 month before the expiration date.*

(2) *If requested by a licensee, the Board shall send to the licensee, at least two times within the month before a license expires, a renewal notice by electronic means to the last known electronic mail address of the licensee.*

(3) *If a renewal notice sent by electronic mail under §C(2) of this regulation is returned to the Board as undeliverable, the Board shall send to the licensee a renewal notice by first-class mail to the last known address of the licensee.*

[C.] D. (text unchanged)

## 10.38.06 Foreign-Educated Licensure Requirements

Authority: Health Occupations Article, §13-311, Annotated Code of Maryland

### .03 Issuance of Licenses.

A. (text unchanged)

B. Renewal of Physical Therapist License.

(1) (text unchanged)

[(2)] (2) The Board shall mail applications for renewal at least 1 month prior to the expiration date.]

[(3)] (2)—[(4)] (3) (text unchanged)

C. Method of Renewal Notification.

(1) *Except as otherwise provided in §C(2) of this regulation, the Board shall mail notices for renewal at least 1 month before the expiration date.*

(2) *If requested by a licensee, the Board shall send to the licensee, at least two times within the month before a license expires, a renewal notice by electronic means to the last known electronic mail address of the licensee.*

(3) *If a renewal notice sent by electronic mail under §C(2) of this regulation is returned to the Board as undeliverable, the Board shall send to the licensee a renewal notice by first-class mail to the last known address of the licensee.*

[C.] D. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 41 BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH- LANGUAGE PATHOLOGISTS

### 10.41.03 Licensure and Continuing Education

Authority: Health Occupations Article, §§2-205 and 2-308, Annotated Code of Maryland

#### Notice of Proposed Action

[12-012-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .06 under **COMAR 10.41.03 Licensure and Continuing Education**. This action was considered by the Board of Examiners

for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists at a public meeting on November 17, 2011, notice of which was given by publication in 38:23 Md. R. 1478 (November 4, 2011), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to clarify the amount of continuing education units (CEUs) a licensee can incur, setting a minimum amount for within the area of licensure and a maximum amount in areas related to speech-language pathology, audiology, or both, and requiring that an individual licensed as both an audiologist and a speech-language pathologist complete the required number of CEUs within a certain time frame.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to regs@dhmh.state.md.us, or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

### .06 Continuing Education.

A. Required Continuing Education Units.

(1) Within the 2-year renewal period immediately preceding the licensee's application for renewal, the licensee shall earn 30 continuing education units (CEUs) as follows:

(a) *A minimum of 20 CEUs in the area of licensure; and*

(b) *No more than 10 CEUs in areas related to speech-language pathology or audiology or both, including practice management.*

(2) Within the 2-year renewal period immediately preceding the licensee's application for renewal, an individual licensed as both an audiologist and a speech-language pathologist shall earn [50] 40 CEUs as follows:

(a) [20] *A minimum of 15 CEUs in each area of licensure; and*

(b) *No more than 10 CEUs in areas related to speech-language pathology and audiology, including practice management.*

(3) (text unchanged)

B. Time Period for CEUs

(1)—(2) (text unchanged)

(3) *An individual licensed as both an audiologist and a speech-language pathologist shall complete the required CEUs within the 2-year period ending December 31st of the year preceding renewal.*

[(3)] (4)—[(8)] (9) (text unchanged)

C.—G. (text unchanged)

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Subtitle 46 BOARD OF OCCUPATIONAL THERAPY PRACTICE

### 10.46.02 Code of Ethics

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

#### Notice of Proposed Action

[12-014-P]

The Secretary of Health and Mental Hygiene proposes to adopt new Regulation .03 and recodify existing Regulation .03 to be Regulation .04 under **COMAR 10.46.02 Code of Ethics**. This action was considered by the Board of Occupational Therapy Practice at a public meeting held on November 18, 2011, notice of which was given by publication in 38:22 Md. R. 1389 (October 21, 2011), pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to establish uniform standards for professional competency for occupational therapists and occupational therapy assistants.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Michele A. Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to [regs@dnhm.state.md.us](mailto:regs@dnhm.state.md.us), or fax to 410-767-6483. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

#### .03 Professional Competence.

*An occupational therapist and occupational therapy assistant shall:*

*A. Limit practice to the areas of competency by which proficiency has been gained through education, training, and experience;*

*B. Acquire the education and training needed to address the cultural differences of diverse populations;*

*C. Avoid unfair discrimination based on age, gender, race, ethnicity, culture, national origin, disability, socioeconomic status, sexual orientation, or other basis proscribed by law;*

*D. Use treatment only when the occupational therapist or occupational therapy assistant knows that the circumstances are appropriate;*

*E. Maintain competence by meeting the requirements of continuing education in accordance with COMAR 10.46.04;*

*F. Engage in ongoing consultation with other occupational therapists and occupational therapy assistants or relevant professionals and seek appropriate education, training, and experience when developing competence in a new service or technique; and*

*G. Document and maintain appropriate records of all relevant work and training used to gain competence in new techniques or services.*

JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene

## Title 13B MARYLAND HIGHER EDUCATION COMMISSION

### Subtitle 02 ACADEMIC REGULATIONS

#### 13B.02.03 Academic Programs—Degree-Granting Institutions

Authority: Education Article, §§ 11-105(k) and (u), 11-201, 11-206, and 11-206.1, Annotated Code of Maryland

#### Notice of Proposed Action

[11-382-P]

The Maryland Higher Education Commission proposes to repeal existing Regulations .26—.34, adopt new Regulations .19, .24, and .28, amend existing Regulations .01, .02, .03—.14, and .16—.18, amend and recodify existing Regulations .19, .21, .23, .24, and .25 to be Regulations .20, .23, .25, .26, and .27, and recodify existing Regulations .20 and .22 to be Regulations .22 and .21 under **COMAR 13B.02.03 Academic Programs—Degree-Granting Institutions**. This action was considered and approved at a public meeting on held on November 17, 2011, notice of which was given pursuant to State Government Article, §10-506, Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to amend and adopt regulations on academic programs to revise long-term goals, articulate institutional categories, clarify provisions relating to new programs and substantial modifications and to degrees and certificates, revise provisions on distance education, revise provisions on review by the Commission of a decision by the Secretary, update definitions, provide for more consistency with COMAR Title 13B, Subtitle 02, Chapters 01 and 02, reorganize the chapter, and make stylistic and clarifying changes.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

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

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Dr. Sue A. Blanshan, Director of Academic Affairs, Maryland Higher Education Commission, 6 N. Liberty St., 10th Floor, Baltimore, MD 21201, or call 410-767-3268, or email to [sblansha@mhec.state.md.us](mailto:sblansha@mhec.state.md.us), or fax to 410-332-0270. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.01 Scope.**

This chapter [is intended to serve as a guide in] *sets forth requirements for* [academic] program development [for use] by *all* [Maryland] *institutions of* higher education [degree-granting institutions], including public, independent, *private for-profit*, 2-year, and 4-year institutions.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) "Area of concentration" means a sequential arrangement of courses within a program [which at the] *that*:

(a) [Undergraduate] *At the bachelor's level* [exceeds] *is at least* 24 semester credit hours;

(b) [Master's level exceeds] *At the master's level is at least* 12 semester credit hours *above the bachelor's degree*; and

(c) [Doctorate level exceeds] *At the doctoral level is at least* 18 semester credit hours *above the master's degree*.

(2) "[Articulated] *Articulation* system (ARTSYS)" means a computerized data information system created to facilitate the transfer of students from Maryland community colleges to the University System of Maryland [System] and other participating institutions.

[(3) "Associate of Applied Science (A.A.S.)" means a degree which recognizes a mastery of vocational-technical occupational skills (law enforcement, computer technology, engineering technology, etc.). The program is intended for those seeking immediate employment opportunities. However, the program does not preclude a student from transferring to a technical baccalaureate degree program such as a bachelor's degree in technology or a bachelor's degree in technical or professional studies, or from transferring nontechnical courses to a 4-year institution.

(4) "Associate of Arts (A.A.)" means a degree which recognizes a mastery in the liberal arts (social sciences, humanities, and similar subjects) and in the fine arts (music, art, etc.). The program is intended for transfer to an equivalent Bachelor of Arts degree program at 4-year institutions.

(4-1) "Associate of Art in Teaching (A.A.T.)" means a degree which recognizes a mastery in teacher education which:

(a) Meets the lower-level degree academic content, outcomes, and requirements for teacher education, similar to the first 2 years of a baccalaureate program in teacher education;

(b) Requires evidence of qualifying scores as established by the State Superintendent of Schools on the teacher certification tests approved by the State Board of Education;

(c) Requires a cumulative grade point average of 2.75 on a 4.00 scale; and

(d) If achieved, transfers up to 64 semester credit hours, satisfying all lower-division teacher education program outcomes without further review by Maryland public and independent 4-year institutions.

(5) "Associate of Fine Arts (A.F.A.)" means a degree which recognizes a mastery in the professional arts in programs which:

(a) Have as a primary goal transfer to a B.F.A. degree program;

(b) Are similar to the first 2 years of a B.F.A. degree program; and

(c) Require at least 60 percent of the course credit to be in studio work and related areas.

(6) "Associate of Science (A.S.)" means a degree which recognizes a mastery in science or technology (engineering, agriculture, the natural sciences) with a heavy emphasis on undergraduate mathematics or science. The program is intended for transfer to a Bachelor of Science degree program at 4-year institutions.

(6-1) "Associate of Science in Engineering (A.S.E.)" means a degree that recognizes a mastery in engineering and that:

(a) Meets the lower-level degree academic content, outcomes, and requirements for engineering education, similar to the first 2 years of a parallel baccalaureate program in engineering education;

(b) Requires at least a 2.0 on a 4.0 grade scale in all courses required by the degree program in computer science, engineering, mathematics, and the physical and natural sciences; and

(c) If conferred, transfers without further review or course-by-course match by Maryland public and participating independent 4-year institutions into a parallel baccalaureate program, except that transfer students may be treated like native students with regard to credits earned through Advanced Placement (AP), International Baccalaureate (IB), and transcribed credits.

(7) "Bachelor of Arts/Bachelor of Science (BA/BS)" means a degree awarded for successful completion of a program of 120 or more undergraduate semester credit hours.

(8) "Bachelor of Technical or Professional Studies" means a degree awarded for the successful completion of an A.A.S. degree, an advanced program of study in the designated area of concentration, and a 12-credit internship or field placement related to the program of study.]

[(9)] (3) "Certificate" includes:

(a) [Certificate of advanced study] *Lower division certificate*;

(b) [Lower division certificate] *Upper division certificate*;

(c) Post-baccalaureate certificate;

(d) Post-master's certificate;

(e) Professional certificate; [and]

(f) [Upper division certificate] *Certificate of advanced study*; and

(g) *Directed Technology Certificate*.

[(10) "Certificate of advanced study" means a certificate awarded for successful completion of at least 30 semester credit hours of graduate study beyond the master's degree.]

[(11)] (4) "Commission" means the Maryland Higher Education Commission.

(5) "Degree" includes:

(a) *Associate of Applied Science (A.A.S.)*;

(b) *Associate of Arts (A.A.)*;

(c) *Associate of Arts in Teaching (A.A.T.)*;

(d) *Associate of Fine Arts (A.F.A.)*;

(e) *Associate of Science (A.S.)*;

(f) *Associate of Science in Engineering (A.S.E.)*;

(g) *Bachelor of Arts (B.A.)*;

(h) *Bachelor of Fine Arts (B.F.A.)*;

(i) *Bachelor of Professional Studies (B.P.S.)*;

(j) *Bachelor of Science (B.S.)*;

(k) *Bachelor of Technical Studies (B.T.S.)*;

(l) *Master's*; and

(n) *Doctorate*.

[(12) "Directed technology certificate" means a certificate awarded for successful completion of a specialized learning program which:

(a) Meets employer training needs; and

(b) Consists of at least 12 credits but not more than 24 credit hours at the freshman or sophomore levels, or both.]

(6) "Distance education" means *course work taught by an institution through electronic distribution of instruction to a site other than the principal location of the institution, and advertised or described as leading to the formal award of a certificate or degree.*

(7) "Distance education program" means:

(a) *For an institution of higher education other than a community college, a program in which more than 50 percent of the*

*program is offered through electronic distribution of instruction to one or more sites other than the principal location of an institution; or*

*(b) For a community college, a program in which more than 50 percent of the program is offered through electronic distribution of instruction outside the community college service area.*

[(13)] (13) “Doctoral degree” means a degree awarded for successful completion of at least 2 years of study beyond the master’s level, including completion of a thesis or dissertation.

(14) “First professional degree” means a degree awarded for successful completion of all institutional requirements for becoming a practitioner in a field such as law, medicine, dentistry, pharmacy, theology, or nursing.]

[(15)] (8) “Formal award” means a certificate[, diploma,] or degree granted in recognition of successful completion of the requirements of a program.[. These official awards are] conferred by the faculty and ratified by [the] an institution’s governing board.

[(16)] (16) “Full-time equivalent faculty (FTEF)” means the number of full-time faculty plus the number of course credit hours taught by part-time faculty during the fall and spring semesters, divided by 24 for teaching 4-year institutions and divided by 18 for research institutions. For community colleges, the number of course credit hours eligible for State aid and taught by part-time faculty during a given fiscal year would be divided by 30 and added to the number of full-time faculty.]

(9) “Historically black institution (HBI)” means a Maryland public historically black institution, including Bowie State University, Coppin State University, Morgan State University, and University of Maryland Eastern Shore.

(10) “Independent institution” means a private nonprofit institution of higher education.

(11) “In-State institution” means an institution of higher education whose primary campus is in Maryland and whose authority to grant degrees is conferred by Maryland.

(12) “Institution of higher education” means an institution of postsecondary education that generally limits enrollment to graduates of secondary schools, and awards degrees at the associate, bachelor’s, or graduate level.

[(17)] (17) “Instructional program” means a course of study requiring the completion of a specified number of course credits from among a prescribed group of courses which leads to a formal award.]

[(18)] (13) “Internship” means a supervised work experience or field placement [directly related to the] in a student’s program.

[(19)] (14) “Joint degree” means a single degree offered by two or more institutions bearing the name and seal of each in which all [participants] cooperating institutions are substantively involved in required course work, faculty exchange, and shared use of facilities.

[(20)] (20) “Lower division certificate” means a certificate awarded for successful completion of at least 12 semester credit hours at the freshman or sophomore levels, or both.

(21) “Master’s degree” means a degree awarded for successful completion of at least 30 semester credit hours or the equivalent of graduate-level courses.]

[(22)] (15) Off-Campus Program.

(a) “Off-campus program” means, for institutions other than community colleges:

(i) A program in which more than 1/3 of the required course work [in a major field of study] leading to a *bachelor’s degree* or a certificate beyond the bachelor’s level [or leading to an undergraduate or graduate degree] is offered by an [approved or chartered] institution at a location other than the principal location of the [sponsoring] institution during any 12-month period; or

(ii) Course work offered at a location other than the principal location of an [approved or chartered] institution that is advertised as leading to a *degree* or [an undergraduate or graduate

degree or to] a certificate beyond the bachelor’s level at that location, regardless of the portion of a program offered at that location.

(b) “Off-campus program” means, for community colleges, [means an activity or activities] *course work* offered outside the community college service area.

[(23)] (16) “Parallel program” means a program [of study, or courses, at one institution of higher education which] *at a community college and a program at a public 4-year institution of higher education* [has] *having* comparable objectives. [to those at another higher education institution. For example, a transfer program in psychology in a community college is defined as a parallel program to a baccalaureate psychology program at a 4-year institution of higher education.]

[(24)] (24) “Post-baccalaureate certificate” means a certificate awarded for successful completion of at least 12 semester credit hours at the graduate or upper divisional level, the majority of which are at the master’s or specialized postgraduate level.

(25) “Post-master’s certificate” means a certificate awarded for successful completion of at least 12 semester credit hours of graduate study beyond the master’s degree.]

[(26)] (17) “Primary degree” means a single degree offered by one institution having responsibility for at least 2/3 of the course requirements in which cooperating institutions participate by the appropriate and complementary addition of courses, faculty, and facilities intended to complete the degree requirements of the primary institution.

(18) “Private for-profit institution” means a privately owned and operated institution of higher education that is intended to operate as a business.

[(27)] (27) “Professional certificate” means a certificate awarded for successful completion of the number of courses required by the appropriate national professional association.]

(19) “Program” means a course of study requiring the completion of a specified number of semester credit hours from among a prescribed group of courses that leads to a formal award.

(20) “Program proposal” means a submission for a new program or substantial modification for review in the form and manner required by the Secretary.

[(28)] (21) “Recommended transfer program (RTP)” means a [planned program of courses,] *program* including both general education and courses in [the] a major, taken at [the] a community college, [which] *that is*:

(a) Applicable to a [baccalaureate] *bachelor’s degree* at a [receiving] 4-year institution; and

(b) Ordinarily the first [2] *two* years of the [baccalaureate] *bachelor’s degree*.

[(29)] (22) (text unchanged)

[(30)] (23) “Segment” means:

(a) [the] *The University System of Maryland* [System,];

(b) *Morgan State University*[,];

(c) *St. Mary’s College of Maryland*[,];

(d) [the] *The Maryland Independent* [Colleges and Universities] *College and University Association*[,];

(e) *The Maryland Association of Private Colleges and Career Schools*; and

(f) [the] *The Maryland Association of Community Colleges*.

[(31)] (24) “State Plan” means the document entitled *Maryland State Plan for [Higher] Postsecondary Education*.

(25) “Substantial modification” means a major change in an existing program or area of concentration.

[(32)] (26) “Undergraduate major” means, varying by degree program and subject area[, a]:

(a) [Minimum] A *minimum* of 30 semester credit hours, [(1/2 of which must be upper-divisional credit,)] in one field or in an interdisciplinary or multidisciplinary field; and



(b) [Coherent] A *coherent*, sequential, and integrated [academic] program of study-in-depth which is intended to provide:

- (i) A body of knowledge[.];
- (ii) Methods of study[.]; and
- (iii) Practice appropriate to a subject area.

[(33)] "Upper division certificate" means a certificate awarded for successful completion of at least 12 semester credit hours at the junior or senior levels, or both.]

**.03 Statutory Authority of the Commission Regarding Academic Program Review, Approval, and Recommendation.**

A. The Commission shall review [academic] program proposals [in both the] *for public institutions*, [and] *independent institutions*, and *private for-profit institutions* [sectors] of higher education.

B. [In the] *For public* [sector] *institutions*, the Commission shall review and approve or disapprove *program proposals for*:

- (1) [All new] *New programs*; and
- (2) Substantial modifications [of existing programs, including off-campus degree programs].

C. [In the independent sector] *For independent institutions and private for-profit institutions*, the Commission shall review and recommend or not recommend [that programs be implemented] *implementation of program proposals for*:

- (1) *New programs*; and
- (2) *Substantial modifications*.

D. *An institution shall submit a program proposal for a new program to establish*:

- (1) *A program leading to a formal award in a subject area in which the award is not presently authorized*;
- (2) *A program in a subject area in which a formal award is offered at a different degree level (for example, an institution awards a Bachelor of Science (B.S.) in chemistry and wishes to award a Master of Science (M.S.) in chemistry, or an institution wishes to offer an associate degree in addiction counseling, but currently offers only a lower-division certificate in addiction counseling)*;
- (3) *A new undergraduate major by combining course work offered in two or more existing programs (for example, an institution wishes to offer a program in biochemistry by permitting students to combine course work offered in its current programs in biology and in chemistry)*; or
- (4) *A formal award of a different type in a subject matter area in which another formal award at the same level is already offered (for example, an institution awards the Master of Science in Management (M.S.) and wishes to offer a Master of Business Administration (M.B.A.), or an institution awards an Associate of Applied Science (A.A.S.) and wishes to offer an Associate of Arts (A.A.) or Associate of Science (A.S.))*.

E. *An institution shall submit a program proposal for a substantial modification to*:

- (1) *Change more than 33 percent of an existing program's course work*;
- (2) *Convert more than 50 percent of a program previously approved for offering in a distance education format to a classroom or site-based learning format, or convert more than 50 percent of a program previously approved for offering in a classroom or site-based learning format to a distance education format*;
- (3) *Offer an existing program as an off-campus program*;
- (4) *Establish a new area of concentration within an existing program (for example, an institution offers a program in psychology and wishes to add a new area of concentration in employee assistance training, or an institution offers a program in mental health and wishes to offer a new area of concentration in addiction counseling)*; or

(5) *Establish a new program title within an approved program (for example, an institution offers a program in human resources and wishes to offer a program in human resources management)*.

**[E.] F. Program Review Process.**

(1) If the Commission fails to act on a [proposed] program *proposal* within [the] 60 days after the submission of the *program proposal* to the Commission, the program is officially approved without any further action of the Commission.

(2) If the Commission disapproves or does not [endorse] *recommend* a proposal, the Commission shall provide to the institution's governing board a written explanation of the reasons for the disapproval or *non-recommendation*.

(3) After revising a proposal to address the Commission's reasons for disapproval or [lack of endorsement] *non-recommendation*, the governing body may resubmit the revised proposal to the Commission [for approval] in accordance with the schedule in Regulation [25].27 of this chapter, thereby triggering a new 60-day time frame for Commission action.

**G. Implementation of Programs.**

[(4)] Public institutions] (1) A *public institution* may not implement a program without the prior approval of the Commission.

[(5)] (2) Implementation of Program by Independent Institution.

(a) If an independent institution [of higher education] has implemented a new *program* or [substantially modified program] a *substantial modification* contrary to the *non-recommendation* of the Commission that was based on a finding of unreasonable duplication, the Commission may recommend that the General Assembly reduce the institution's appropriation by the amount of aid associated with the full-time equivalent enrollment in that program.

(b) The provision in [§E(5)(a) of this regulation] *subsection (2)(a) of this section* does not preclude the independent institution from implementing the new *program* or [substantially modified program] *substantial modification*.

(c) If the General Assembly reduces program funding, the affected independent institution may apply annually to the Commission for reconsideration of the program [recommendation] *review decision*.

(3) A *private for-profit institution* may implement a program notwithstanding the *non-recommendation* of the Commission.

(4) If an independent institution or a private for-profit institution implements a program despite a recommendation from the Commission that the program not be implemented, the institution shall notify both prospective students of the program and enrolled students in the program that the program has not been recommended for implementation by the Commission.

**H. Program Suspension.**

(1) An institution may temporarily suspend a program and examine its future direction.

(2) During a period of program suspension, an institution has the opportunity to:

- (a) Study its future commitment to a particular field of study; and
- (b) Determine whether the program should be:
  - (i) Maintained in present form;
  - (ii) Consolidated with other program offerings; or
  - (iii) Discontinued.

(3) The suspension of a program relieves an institution from having to submit a program proposal to the Commission to reactivate a discontinued program.

**(4) Criteria and Process for Program Suspension.**

(a) A program may be suspended for a period of time not to exceed 3 years.

(b) The catalog and other official publications shall indicate the official status of the program.

(c) *New students may not be admitted into a program during the period of suspension.*

(d) *Currently enrolled students shall be given the opportunity to satisfy degree requirements.*

(e) *Before suspending a program, the institution shall notify the Secretary in writing.*

(f) *After a 3-year period, the institution shall either discontinue or reactivate the program and notify the Secretary in writing.*

[D.] I. The Commission does not review [programs] *a program* proposed for discontinuance by [institutions] *an institution*. However, [institutions] *an institution* shall provide written notice to the Commission in advance of a [program] *program's* discontinuance.

#### **.04 Delegation of Program Responsibility.**

A. The Commission has delegated to the Secretary the responsibility and authority to act in its behalf on *program* proposals for new programs and substantial modifications [of existing programs] submitted by institutions of [postsecondary] *higher* education operating in Maryland under Education Article, §§11-206[, Annotated Code of Maryland, and program proposals from constituent institutions of the University System of Maryland under Education Article, §11-206.1] *and 11-206.1*, Annotated Code of Maryland.

B. [This delegation is subject to the following conditions and limitations:] *Delegation Subject to Conditions and Limitations.*

(1) The Secretary shall prepare and present a report to the Commission at each meeting summarizing all actions taken since the prior report, and [when appropriate,] the report [shall] *may* include [the]:

(a) [Name] *The name* of the [academic] program proposal or articulation agreement[.];

(b) [Degree] *The degree* to be offered[.];

(c) [Name] *The name* of the proposing institution[.];

(d) [Relationship] *The relationship* to institutional and segment role and mission[.];

(e) [Relationship] *The relationship* to the goals, objectives, and initiatives of the State Plan [for Higher Education,]; and

(f) [Disposition] *The disposition* of the *program* proposal[.].

(2) If the Secretary approves, disapproves, *recommends for*, or recommends against a *program* proposal, the proposing or objecting institutions are entitled, [upon] *on* request, to have the matter reviewed by the Commission in accordance with the Commission's procedures in [Regulations .25 and .26] *Regulation .28* of this chapter[.].

(3) [The Secretary shall, to the maximum extent feasible, use current procedures, forms, and regulatory standards in exercising the authority delegated in this chapter; and

(4) [The Secretary shall report [biennially] to the Commission every 2 years on programs experiencing low productivity.

#### **.05 Long-Term Goals.**

[Three] *Four* long-term goals, *quality, access and choice, accountability, and HBI enhancement*, guide the Commission's [Statewide planning responsibility, and are set forth as follows] *program approval responsibilities, with each goal having the following focus:*

A. [The quality, in the context of Statewide planning,] *Quality* shall focus on the effectiveness of institutional [results which includes the] actions, including:

(1) [Extent] *The extent* to which an institution fulfills its stated mission[, and];

(2) [Centrality] *The centrality* of a proposed program to the institution's approved mission; and

(3) *The adherence of a proposed program to commonly accepted standards of academic practice as found in Regulation .06 of this chapter;*

B. [The access] *Access* and choice for Maryland citizens to higher education [is concerned with] *shall focus on* the needs of citizens for [postsecondary] *higher* education programs, services, and research, including:

(1) Financial assistance[.];

(2) Transferability of credit[.];

(3) Economic development[, and];

(4) Equal opportunity concerns; and

(5) *Expansion of educational opportunities and choices for minority and educationally disadvantaged students at institutions of higher education;*

C. *Accountability shall focus on whether there is a comprehensive set of reliable and valid indicators, appropriate to the mission of the [campus] institution, which can assess an institution's [performance against its self-definition and aspirations] effectiveness in delivering the proposed program; and*

D. *HBI enhancement shall focus on whether the proposed program advances the expansion of mission, program uniqueness, or institutional identity at HBIs.*

#### **.06 Criteria for Program Review.**

[A.] A program proposal shall [receive particular scrutiny in determining the extent to which it addresses] *address* the following areas:

(1) Centrality to mission and planning priorities, relationship to the [instructional] program emphasis as outlined in the mission statements, and [a campus] *an institutional* priority for [academic] program development;

(2) — (4) (text unchanged);

(5) *Relevance to the implementation or maintenance of high-demand programs at HBIs;*

(6) *Relevance to the support of the uniqueness and institutional identities and missions of HBIs;*

[(5)] (7) Adequacy of curriculum design *and delivery* to related learning outcomes *consistent with Regulation .10 of this chapter;*

[(6)] (8) (text unchanged)

[(7)] (9) Adequacy of faculty resources *consistent with Regulation .11 of this chapter;*

[(8)] (10) Adequacy of library resources *consistent with Regulation .12 of this chapter;*

[(9)] (11) Adequacy of physical facilities, *infrastructure*, and instructional equipment *consistent with Regulation .13 of this chapter;*

[(10)] (12) Adequacy of financial resources with documentation *consistent with Regulation .14 of this chapter;*

[(11)] (13) Adequacy of provisions for evaluation of program *consistent with Regulation .15 of this chapter;*

[(12)] (14) — [(13)] (15) (text unchanged)

#### **[B. Parallel Programs**

(1) If parallel programs exist at community colleges and public 4-year institutions public institution program proposals shall provide evidence of the development and dissemination of recommended transfer programs (RTPs) in cooperation with sending/receiving institutions. An institution shall provide evidence that the RTPs are available to students through ARTSYS or in written form

(2) In order to foster articulation with K—12, community colleges shall also identify parallel curricula to secondary schools.]

#### **.07 Mission and Planning Priorities.**

A. [Centrality to an institution's mission as well as the established planning priorities of the institution is essential. Programs] *A program proposal* submitted by an institution that [are] *is* central to

the institution's mission statement [are] *is* eligible for approval [and implementation] *or recommendation for implementation*.

B. [The] A proposed program shall be:

(1) Central to the [campus] *institution's* mission;

(2) Related to the [instructional] program emphasis as outlined in the mission [statements] *statement*; and

(3) [A campus] *An institutional* priority for [academic] program development *consistent with the institution's strategic planning process*.

#### **.08 Need for the Proposed Program.**

A. (text unchanged)

B. [Demand] *A program proposal shall clearly demonstrate demand and need for [a] the program in terms of meeting present and future needs of the region[,] and the State in general[, shall be clearly stated]. [Two] Four* kinds of needs may be identified:

(1) *The need for the advancement and evolution of knowledge;*

[(1)] (2) Societal needs, *including expanding educational opportunities and choices for minority and educationally disadvantaged students at institutions of higher education; [and]*

[(2)] (3) Occupational *and professional* needs relative to upgrading vocational/ technical skills or meeting job market requirements; *and*

(4) *The need to strengthen and expand the capacity of historically black institutions to provide high quality and unique educational programs.*

C. The Commission recognizes and supports the tradition of liberal arts education and the need for [higher education] programs [which] *that* offer individual and societal benefits [that are] independent of manpower or market demand considerations. These programs provide immeasurable returns to the State in part by instilling in citizens a capacity for advanced learning and an understanding of the fundamentals of civilization.

D. Market Demand Data.

(1) *This section does not apply to programs in the liberal arts and sciences.*

[(1)] (2) [When appropriate, an] *An* institution proposing a new [programs] *program* shall present data projecting market demand and the availability of openings in the job market to be served by the new program. The types of information submitted vary, depending on the program, but may include manpower and employment projections prepared by the *Maryland Department of Labor, Licensing, and Regulation*, Bureau of Labor Statistics, *Census Data*, and the Maryland Department of Business and Economic Development as well as professional and trade associations.

[(2)] (3) [With the exception of programs in the liberal arts and sciences, market surveys shall be conducted which] *An institution shall conduct market surveys that* clearly provide quantifiable and reliable data from prospective employers on the educational and training needs and the anticipated number of vacancies expected over the next 5 years.

[(3)] (4) (text unchanged)

E. Identification of Programs Having Market Demand.

(1) [To assist institutions in program development, the] *The* Commission shall identify, on a regular basis, [academic degree] programs [which] *that* are in market demand in Maryland.

(2) (text unchanged)

(3) [Campuses] *Institutions* maintaining a role and mission appropriate and consistent with those fields declared as shortage areas are encouraged to develop specific [academic] programs.

(4) Proposals submitted in response to a declared shortage area do not need to include additional documentation on market demand and supply data[, which is typically expected of all other program proposals].

[(5) Commission staff shall consult with institutions regarding the applicability of conducting marketing studies, for example, liberal arts versus professional programs.]

[(6)] *F.* (text unchanged)

#### **.09 Duplication of the Proposed Program.**

A. (text unchanged)

B. Evidence demonstrating that a proposed program is not duplicative of similar offerings in the State shall be submitted by the institution [to the Commission]. At a minimum, this evidence shall be substantiated on the basis that the proposed program [or programs] to be offered [are] *is* not unreasonably duplicative of existing programs in a specific [geographic] *geographically proximate* location in the State.

C. Determination of Duplication.

(1) In determining whether a program [or course of study] is unreasonably duplicative, the Secretary shall consider:

(a) The degree to be awarded;

(b) The area of specialization;

(c) The purpose or objectives of the program [or course of study] to be offered;

(d) The specific academic content of the program [or course of study];

(e) Evidence of [the quality] *equivalent competencies* of the proposed program in comparison to existing programs; and

(f) An analysis of the market demand for the program.

(2) The [Commission staff] analysis shall include an examination of factors, including:

(a)—(b) (text unchanged)

(c) Alternative means of educational delivery *including distance education*;

(d) Analysis of enrollment characteristics; [and]

(e) Residency requirements;

(f) *Admission requirements; and*

(g) *Educational justification for the dual operation of programs broadly similar to unique or high-demand programs at HBIs.*

#### **.10 Adequacy of Curriculum Design and Related Learning Outcomes.**

A. (text unchanged)

B. Required courses in the [major] *program* may not be excessive and shall be consistent with customary expectations for the type of *certificate or degree* proposed.

C. The [arts and sciences core] *general education* courses shall be distributed in a manner consistent with [the Commission's minimum standards] *COMAR 13B.02.02.16.E and F.*

D. [If appropriate, the curriculum of the proposed program shall reflect the requirements of an accrediting or certifying body.] *Accreditation Requirements; Conditional Approval.*

(1) *If a professional shall graduate from a program with specialized accreditation, certification, or approval to practice in the State, the program shall meet all appropriate accreditation, certification, or approval standards.*

(2) *The Secretary may grant conditional approval for a program that fails to meet the standards specified in §D(1) of this regulation if the institution begins the process of securing appropriate accreditation, certification, or approval.*

(3) *Except as provided in §D(4) of this regulation, the Secretary's conditional approval shall be revoked if an institution fails to secure appropriate accreditation, certification, or approval for the program within a timeframe consistent with the relevant approval process.*

(4) *The Secretary may extend conditional approval if the institution has made substantial progress in securing appropriate accreditation, certification, or approval for the program.*

*E. If an institution contracts for instructional services in the State, to be provided by another institution or a non-collegiate organization, these services shall be based on a written contract that provides for institutional control over the quality of the curriculum, instructional staffing, instructional support services, and the integrity of enrollment policies.*

**.11 Faculty Resources.**

A. Faculty resources shall be *consistent with COMAR 13B.02.02.17* and shall be adequate and appropriate for a proposed program, taking into consideration the institution's mission and the character of the program to be developed.

B. (text unchanged)

C. [While the] *The* doctorate[, in most instances,] is the appropriate terminal degree for [baccalaureate] *bachelor's* and graduate programs, *however*, the Master of Fine Arts [(MFA) or a similar] *(M.F.A.)* or another professional degree [is often considered a terminal degree] *may be adequate and appropriate for the proposed program.*

D. (text unchanged)

[F.] *E.* [Generally, programs] *Programs* shall involve credentialed full-time faculty in teaching, program development, and student [services] *academic support.*

[E.] *F.* Adjunct and part-time faculty are an important and necessary component of some programs. Except in [unusual] circumstances to be determined by the Secretary, at least 50 percent of the total [courses] *semester credit hours* within the proposed [degree] program shall be taught by full-time faculty.

G. Adjunct and part-time faculty[, when used,] shall:

(1) Possess the same or equivalent qualifications as the [regular] *full-time* faculty of the institution; and

(2) (text unchanged)

[H. The responsibilities of adjunct faculty shall be specified in such a manner that their involvement in the activities of program development and academic advising is ensured, or that these activities are provided by other appropriate means.]

**.12 Library Resources.**

A. Library resources shall be *consistent with COMAR 13B.02.02.18* and appropriate to support the proposed program, whether it is to be offered on-site or at an off-campus location.

B. Appropriate library resources may be achieved through *one or more of the following*:

(1) [on-site] *On-site* collections[.];

(2) [interlibrary] *Interlibrary* loans[.]; or

(3) [computerized] *Computerized* access to holdings in other in-State or out-of-State libraries[, or all of these].

C. When formal, cooperative arrangements with other institutions are required to ensure students' access to library holdings, these shall be discussed and accompanied by letters of agreement[, if appropriate].

**.13 Physical Facilities and Instructional Equipment.**

A. *For new programs offered at an institution's principal location, the institution shall ensure that:*

(1) Physical facilities, infrastructure, and instructional equipment [shall be] *are* consistent with COMAR 13B.02.02.20, and adequate to initiate [the] *the new* program[.];

[B.] (2) Spaces [shall be] *are* provided for classrooms and for staff and faculty offices[.]; and

[C.] (3) Laboratories for studies in the technologies and sciences [shall be] *are* designed to provide maximum utilization of facilities, materials, and equipment.

[D.] *B.* An institution offering courses off-campus [which] *that* require laboratory facilities, specialized equipment such as computer terminals and audiovisual aids, or other special resources shall ensure

that appropriate facilities and instructional equipment requirements are met.

**.14 Finances.**

A. The resource requirements of a [proposed] program shall be *consistent with COMAR 13B.02.02.21, and* analyzed by the Commission [staff] in order to assess the adequacy of the sources of funds to support a quality program. This [assessment is to] *analysis* shall:

(1) (text unchanged)

(2) Assess the impact of the [proposed] program on the institution's overall need for funds.

B. [Forms] *The institution shall complete forms supplied by the Commission* concerning resource categories and expenditure categories [shall be completed by the institution]:

(1) [in] *In* sufficient detail to permit the Secretary to make a judgment on the adequacy of resources[.]; and

(2) [Whenever required,] *With* narrative explanation [shall accompany] *accompanying* the entries in the tables. [This narrative may be inserted below the table or on an attachment to the table.]

C. The proposed [academic] program shall be supported by at least one of the following sources of funds:

(1) Reallocation of existing campus resources, including the discontinuance or downsizing of an existing program or organizational unit;

(2) Tuition and fee revenue from students new to the institution enrolling in the new program;

(3) Grants and contracts; [and] *or*

(4) Sources, other than those in §C(1), (2), and (3) of this regulation, specifically designated for the [proposed] program, with backup information and documentation of these resources provided with the proposal.

**.16 Minority Student [Achievement] Access.**

[Consistent with the Commission's policies regarding minority access, specific actions and strategies which will be used in the recruitment and retention of students in the minority population at a particular campus shall be identified.] *An institution shall set forth appropriate actions and strategies to recruit and retain underrepresented minority students for each new program consistent with:*

A. *Provisions of the State Plan regarding minority student access; and*

B. *The institution's program of cultural diversity.*

**.17 Low Productivity Programs.**

A. [Twice a year] *Every 2 years*, the Commission shall identify low productivity programs *at public institutions.*

B. [Low productivity programs directly related to a proposed program shall be addressed by the institution.]

C. The review shall consider:] *If an identified low productivity program is directly related to a proposed new program, in its program proposal the institution shall address:*

(1) The fiscal resources, including faculty, administration, library resources, and general operating expenses, currently devoted to the low productivity [programs] *program*; and

(2) How those resources may be redistributed to help fund [a] *the proposed new* program.

**.18 [Review of] Cooperative [Ventures] Programs.**

A. (text unchanged)

B. An institution considering a new [academic degree] program or a [major] *substantial* modification [of an existing program] is encouraged to explore cooperative development of [new] *these* program initiatives.

C. [The Commission has developed] *The institution shall follow cooperative degree program guidelines [which are available as an illustration of a model] developed by the Commission to assist institutions in establishing these programs.*

D. *Cooperative programs shall be designated as belonging to one of the degree program categories in this regulation.*

E. *Requirements for Joint Degree Programs.*

(1) *Two or more institutions may offer a joint degree program in which the cooperating institutions are substantively involved in required course work, faculty exchange, and shared use of facilities.*

(2) *A student enrolled in a joint degree program shall receive a single diploma that bears the names and seals of all cooperating institutions.*

(3) *The proposed program shall be planned by representatives from each cooperating institution. Identical proposals for each institution shall go through the normal program approval procedures for the institutions and segments, including formal approval and recognition by each governing board.*

(4) *A memorandum of understanding between or among cooperating institutions shall be included when the program proposal is submitted.*

(5) *Each institution is responsible for designating a program director. The program directors shall inform each other as they administer the program, select or assign faculty, set common admissions standards, coordinate curriculum modifications, monitor operations, plan budgets, write grants, and establish joint library purchases.*

(6) *Distribution of course work in the major field of study is based on programmatic requirements and the respective strengths of cooperating institutions. The ideal arrangement approximates an even division of curriculum responsibilities between or among the cooperating institutions. The proposed degree shall be consistent with the institutional mission as it is outlined in the State Plan.*

(7) *An arrangement shall exist for recruiting and admitting students and for administration of student support services in joint degree programs.*

(8) *A mechanism shall exist for monitoring and evaluating programs, with provisions for participation by faculty, students, and administrators from each institution involved.*

F. *Requirements for Primary Degree Programs.*

(1) *One or more institutions may offer a primary degree program.*

(2) *The diploma shall be awarded by the primary institution.*

(3) *The program shall be planned by the institution awarding the degree. However, the institution designated as primary assumes responsibility for ensuring the involvement of other institutions of higher education having particular and complementary strengths in the same or similar program area. The program proposal shall show the actual involvement of other institutions of higher education in such areas as course work, faculty, and facilities.*

(4) *A memorandum of understanding between or among cooperating institutions shall be included when the program proposal is submitted.*

(5) *The primary institution shall offer at least 2/3 of the course requirements. The proposed degree shall be consistent with the institutional mission as it is outlined in the State Plan. Other institutions may participate by the appropriate and complementary addition of courses, faculty, and facilities.*

(6) *Students shall be matriculated at the primary institution as degree candidates in accordance with the policies for degree completion requirements at that institution. Advising and other student services shall be provided by the primary institution but this does not preclude appropriate involvement in these areas by the cooperating institution.*

(7) *The primary institution is responsible for all administrative functions associated with the program, including communication and relationships with the cooperating institutions.*

(8) *The primary institution is responsible for the continuing evaluation of the program in accordance with institutional policies. The evaluation process shall provide an opportunity for the involvement of representatives from cooperating institutions, as appropriate.*

#### **.19 Parallel Programs and Recommended Transfer Programs.**

A. *Community colleges and public 4-year institutions of higher education may have parallel programs that have comparable objectives. For example, a transfer program in psychology in a community college is considered a parallel program to a bachelor's program in psychology at a public 4-year institution of higher education.*

B. *If a parallel program exists at a community college and a public 4-year institution, the public 4-year institution's program proposal shall provide evidence that:*

(1) *The recommended transfer program (RTP) is developed and will be disseminated in cooperation with the community college; and*

(2) *The RTPs are available to students through ARTSYS or in written form.*

C. *A recommended transfer program (RTP) shall consist of a program that includes both general education and courses in the undergraduate major, taken at a community college, that are:*

(1) *Applicable to a bachelor's degree at a public 4-year institution; and*

(2) *Ordinarily the first 2 years of the bachelor's degree.*

D. *In order to foster articulation with K-12, community colleges shall also identify parallel curricula to secondary schools.*

#### **[.19] .20 [Review of] Off-Campus Programs.**

A. *An off-campus program may be approved only if there is already an existing on-campus program.*

[A.] B. *A program proposal for an [Off-campus] off-campus program [proposals] shall be submitted by the institution to the Commission [for review and approval] and contain the following information regarding need and demand for extending the program and the impact the program may have on similar programs [which] that may exist in the region:*

(1) — (2) (text unchanged)

(3) *The need and demand for the program in terms of [the]:*

(a) *Specific local, State, and national needs for graduates[.];*

(b) *Job opportunities that are available to those who complete the program[.]; and*

(c) *Evidence of market demand through supporting data, including results of surveys [which] that have recently been conducted;*

(4) *[If] A description of the following, if a similar program is offered within the same geographical region of the State [describe the]:*

(a) *Similarities or differences in the degree to be awarded[.];*

(b) *Area [or areas] of specialization[.]; and*

(c) *Specific academic content of the program [or course of study];*

(5) *A description of the method of instructional delivery, including [telecommunications instruction] distance education, on-site faculty, and the mix of full-time and [adjunct] part-time instructors; and*

(6) (text unchanged)

[B.] C. *[Campuses] An institution offering [programs] an off-campus program shall provide for adequate and appropriate library resources within reasonable distance of the instructional site or through institution-sponsored electronic collections and databases.*

[C. Students enrolled in off-campus instruction shall have access to academic support services equivalent to those provided to students enrolled in on-campus resident credit courses, including academic advising, counseling, library and other learning resources, and financial aid.]

D. Faculty.

(1) *Students shall be taught by qualified faculty with appropriate experience.*

(2) At least 1/3 of the classes offered in an off-campus program shall be taught by full-time faculty [members] of the parent institution.

E. An off-campus program shall:

(1) *Be complete and coherent;*

(2) *Provide for either real-time interaction or delayed interaction between faculty and students and among students;*

(3) *Provide appropriate oversight of the program offered by qualified faculty from the parent institution; and*

(4) *Provide enrolled students with reasonable and adequate access to the range of academic and support services appropriate to support their learning, including academic advising, counseling, library and other learning resources, and financial aid.*

[E. Off-campus programs may be submitted to the Commission any time during the year. Commission staff review shall proceed expeditiously, preferably within 60 to 90 days.]

F. An institution has responsibility for:

(1) *Evaluating the program's educational effectiveness, student learning outcomes, student retention, and student and faculty satisfaction; and*

(2) *Providing to faculty with professional development activities, appropriate training, and other support.*

[.22] .21 Closed Sites.

A. [Maryland colleges and universities] *An in-State institution maintaining full and unconditional accreditation [and approval] from [the Middle States Association] an accrediting association recognized by the United States Department of Education and approval from the Commission may respond to the request of a sponsoring agent to offer a previously approved [academic degree] program at [a business or industry or governmental site] an off-campus site selected by the sponsoring agent solely for [its own] the sponsoring agent's employees by submitting a letter of notification to the Secretary.*

B. A letter of notification shall describe the program and affirm that there is access to library resources and faculty consistent with the scope and nature of the offerings.

C. [Academic programs] A program may be offered through traditional means as well as through various [technological modes] distance education formats.

D. General Public.

(1) [Under this policy, the] *The general public may not be recruited or admitted to these programs.*

(2) If an institution elects to open the program beyond [its] *the sponsoring agent's* designated employees, the Commission's [off-campus] policies and procedures *for off-campus programs* [prevail] apply.

[.20] .22 [Telecommunications Instruction] Distance Education.

[A. In January of each year, the Commission shall request all campuses to submit a list of courses, by location, projected for delivery via telecommunications instruction for the following fall and spring semesters.]

[B.] A. The Commission shall review [the annual institutional plans] *a distance education program proposal under the criteria established in Regulation .06 of this chapter* [with respect to:

(1) Appropriateness to campus mission;

(2) Relationship to Statewide and regional needs identified in the State plan; and

(3) Program duplication].

[C.] B. A program proposal for a distance education program [offered via telecommunications instruction] shall be submitted by the institution to the Commission [by the institution for review and approval] before implementation and contain the following information: [The proposal format for this purpose shall be the same as the format used for off-campus programs in Regulation .19 of this chapter. Guidelines for determining what constitutes a program offered via telecommunications are identified in Regulation .30 of this chapter.]

(1) *The title of the program and the degree or certificate to be awarded;*

(2) *The resource requirements for the program and the source of funds to support the program for the first 2 years of program implementation;*

(3) *The need and demand for the program in terms of:*

(a) *Specific local, State, and national needs for graduates;*

(b) *Job opportunities that are available to those who complete the program; and*

(c) *Evidence of market demand through supporting data, including results of surveys that have recently been conducted;*

(4) *If a similar program is offered within the State, a description of:*

(a) *Similarities or differences in the degree to be awarded;*

(b) *Area of specialization; and*

(c) *Specific academic content of the program;*

(5) *A description of the method of instructional delivery; and*

(6) *A brief description of the academic oversight, quality control, and student services to be provided.*

[D. A program delivered through telecommunications instruction shall:

(1) Be complete, coherent, and offered on the parent campus for resident students;

(2) Provide for either real-time interaction or delayed interaction between faculty and students and among students;

(3) Provide appropriate oversight of the program offered by qualified faculty from the parent campus; and

(4) Provide enrolled students with reasonable and adequate access to the range of academic and support services appropriate to support their learning.]

C. Principles of Good Practice.

(1) *This section applies to distance education and distance education programs offered by an institution of higher education operating in this State that is required to have a certificate of approval from the Commission under COMAR 13B.02.01 or 13B.02.02.*

(2) *An institution shall provide evidence to the Secretary of compliance with the principles of good practice in this section.*

(3) *Principles of Good Practice for Distance Education.*

(a) *Curriculum and Instruction.*

(i) *A distance education program shall be established and overseen by qualified faculty.*

(ii) *A program's curriculum shall be coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats.*

(iii) *A program shall result in learning outcomes appropriate to the rigor and breadth of the program.*

(iv) *A program shall provide for appropriate real-time or delayed interaction between faculty and students.*

(v) *Faculty members in appropriate disciplines in collaboration with other institutional personnel shall participate in the design of courses offered through a distance education program.*

(b) *Role and Mission.*

(i) *A distance education program shall be consistent with the institution's mission.*

(ii) *Review and approval processes shall ensure the appropriateness of the technology being used to meet a program's objectives.*

(c) *Faculty Support.*

(i) *An institution shall provide for training for faculty who teach with the use of technology in a distance education format, including training in the learning management system and the pedagogy of distance education.*

(ii) *Principles of best practice for teaching in a distance education format shall be developed and maintained by the faculty.*

(iii) *An institution shall provide faculty support services specifically related to teaching through a distance education format.*

(d) *An institution shall ensure that appropriate learning resources are available to students including appropriate and adequate library services and resources.*

(e) *Students and Student Services.*

(i) *A distance education program shall provide students with clear, complete, and timely information on the curriculum, course and degree requirements, nature of faculty/student interaction, assumptions about technology competence and skills, technical equipment requirements, learning management system, availability of academic support services and financial aid resources, and costs and payment policies.*

(ii) *Enrolled students shall have reasonable and adequate access to the range of student services to support their distance education activities.*

(iii) *Accepted students shall have the background, knowledge, and technical skills needed to undertake a distance education program.*

(iv) *Advertising, recruiting, and admissions materials shall clearly and accurately represent the program and the services available.*

(f) *Commitment to Support.*

(i) *Policies for faculty evaluation shall include appropriate consideration of teaching and scholarly activities related to distance education programs.*

(ii) *An institution shall demonstrate a commitment to ongoing support, both financial and technical, and to continuation of a program for a period sufficient to enable students to complete a degree or certificate.*

(g) *Evaluation and Assessment.*

(i) *An institution shall evaluate a distance education program's educational effectiveness, including assessments of student learning outcomes, student retention, student and faculty satisfaction, and cost-effectiveness.*

(ii) *An institution shall demonstrate an evidence-based approach to best online teaching practices.*

(iii) *An institution shall provide for assessment and documentation of student achievement of learning outcomes in a distance education program.*

[E. An institution has the responsibility for:

(1) *Evaluating the program's educational effectiveness, student learning outcomes, student retention, and student and faculty satisfaction; and*

(2) *Providing to faculty the training and other appropriate support to teach via the use of technology.]*

**[.21] .23 Consultant Review.**

A. [The review of] *In reviewing a program [proposals generally entails] proposal, Commission staff [discussions] shall discuss the proposal with institutional or segmental personnel involved with the program.*

B. If the Secretary determines that additional expertise is needed to evaluate a program, [outside experts may be retained] *the Secretary may retain one or more outside consultants.*

C. The Secretary and the institutional or segmental administrators shall agree on the selection of [the] *a consultant [or consultants] and on an appropriate time frame.*

D. [Financial obligations] *The proposing institution is responsible for the costs incurred [during] for a consultant's [visit] work [are the responsibility of the institution].*

E. (text unchanged)

**.24 Degree Programs.**

A. *The following degree levels are available to institutions in this State, as approved in accordance with COMAR 13B.02.02.10.*

B. Associate of Applied Science (A.A.S.).

(1) *An institution may award an Associate of Applied Science (A.A.S.) degree for successful completion of not less than 60 and not more than 70 semester credit hours in vocational-technical occupational skills, including law enforcement, computer technology, and engineering technology.*

(2) *The program is intended for a student seeking immediate employment opportunities. However, the program does not preclude a student from transferring to a technical bachelor's degree program such as a bachelor's degree in technology or a bachelor's degree in technical or professional studies, or from transferring non-technical courses to a 4-year institution.*

C. Associate of Arts (A.A.).

(1) *An institution may award an Associate of Arts (A.A.) degree for successful completion of not less than 60 and not more than 70 semester credit hours in the liberal arts (social sciences, humanities, and similar subjects) and in the fine arts (music, art, etc.).*

(2) *The program is intended for transfer to an equivalent Bachelor of Arts (B.A.) degree program at 4-year institutions.*

D. *An institution may award an Associate of Art in Teaching (A.A.T.) degree that:*

(1) *Meets the lower-level degree academic content, outcomes, and requirements for teacher education, similar to the first 2 years of a bachelor's program in teacher education;*

(2) *Requires evidence of qualifying scores as established by the State Superintendent of Schools on the teacher certification tests approved by the State Board of Education;*

(3) *Requires a cumulative grade point average of at least 2.75 on a 4.00 scale; and*

(4) *If achieved, transfers up to 64 semester credit hours, satisfying all lower-division teacher education program outcomes without further review by in-State 4-year public and independent institutions.*

E. *An institution may award an Associate of Fine Arts (A.F.A.) degree for successful completion of not less than 60 and not more than 70 semester credit hours in the professional arts in programs that:*

(1) *Have as a primary goal transfer to a Bachelor of Fine Arts (B.F.A.) degree program;*

(2) *Are similar to the first 2 years of a B.F.A. degree program; and*

(3) *Require at least 60 percent of the course credit to be in studio work and related areas.*

F. Associate of Science (A.S.).

(1) *An institution may award an Associate of Science (A.S.) degree for successful completion of not less than 60 and no more than 70 semester credit hours in science or technology (engineering, agriculture, the natural sciences) with a heavy emphasis on undergraduate mathematics or science.*

(2) *The program is intended for transfer to a Bachelor of Science (B.S.) degree program at 4-year institutions.*

*G. Associate of Science in Engineering (A.S.E.).*

(1) An institution may award an Associate of Science in Engineering (A.S.E.) degree that:

(a) Meets the lower-level degree academic content, outcomes, and requirements for engineering education, similar to the first 2 years of a bachelor's parallel program in engineering education;

(b) Requires at least a 2.0 on a 4.0 grade scale in all courses required by the program in computer science, engineering, mathematics, and the physical and natural sciences; and

(c) If conferred, transfers without further review or course-by-course match by in-State 4-year public and participating independent institutions into a bachelor's parallel program, except that transfer students may be treated like non-transfer students with regard to semester credit hours earned through Advanced Placement (AP), International Baccalaureate (IB), and transcribed credits.

(2) The Commission shall convene a continuous review committee for each A.S.E. degree area, such as electrical engineering. Each continuous review committee shall be composed of faculty with relevant expertise in that area of study from in-State 2-year and 4-year public and independent institutions with approved engineering programs.

(3) Outcomes for each A.S.E. degree area shall be reviewed by the appropriate continuous review committee to ensure that outcomes are consistent with current standards. The committees shall meet at least once a year for the purpose of conducting this review.

(4) The president or president's designee of an in-State 4-year independent institution that wishes to participate in the Statewide articulation agreement shall submit a letter to the Secretary stating that the A.S.E. shall transfer to its institution without further review or course-by-course match, except that semester credit hours earned through Advanced Placement (AP), International Baccalaureate (IB), or transcribed credit, may be treated as they would be with non-transfer students at the institution.

*H. An institution may award a Bachelor of Arts (B.A.), Bachelor of Fine Arts (B.F.A.), or Bachelor of Science (B.S.) degree for successful completion of a program of 120 or more undergraduate semester credit hours.*

*I. Bachelor of Technical Studies (B.T.S.) or Bachelor of Professional Studies (B.P.S.).*

(1) An institution may award a Bachelor of Technical Studies (B.T.S.) or Bachelor of Professional Studies (B.P.S.) degree of at least 120 semester credit hours awarded for the successful completion of an A.A.S. degree, an advanced program of study in the designated area of concentration, and a three-credit internship related to the program.

(2) Under an articulated agreement, students who have completed an A.A.S. degree may obtain a Bachelor of Technical Studies or a Bachelor of Professional Studies in a related, specialized area of concentration at an institution with degree-granting authority in this State. The area of concentration shall be specified by the institution granting the Bachelor of Technical Studies or Bachelor of Professional Studies. The receiving institution shall accept not less than 60 semester credit hours and not more than 64 semester credit hours for the Associate of Applied Science (A.A.S.) degree.

(3) The Commission shall provide information on technical or professional fields that have graduated significant numbers of students and for which one or more community colleges request an articulated bachelor of technical or bachelor of professional studies degree. Institutions that wish to participate in developing a Bachelor of Technical Studies or Bachelor of Professional Studies shall meet and develop a memorandum of understanding. Participating institutions shall notify the Commission of their intent to develop the new degree program.

(4) A memorandum of understanding shall be drafted and agreed to by institutions. The memorandum of understanding shall address procedures for admissions, registration, advising, student services, financial aid, tuition, and faculty resources. Programmatic and degree requirements shall also be identified. The program shall include an internship which encompasses specific competencies and is a minimum of three credits. The program shall be made available at the principal location or other convenient locations, or both. The program may also be delivered through distance education.

(5) The memorandum of understanding shall be submitted instead of a program proposal.

*I. An institution may award a Master's Degree for successful completion of at least 30 semester credit hours or the equivalent of graduate-level courses.*

*J. An institution may award a Doctoral Degree for the highest level of formal collegiate study in a field, typically requiring successful completion of at least 60 semester credit hours or the equivalent at the graduate level, including completion of a dissertation, final project, or other form of culminating academic work.*

**[.23] .25 Certificate Programs.**

*A. The following certificates are available to institutions in this State, as approved in accordance with COMAR 13B.02.02.10.*

*B. An institution may award:*

(1) A lower division certificate for successful completion of at least 12 semester credit hours at the freshman or sophomore levels, or both.

(2) An upper division certificate for successful completion of at least 12 semester credit hours at the junior or senior levels, or both.

(3) A post-baccalaureate certificate for successful completion of at least 12 semester credit hours at the graduate or upper divisional level, the majority of which are at the master's or specialized postgraduate level.

(4) A post-master's certificate for successful completion of at least 12 semester credit hours of graduate study beyond the master's degree.

(5) A certificate of advanced study for successful completion of at least 30 semester credit hours of graduate study beyond the master's degree.

(6) A professional certificate for successful completion of the number of courses required by the appropriate national professional association.

**[A.] C. Directed Technology Certificates.**

(1) An institution may award a directed technology certificate for completion of a specialized learning program developed by the institution specifically for employer training needs at a closed site. A directed technology certificate is designed [for community colleges] as a sequence of courses that meets specific training objectives. Its purpose is to dramatically shorten the start-up time for credit training programs and to provide a useful credentialing function for those desiring a formal [college] award. The certificate may be awarded for successfully earning at least 12 [credits] semester credit hours, but no more than 24 [credits] semester credit hours.

(2) [The directed technology certificate is a specialized learning program developed by colleges specifically for employer training needs. A college] An institution shall provide a copy of the curriculum and evidence that:

(a) (text unchanged)

(b) The curriculum has been reviewed by the appropriate curriculum approval bodies at the [college] institution;

(c) — (d) (text unchanged)

(3) The Secretary may grant approval to offer or may recommend offering of a directed technology certificate program for a



period of [not more than] 3 years *and may renew the approval or recommendation after the third year on application by the institution.*

(4) [A request for approval to offer a directed technology certificate may be submitted at any time. A] *The president of the institution shall submit to the Secretary a letter of request [from the president of the college should be submitted to the Secretary which] that responds to the requirements of this regulation. The review [and approval] of a program proposal for a directed technology certificate shall be processed and a decision made within 30 days after it is submitted to the Secretary.*

[B. Certificate Programs in Existing Degree Areas. Certificate programs consisting exclusively of courses in existing degree programs may be offered by institutions following notice to the Secretary of the title of the certificate program and the associated program code number.]

[C.] *D. New Certificate in Existing Degree Programs.*

(1) [Proposals] *A program proposal for a new certificate [programs in areas other than either directed technology certificates or certificate programs in existing degree areas] in an existing degree program may be made in a brief, one-page document that:*

(a) — (d) (text unchanged)

[(2) Proposals will be reviewed by the Secretary within 30 days after submission. Proposals will be circulated among segments and institutions for comments. There will be a 30-day period allowed for comments.]

[(3)] (2) (text unchanged)

[(4)] (3) If the Secretary does not approve or [endorse] *recommend* [a certificate] *the* program proposal, the Secretary shall provide a written explanation of the reasons [for the disapproval].

[(5)] (4) Following the Secretary's decision on a proposed certificate program, an institution may elect to:

(a) Revise a proposal to address the Secretary's reasons for disapproval *or non-recommendation* and submit the revised proposal for reconsideration; or

(b) Have the matter reviewed by the Commission in accordance with the appeal procedure in Regulation [.25D] .27 of this chapter.

**[.24] .26 Health [Manpower] Occupation Shortage and Statewide Programs.**

A. Health [Manpower] Occupation Shortage Programs.

(1) Any student who is a resident of this State and enrolls at a community college in [an instructional] *a* program that the Commission has designated as a health [manpower] *occupation* shortage program, shall pay only the student tuition and fees payable by a resident of a county that supports the community college, and the Commission shall pay any applicable out-of-county fee.

(2) The Department of Health and Mental Hygiene shall determine which health occupations are in short supply in the State and report the determinations to the Commission. The Commission shall designate the eligible health [manpower] *occupation* shortage programs determined to be in short supply annually to the community colleges.

B. Statewide Programs.

(1) — (3) (text unchanged)

(4) The general criteria for Statewide designation [is based upon the] *are*:

(a) Maximization of student access to [instructional] programs;

(b) [Ability] *The ability* of the college to accommodate additional students;

(c) [Need] *The need* for additional students to sustain the program;

(d) [Unit] *The unit* cost of the program;

(e) [Uniqueness] *Uniqueness* of the program; and

(f) (text unchanged)

C. When limited funds are available, priority shall be given to programs that:

(1) Address designated health [manpower] *occupation* shortage areas;

(2) — (4) (text unchanged)

D. The designation of [an instructional] *a* program as Statewide does not preclude a *community* college from proposing the same program for its political subdivision. While the existence of the Statewide program shall be taken into account, the proposed program shall be evaluated on its merits, considering the number of job openings, student demand, and cost.

E. If the Secretary determines there is no longer a need for a program to be designated as health [manpower] *occupation* shortage or Statewide, the health [manpower] *occupation* shortage or Statewide program designation may be discontinued. In these cases, [institutions] *a community college* shall continue to receive reimbursement for the out-of-county differential for students already enrolled in the program.

**[.25] .27 Steps in the Program Review Process.**

[A. The two major steps in the review of program proposals are:

(1) Submission and review of a completed program proposal; and

(2) Review and final action by the Secretary of Higher Education.]

[B.] A. Submission [and Review] of a Program Proposal.

[(1) A proposal is a plan for implementing a program action submitted in the form and manner required by the Secretary.

(2) Proposals shall be approved or endorsed according to the procedures of the appropriate institutional or segmental governing boards before formal submission to the Secretary.

(3) The Secretary may not take action until the proposal is submitted officially by the appropriate governing board.]

(1) *If a proposed program can be implemented using existing resources, the program proposal may be submitted simultaneously to the institution's governing board and the Secretary. Otherwise, the program proposal will be approved by the appropriate governing board before submission to the Secretary.*

(2) *A program proposal from a public institution must provide documentation as required by Education Article, §11.206.1(c), Annotated Code of Maryland.*

[(4)] (3) Within 10 days after receipt of a *program* proposal, the Commission [staff]:

(a) [shall] *Shall* notify an institution of the status of the institution's proposal; and

(b) *May request documentation deemed to be missing or insufficient in response to the program review parameters.*

[(5)] (4) [The] A program proposal is not considered to be complete until the applicant submits supporting documentation requested by the Commission [staff].

[(6) Other than seeking clarification on technical matters, the Commission staff may not request a campus to conduct additional studies or request additional documentation.]

[(7)] (5) The submission of substantial supplemental information *beyond that requested by the Commission* may cause a program proposal to be changed significantly, and thereby cause the proposal to be considered a new submission, triggering another 60-day review.

[(8) The Secretary shall develop the information required for various types of program proposals and provide the information to an institution upon request.

(9) Immediately after receipt of a completed proposal, the Secretary shall inform all institutions and segments of the proposal. A 30 day period for comments and objections will be allowed.]

*B. Review of a Program Proposal.*

(1) *The Secretary shall review each program proposal according to the criteria for program review in Regulation .06 of this chapter and the delegation of the Commission authority in Regulation .04 of this chapter.*

(2) *Immediately after receipt of a completed program proposal, the Secretary shall:*

- (a) *Inform all institutions and segments of the proposal; and*
- (b) *Allow a 30-day period for comments and objections.*

(3) *The Secretary or an institution may file an objection to implementation of a proposed program if the objection is based on:*

- (a) *Inconsistency of the proposed program with the institution's approved mission;*
- (b) *Not meeting a regional or Statewide need consistent with the State Plan;*
- (c) *Unreasonable program duplication which would cause demonstrable harm to another institution; or*
- (d) *Violation of the State's equal educational opportunity obligations under State and federal law.*

(4) *If an objection is filed under §B(3) of this regulation, the Commission shall immediately notify the proposing institution's governing board and president.*

(5) *The Secretary shall determine that an institutional objection is justified if it is based upon the criteria in §B(3) of this regulation and is accompanied by detailed data and information supporting the reasons for the objection.*

(6) *The Secretary may request additional information from the proposing or objecting institutions.*

(7) *If the Secretary determines that an objection is justified under §B(5) of this regulation, the Secretary shall negotiate with the proposing institution's governing board and president, or designees, to modify the proposed program in order to resolve the objection.*

(8) *The Secretary may invite representatives of the objecting institution to any negotiations.*

(9) *If the objection cannot be resolved within 30 days of receipt of an objection, the Secretary shall make a final determination on the proposed new program unless the respective representatives of the proposing and objecting institutions agree to a longer negotiation period.*

(10) *The review shall be completed within 60 days of the date the Secretary determined that the program proposal was complete unless the deadline is extended with the agreement of the proposing institution.*

*C. [Review and] Final Action by the Secretary.*

(1) *Following the Commission staff's review of a completed proposal, the staff shall present their analysis and recommendation or recommendations to the Secretary.*

(2) *Favorable action on a completed program proposal by the Secretary constitutes final program approval, endorsement, and final degree authorization, if required.*

(3) *An institution shall implement an approved and endorsed program in accordance with the approved program proposal and the conditions set by the Secretary.*

(4) *The Secretary may request an institution to submit a progress report responding to the original proposal and any conditions which may be imposed.*

(5) *If the Secretary does not approve or endorse a program proposal, the Secretary shall provide a written explanation of the reasons for the disapproval.*

(6) *Following the Secretary's decision on a proposed program, an institution may elect to:*

- (a) *Revise a proposal to address the Secretary's reasons for disapproval and submit the revised proposal for reconsideration; or*
- (b) *Have the matter reviewed by the Commission in accordance with the appeal procedure in §D of this regulation.*

(7) *A revised, resubmitted program proposal is considered a new proposal for purposes of the statutory 60-day time frame for Commission action.]*

*(1) Favorable Action.*

(a) *Unless there is a request for a Commission review, favorable action by the Secretary on a completed program proposal constitutes final program approval or recommendation, and final degree authorization, if required.*

(b) *An institution shall implement an approved or recommended program in accordance with the approved program proposal and the conditions set by the Secretary.*

(c) *The Secretary may request an institution to submit a progress report responding to the original proposal and any conditions that may be imposed.*

*(2) Unfavorable Action.*

(a) *If the Secretary does not approve or recommend the program proposal, the Secretary shall provide a written explanation of the reasons for the disapproval or non-recommendation.*

(b) *Following the Secretary's decision, an institution may elect to:*

(i) *Revise the proposal to address the Secretary's reasons for disapproval or non-recommendation and submit the revised proposal for reconsideration; or*

(ii) *Have the matter reviewed by the Commission in accordance with Regulation .28 of this chapter.*

(c) *A revised, resubmitted program proposal is considered a new proposal for purposes of the statutory 60-day time frame for Commission action.*

*[D. Appeal Procedure.*

(1) *In the event of an appeal of the Secretary's approval or endorsement or denial of approval or endorsement for either a public or independent institution, the following procedures shall be followed:*

(a) *A letter of appeal from the chief executive officer of the appealing party shall be received by the Secretary within 30 days of receipt of the official notice of the Secretary's decision;*

(b) *The appealing party shall submit its full rationale in support of the appeal to the Commission, including:*

(i) *A summary of the justification for a review of the Secretary's decision, and*

(ii) *Any relevant supporting evidence; and*

(c) *Depending upon the Secretary's reasons for the decision, the information required by this section shall be placed on the agenda for the next regularly scheduled meeting of the Education Policy Committee, the Finance Policy Committee, or the full Commission. Upon request by the appealing party and proof of compelling circumstances, the Commission or Committee may schedule a hearing before its next regularly scheduled meeting.*

*(2) Testimony at Hearing.*

(a) *The Secretary shall designate a staff representative who shall have 15 minutes to present oral testimony in support of the Secretary's decision.*

(b) *The institution shall designate an institutional representative who shall have 15 minutes to present oral testimony in support of the institution's appeal.*

(c) *The staff representative may have 10 minutes to present rebuttal testimony upon completion of the institution's testimony.*

(d) *The institution may have 10 minutes to present rebuttal testimony upon completion of the staff representative's rebuttal.*

(3) *Testimony shall be directly related to the reasons for the Secretary's decision. In the appeal process, an institution shall present only that information, data, facts, and materials which clarify material contained in the original proposal and relate to the basis on which the program was approved or denied.*

(4) At the hearing, either party may present a written summary of the oral presentation, including relevant documents. Documentation provided by the institution shall be directly related to the criteria or deficiencies noted by the Secretary.

(5) The Commission members may ask questions of either party. Other testimony is not permitted, including testimony from other parties in support of or in opposition to the appeal, unless approval is specifically granted by the Chairman after receipt of a written request by a party to provide testimony or comment.

(6) Recommendation to the Commission When Hearing Is Conducted by Committee.

(a) Upon completion of the testimony, the Committee may adjourn to executive session as allowed by law to discuss the testimony received at the hearing, as well as any relevant documentation submitted by either party.

(b) After consideration of the appeal, but not later than 5 working days after the hearing, the Committee shall make a written recommendation to the Commission.

(7) Commission Action.

(a) At the next scheduled meeting of the Commission, the Commission shall receive and act upon a report from the chairman of the Committee on the appeal. The report shall include the Committee's recommendations and rationale for the recommendations.

(b) After an advance written request to the Chairman of the Commission, the chairman may permit an institution to present a statement in support of or in opposition to the recommendation of the Committee.

(c) The decision of the Commission is final and not subject to further review or appeal.

(8) Procedure When Hearing Is Conducted by the Commission.

(a) Upon completion of the testimony, the Commission may adjourn to executive session as allowed by law to discuss the testimony received at the hearing, as well as any relevant documentation submitted by either party.

(b) After consideration of the appeal, but not later than 5 working days after the hearing, the Commission shall send a final written decision to the appealing party.

(c) The decision of the Commission is final and not subject to further review or appeal.]

## **.28 Review by The Commission.**

### **A. Request for Review.**

(1) Subject to the requirements of §B of this regulation, the Commission shall review a decision of the Secretary on a program proposal at the request of the president of an institution as provided in this section.

(2) If the Secretary disapproves or does not recommend a program, the president of the proposing institution may ask the Commission to review the Secretary's decision.

(3) If the Secretary approves or recommends a program, the president of an institution that objected during the Secretary's review within the time frames established by this chapter may ask the Commission to review the Secretary's decision.

### **B. Prerequisites to Review.**

(1) The Commission shall accept a request for review of a decision of the Secretary on a program proposal, if the requirements of this section are met.

(2) Within 10 days of the issuance of the Secretary's decision, a president seeking the Commission's review of that decision shall send a letter to the Secretary and the Commission chairperson notifying the Commission of its request for a review.

(3) Within 30 days of the issuance of the Secretary's decision, a president seeking review shall submit to the Secretary and the

Commission chairperson its full rationale in support of its position, including any relevant supporting data.

(4) Unless the Commission finds that an exigent circumstance prevented a president from meeting the requirements of this section, the Commission may not accept a request for review of a decision of the Secretary on a program proposal if the requirements of this section are not met.

### **C. Secretary and Staff Responsibility.**

(1) Within 20 days of receipt of notice of the request for review, the Secretary or Commission staff shall submit to the Commission chairperson its rationale in support of the decision, including any relevant supporting data.

(2) A copy of the materials provided to the Commission shall be made available to any president seeking review.

### **D. Scheduling of Review Meeting.**

(1) The Commission chairperson shall schedule a meeting to review the decision of the Secretary within 60 days of the issuance of the Secretary's decision.

(2) If the Commission chairperson determines that there is sufficient time for the Commission to review the materials submitted under §§B and C of this regulation prior to the next regularly scheduled meeting, the review shall occur at that meeting.

(3) If the next regularly scheduled Commission meeting is scheduled more than 60 days after the issuance of the Secretary's decision or if the Commission chairperson determines that there is insufficient time for the Commission to review the materials prior to the next regularly scheduled Commission meeting, the Commission chairperson shall convene a special meeting at an appropriate time within the 60-day time period.

(4) With the consent of the Secretary and the president seeking review, the Commission chairperson may schedule the review meeting outside of the 60-day time period.

### **E. Conduct of the Review Meeting.**

(1) The Commission chairperson or the chairpersons' designee shall preside over the meeting.

(2) Not later than 3 working days before the Commission meeting, the Secretary and any president who wishes to make a presentation in support of or in opposition to the Secretary's decision shall inform the Commission chairperson of the name and title of each individual who will be speaking with or for them.

(3) The presentations shall include information, data, facts, and materials that clarify material contained in the original proposal or objection, and relate to the basis on which the program was approved or disapproved, or recommended or not recommended.

(4) The Secretary or president may provide the Commission with a written summary of the presentation and relevant documents.

(5) Any Commission member may ask questions during the presentations.

(6) If the number or length of the questions unreasonably consumes the time allotted in §§ F and G of this regulation for any presentation, the Commission chairperson may grant a request for additional time if the chairperson deems it appropriate or necessary.

### **F. Conduct of the Meeting When a Proposing Institution Has Sought Review.**

(1) When a President of a proposing institution has requested the review of the Secretary's disapproval or non-recommendation of a program, the presentations shall follow the order and the time limits set forth in this section.

(2) The Secretary shall make the first presentation and explain the Secretary's decision, including relevant supporting data. The Secretary may make the presentation alone or in combination with one or more others as determined by the Secretary.

(3) The president of the proposing institution shall explain the institution's objections to the decision, including relevant supporting

data. The president may make the presentation alone or in combination with one or more others as determined by the president.

(4) The Secretary and designees as determined by the Secretary may respond to the institution's presentation.

(5) The president and designees as determined by the president may respond to the Secretary's presentations.

(6) The Secretary shall have a total of 30 minutes for the Secretary's presentation, and may divide the time between the initial and responsive presentations as the Secretary deems appropriate.

(7) The president shall have a total of 30 minutes for the proposing institution's presentation, and may divide the time between the initial and responsive presentations as the president deems appropriate.

(8) The president of a proposing institution may select a chief executive officer of a segment as one of the presenter's during the president's 30 minute presentation.

(9) *Presentation by Objecting Institution.*

(a) Subject to the requirements of § E(2) of this regulation, a president of an institution that objected to the proposed program prior to the Secretary's decision within the time frames established by this chapter may make a presentation to the Commission.

(b) The presentation shall be limited to 10 minutes, and shall be made after the proposing institution's second presentation.

(c) The presentation shall be made by one or more individuals designated by the president, and may include the president and a chief executive officer of a segment.

(d) If more than one objecting institution is eligible to make a presentation, the Commission chairperson shall determine the order of the presentations and whether it would be helpful to the Commission to allow more than 10 minutes for all of the presentations.

*G. Conduct of Meeting When an Objecting Institution Has Sought Review.*

(1) When a president of an objecting institution has requested the review of the Secretary's approval or recommendation of a program, the presentations shall follow the order and the time limits set forth in this section.

(2) The Secretary shall make the first presentation and explain the Secretary's decision, including relevant supporting data. The Secretary may make the presentation alone or in combination with one or more others as determined by the Secretary.

(3) The president of the objecting institution shall explain the institution's objections to the decision, including relevant supporting data. The president may make the presentation alone or in combination with one or more others as determined by the president.

(4) The Secretary and designees as determined by the Secretary may respond to the institution's presentation.

(5) The president and designees as determined by the president may respond to the Secretary's presentations.

(6) The Secretary shall have a total of 30 minutes for the Secretary's presentation, and may divide the time between the initial and responsive presentations as the Secretary deems appropriate.

(7) The president shall have a total of 30 minutes for the presentation, and may divide the time between the initial and responsive presentations as the president deems appropriate.

(8) The president of an objecting institution may select a chief executive officer of a segment as one of the presenters during the president's 30 minute presentation.

(9) When there is more than one objecting institution, the Commission chairperson shall decide the order of the presentations and whether it would be helpful to the Commission to allow more than 30 minutes for all of the presentations.

(10) *Presentation by Proposing Institution.*

(a) Subject to the requirements of § E(2) of this regulation, the president of the proposing institution may make a presentation to the Commission.

(b) The presentation shall be limited to 10 minutes, and shall be made after each objecting institution's second presentation.

(c) The presentation shall be made by one or more individuals designated by the president, and may include the president and a chief executive officer of a segment.

*H. Conduct of Meeting When Both the Proposing and an Objecting Institution Have Sought Review.*

(1) If the Secretary disapproves or does not recommend a program and both the proposing and an objecting institution seek review, and objecting institution that has complied with the provisions of §§ B and E(2) of this regulation may follow the procedures for the proposing institution set forth in § F of this regulation.

(2) The objecting institution's presentations shall follow the proposing institution's first and second presentations as set forth in § F(3) and (5) of this regulation.

(3) If more than one objecting institution has sought review, the Commission chairperson shall determine the order of the presentations.

*I. Commission's Decision.*

(1) The Commission shall follow the procedures in this section in making its decision.

(2) Upon completion of the presentations, the Commission may adjourn to executive session as allowed by law to discuss the presentations and any relevant documentation submitted by the presenters.

(3) The Commission shall render a decision that is consistent with the requirements of this Chapter.

(4) After consideration, but not later than 10 working days after the review meeting, the Commission shall send a final written decision to the president with a copy to all presenting institutions, segments, and the Secretary.

(5) The decision of the Commission is final, and is not subject to reconsideration by the Commission or review by any administrative or judicial body.

(6) For purposes of the Administrative Procedure Act, the Commission's review under this chapter is not a contested case.

DANETTE G. HOWARD, Ph.D.  
Interim Secretary of Higher Education

## Title 14

# INDEPENDENT AGENCIES

## Subtitle 06 OFFICE OF THE PUBLIC DEFENDER

### 14.06.03 Eligibility for Services

Authority: [Article 27, §7] *Criminal Procedure Article, §16-210, Annotated Code of Maryland*

#### Notice of Proposed Action

[12-018-P]

The Office of the Public Defender proposes to amend Regulations .02, .05, and .07 under **COMAR 14.06.03 Eligibility for Services**.

#### Statement of Purpose

The purpose of this action is to align the regulations regarding the determination of eligibility for representation by the Office of the

Public Defender with the governing statute as amended in 2010 and 2011 (Criminal Procedure Article, §16-210, Annotated Code of Maryland), with the constitutions of the United States and Maryland, with the Maryland Declaration of Rights, and to comply with the ruling of the Maryland Court of Appeals in *OPD v. State*, 413 Md. 411 (2010).

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

The proposed action has no economic impact.

**Economic Impact on Small Businesses**

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

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Cynthia M. Boersma, General Counsel, Office of the Public Defender, 6 St. Paul Street, Suite 1400, Baltimore, MD 21202, or call 410-767-8474, or email to [mcheatham@opd.state.md.us](mailto:mcheatham@opd.state.md.us), or fax to 410-333-8496. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

**.02 Scope.**

A. The following regulations are established for the operation and administration of the office for the determination of eligibility for public defender services under the Public Defender Statute, [Article 27A, §7, Annotated Code of Maryland] *Criminal Procedure Article, §§16-207 and 16-210, Annotated Code of Maryland, and Office of the Public Defender v. State*, 413 Md. 411 (2010).

[B.] (proposed for repeal)

[C.] B. (text unchanged)

**.05 Determination of Eligibility for Services.**

A. Pursuant to [Article 27A, §7, Annotated Code of Maryland] *Criminal Procedure Article, §§16-207 and 16-210, Annotated Code of Maryland, and Office of the Public Defender v. State*, 413 Md. 411 (2010), eligibility for services of the Office of the Public Defender shall be determined on the basis of need of the individual seeking legal representation. Need [may be measured according to the applicant's maximum annual net income level and asset ceiling. In cases where good cause is shown, need may] *shall* be measured by the financial ability of the applicant to engage and compensate competent private counsel and to provide all other necessary expenses of representation *without undue financial hardship*. This ability shall be recognized to be a variable depending on:

(1) — (6) (text unchanged)

B. Persons seeking the services of the Office of the Public Defender shall fully disclose, under oath or affirmation, all financial assets, income, [and] living expenses, *and liabilities* by completing an Application for Public Defender Services Form which shall be supplied by the Office at a confidential eligibility interview and provide the office at the time of the interview with documentary evidence of all financial information as given on the application form.

C. (text unchanged)

D. [Maximum] Income Level.

(1) [Except as provided in §D(3) of this regulation, the maximum net annual income level for persons accepted for representation in District Court cases, violation of probation, and contempt proceedings may not exceed 100 percent of the current official federal poverty income guidelines as found in §673(2) of

OBRA—1981 (42 U.S.C. §9902(2))] *For an individual whose assets and net annual income are less than 100 percent of the federal poverty guidelines, eligibility for services of the Office may be determined without an assessment regarding the need of the applicant.*

[(2) Except as provided in §D(3) of this regulation, the maximum net annual income level for persons accepted for representation in all other cases may not exceed 110 percent of the current official federal poverty income guidelines as found in §673(2) of OBRA—1981 (42 U.S.C. §9902(2)).

(3) In cases where good cause is shown, a district public defender or division chief may exempt an applicant from the maximum income level requirement upon due consideration of factors enumerated in this regulation.]

[E. Asset Ceiling.]

[(1)] (2) (text unchanged)

[(2) Except as provided in §E(3) of this regulation, the maximum asset level for persons accepted for representation may not exceed the following:

(a) Applicant — \$1,500;

(b) Applicant and spouse — \$2,500;

(c) Each additional dependent — \$750.

(3) In cases where good cause is shown, a district public defender or division chief may exempt an applicant from the asset level requirement upon due consideration of factors enumerated in Regulation .05 of this chapter.]

**.07 Application for Public Defender Services.**

A. (text unchanged)

B. Administrative Fee.

(1) — (3) (text unchanged)

(4) *The administrative fee does not apply to applicants who are minors or to applicants for representation related to confinement in a public or private mental health institution.*

PAUL B. DEWOLFE  
Public Defender

## Title 26 DEPARTMENT OF THE ENVIRONMENT

### Subtitle 08 WATER POLLUTION

#### 26.08.02 Water Quality

Authority: Environment Article, §§9-303.1, 9-313 — 9-316, 9-319, 9-320 — 9-325, 9-327, and 9-328, Annotated Code of Maryland

#### Notice of Proposed Action

[12-021-P]

The Secretary of the Environment proposes to amend Regulation .03-3 under **COMAR 26.08.02 Water Quality**.

#### Statement of Purpose

The purpose of this action is to revise water quality standards. The Department's review of water quality standards regulations revealed necessary amendments and additions to the regulations.

(1) Establish a 2% restoration variance for the Eastern Bay Mesohaline (EASMH) segment.

(2) Increase the restoration variance for the Lower Chester River Mesohaline (CHSMH) from 14% to 16% non-attainment by volume and duration and move (recodify) this subparagraph to the appropriate paragraph.

A technical support document for this action can be found in the "Special Documents" section of this edition of the Maryland Register.

#### Background

The Clean Water Act requires that States review their water quality standards at least every 3 years (Triennial Review) and revise the standards as necessary. The water quality standards consist of three parts:

(1) A designated use that set goals for a water body: Examples are support of aquatic life, drinking water supply, or a coldwater fishery such as trout.

(2) Criteria that support the designated uses: There are numerous criteria for chemical substances, bacteria, acidity, and physical characteristics such as temperature. Examples include dissolved oxygen sufficient to support aquatic life or metals in sufficiently low concentrations that they will not interfere with aquatic life.

(3) An antidegradation policy: Maryland has a policy in place, but updates the list of high quality waters as necessary.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

**I. Summary of Economic Impact.** The proposed action will reduce the need for reductions of nitrogen, phosphorus, and sediment loads to the Chesapeake Bay by 4,000,000 pounds. The cost of those reductions has not been calculated, nor has the allocation of some portion of those pounds to Maryland, but this will result in a significant savings for all of the jurisdictions in the Chesapeake Bay drainage, including Maryland.

#### II. Types of Economic Impact.

	Revenue (R+/R-)	
		Expenditure (E+/E-) Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E-)	Significant
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Various
E. On other industries or trade groups:	(+)	Various
F. Direct and indirect effects on public:	(+)	Various

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

C.—F. The proposed action will reduce the need for reductions of nitrogen, phosphorus, and sediment loads to the Chesapeake Bay by 4,000,000 pounds. Much of these reductions would be required through enhancements of local WWTP, stormwater programs, septic system upgrades, and increased implementation of agricultural best management practices. Reduced reductions implies reduced cost for implementation.

#### 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 John Backus, Chief, Water Quality Standards Section, Maryland Department of the Environment, 1800 Washington Blvd Baltimore, MD 21114, or call 410-537-3965, or email to jbackus@mde.state.md.us, or fax to 410-537-3998. Comments will be accepted through February 13, 2012.

An informational public meeting will be held at MDE Headquarters on January 26, 2012, at 2 p.m.

Montgomery Business Park  
1800 Washington Blvd.  
Baltimore, MD 21230

Please notify John Backus if you plan to attend.

#### .03-3 Water Quality Criteria Specific to Designated Uses.

A.—B. (text unchanged)

C. Criteria for Use II Waters—Support of Estuarine and Marine Aquatic Life and Shellfish Harvesting.

(1)—(7) (text unchanged)

(8) Dissolved Oxygen Criteria for Use II Waters.

(a)—(d) (text unchanged)

(e) Seasonal Deep-Water Fish and Shellfish Subcategory.

The dissolved oxygen concentrations in areas designated as seasonal deep-water fish and shellfish subcategory shall be:

(i)—(iv) (text unchanged)

(v) For the dissolved oxygen criteria restoration variance for Chesapeake Bay Mainstem Segment 4 mesohaline (CB4MH) seasonal deep-water fish and shellfish subcategory, not lower for dissolved oxygen in segment CB4MH than the stated criteria for the seasonal deep-water seasonal fish and shellfish use for more than 7 percent spatially and temporally (in combination), from June 1 to September 30; and

(vi) For dissolved oxygen criteria restoration variance for Patapsco River mesohaline (PATMH) seasonal deep-water fish and shellfish subcategory, not lower for dissolved oxygen in segment PATMH than the stated criteria for the deep-water seasonal fish and shellfish use for more than 7 percent spatially and temporally (in combination), from June 1 to September 30; and].

[(vii) For the dissolved oxygen criteria restoration variance for Lower Chester River Mesohaline (CHSMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in segment CHSMH than the stated criteria for the seasonal deep-channel refuge use for more than 14 percent spatially and temporally (in combination), from June 1 to September 30.]

(f) Seasonal Deep-Channel Refuge Subcategory. The dissolved oxygen concentrations in areas designated as deep-channel seasonal refuge use shall be:

(i) Greater than or equal to 1.0 milligrams/liter as an instantaneous minimum from June 1 through September 30 except for Chesapeake Bay segments subject to variances;

(ii) For dissolved oxygen criteria restoration variance for Chesapeake Bay Mainstem Segment 4 mesohaline (CB4MH) deep-channel refuge subcategory, not lower for dissolved oxygen in segment CB4MH than the stated criteria for the seasonal deep-channel refuge for more than 2 percent spatially or temporally (in combination), from June 1 to September 30; [and]

(iii) For the dissolved oxygen criteria restoration variance for Lower Chester River Mesohaline (CHSMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in

*segment CHSMH than the stated criteria for the seasonal deep-channel refuge use for more than 16 percent spatially and temporally (in combination), from June 1 to September 30;*

*(iv) For the dissolved oxygen criteria restoration variance for Eastern Bay Mesohaline (EASMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in segment EASMH than the stated criteria for the seasonal deep-channel refuge use for more than 2 percent spatially and temporally (in combination), from June 1 to September 30; and*

[(iii)] (v) The same as for the open-water fish and shellfish subcategory from October 1 to May 31.

(g)—(h) (text unchanged)

(9)—(11) (text unchanged)

C-1.—H. (text unchanged)

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

## Title 30

# MARYLAND INSTITUTE FOR EMERGENCY MEDICAL SERVICES SYSTEMS (MIEMSS)

### Subtitle 01 GENERAL

#### 30.01.02 Documents Incorporated by Reference

Authority: Education Article §13-516, Annotated Code of Maryland

##### Notice of Proposed Action

[12-022-P-I]

The State Emergency Medical Services Board proposes to amend Regulation **.01** under **COMAR 30.01.02 Documents Incorporated by Reference**. This action was considered and approved by the State Emergency Medical Services Board at its regular meeting on July 12, 2011, notice of which was given by publication in 38:14 Md. R. 871 (July 1, 2011), under State Government Article, §10-506(c), Annotated Code of Maryland.

##### Statement of Purpose

The purpose of this action is to incorporate by reference the current Maryland Medical Protocols for Emergency Medical Services Providers and Maryland Trauma Registry Data Dictionaries and to provide a current phone number for questions.

##### 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 E. Fremont Magee, Assistant Attorney General, Maryland Institute for Emergency Medical Services Systems, 653 West Pratt Street, Baltimore, Maryland 21201, or call

410-706-8531, or email to [fmagee@miemss.org](mailto:fmagee@miemss.org), or fax to 410-706-2138. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

##### Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, Maryland Medical Protocols for Emergency Medical Services Providers (MIEMSS July 12, 2011 Edition), Maryland State Trauma Registry Data Dictionary For Adult Patients (MIEMSS July 11, 2011 Edition), and Maryland State Trauma Registry Data Dictionary For Pediatric Patients (MIEMSS July 11, 2011 Edition) have been declared documents generally available to the public and appropriate for incorporation by reference. For this reason, they will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of these documents are filed in special public depositories located throughout the State. A list of these depositories was published in 38:3 Md. R. 145 (January 28, 2011), and is available online at [www.dsd.state.md.us](http://www.dsd.state.md.us). These documents may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

##### **.01 Incorporation by Reference.**

A. (text unchanged)

B. Documents Incorporated.

(1) "Maryland Medical Protocols for Emergency Medical Services Providers (MIEMSS July [1, 2009] 12, 2011 Edition)". This document can be obtained through the Maryland Institute for Emergency Medical Services Systems at 653 W. Pratt Street, Baltimore, Maryland 21201 ([1-800-762-7157] 410-706-4449).

(2) "Maryland State Trauma Registry Data Dictionary For Adult Patients (MIEMSS [October 27, 2008] July 11, 2011 Edition)". This document can be obtained through the Maryland Institute for Emergency Medical Services Systems at 653 W. Pratt Street, Baltimore, Maryland 21201 ([1-800-762-7157] 410-706-4449).

(3) "Maryland State Trauma Registry Data Dictionary For Pediatric Patients (MIEMSS [October 27, 2008] July 11, 2011 Edition)". This document can be obtained through the Maryland Institute for Emergency Medical Services Systems at 653 W. Pratt Street, Baltimore, Maryland 21201 ([1-800-762-7157] 410-706-4449).

ROBERT R. BASS, M.D.  
Executive Director

Maryland Institute for Emergency Medical Services Systems

# **Title 31 MARYLAND INSURANCE ADMINISTRATION**

## **Subtitle 05 ASSETS, LIABILITIES, RESERVES, AND INVESTMENTS OF INSURERS**

### **31.05.01 Annual Actuarial Opinion and Memorandum**

Authority: Insurance Article, §§2-109(a)(1), 4-116, 5-103, 5-201, 8-444, and 14-121, Annotated Code of Maryland

#### **Notice of Proposed Action**

[12-020-P]

The Insurance Commissioner proposes to amend Regulation .06 under **COMAR 31.05.01 Annual Actuarial Opinion and Memorandum**.

#### **Statement of Purpose**

The purpose of this action is to amend COMAR 31.05.01.06 to make it consistent with accreditation standards established by the National Association of Insurance Commissioners (NAIC). COMAR 31.05.01 applies to all life insurance companies and fraternal benefits societies authorized to write or reinsure business in Maryland. COMAR 31.05.01 establishes the requirements for the annual actuarial opinions and actuarial memorandums to be prepared by each company's appointed actuary relating to the reserves of the company, and filed with the Commissioner as part of the company's annual statements pursuant to Insurance Article, §5-201, Annotated Code of Maryland. COMAR 31.05.01.06 details the requirements of the actuarial memorandum to be filed. The language added by this amendment, developed by the NAIC, gives an example of the type of information that may be of significant concern to the appointed actuary relating to reserves.

#### **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 Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to [klawhorn@mdinsurance.state.md.us](mailto:klawhorn@mdinsurance.state.md.us), or fax to 410-468-2020. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.

### **.06 Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.**

A. — C. (text unchanged)

D. Details of the Regulatory Asset Adequacy Issues Summary.

(1) The regulatory asset adequacy issues summary shall include:

(a) — (c) (text unchanged)

(d) Comments on any interim results that may be of significant concern to the appointed actuary[.], *for example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;*

(e) — (f) (text unchanged)

(2) (text unchanged)

E. — G. (text unchanged)

THERESE M. GOLDSMITH  
Insurance Commissioner

## **Subtitle 12 HEALTH MAINTENANCE ORGANIZATIONS; ENTITIES THAT ACT AS HEALTH INSURERS**

### **31.12.01 Health Maintenance Organizations — Certificate of Authority and Fiscal Requirements**

Authority: Health-General Article, §§19-705(a) and 19-728, Annotated Code of Maryland

#### **Notice of Proposed Action**

[12-001-P]

The Insurance Commissioner proposes to amend Regulation .12 under **COMAR 31.12.01 Health Maintenance Organizations—Certificate of Authority and Fiscal Requirements**.

#### **Statement of Purpose**

The purpose of this action is to amend COMAR 31.12.01.12 to conform it with the current version of Insurance Article, §2-205 (b)(2), Annotated Code of Maryland, and Health-General Article, §19-706 (qq), Annotated Code of Maryland. The statutes require the Commissioner to examine each health maintenance organization at least once every 5 years. Prior to May 11, 2000, the statutory requirement was once every 3 years. This amendment conforms COMAR 31.12.01.12 to the current 5-year time frame within which the Commissioner must conduct financial examinations of health maintenance organizations.

#### **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 Katrina Lawhorn, Regulations Coordinator, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, or call 410-468-2450, or email to [klawhorn@mdinsurance.state.md.us](mailto:klawhorn@mdinsurance.state.md.us), or fax to 410-468-2020. Comments will be accepted through February 13, 2012. A public hearing has not been scheduled.



**.12 Fiscal Examination.**

A. The Commissioner may make an examination of the operation of any health maintenance organization as often as the Commissioner deems necessary for the protection of the interest of the people of Maryland, but the examinations may not be less frequent than once every [3] 5 years.

B. (text unchanged)

THERESE M. GOLDSMITH  
Insurance Commissioner

# Errata

## COMAR 10.24.17

At 38:27 Md. R. 1775 (December 30, 2011), column 2, lines 12 and 13 from the bottom:

For: JOSHUA M. SHARFSTEIN, M.D.  
Secretary of Health and Mental Hygiene  
Read: MARILYN MOON, Ph.D.  
Chair  
Maryland Health Care Commission  
[12-01-49]

## COMAR 27.01.09

At 38:26 Md. R. 1742 (December 30, 2011), column 1, lines 10 and 11 from the bottom:

For: (iv) In accordance with Regulation .01-3B of this chapter;  
or  
Read: (iv) *In accordance with Regulation .01-3B of this chapter; or*

At 38:26 Md. R. 1742 (December 30, 2011), column 2, line 1 from the bottom:

For: forested or is not fully established in existing, *naturally occurring*  
  
Read: forested or is not fully established in *existing, naturally occurring*

At 38:26 Md. R. 1744 (December 30, 2011), column 1, lines 14 — 22 from the top:

For:

Total Mitigation Requirement	Options
Less than 1 acre	Landscaping stock according to §L of this regulation for the entire area
1 acre or greater	At least 50 percent of area in landscaping stock according to §L of this regulation, with the remainder according to §N of this regulation

Read:

<i>Total Mitigation Requirement</i>	<i>Options</i>
<i>Less than 1 acre</i>	<i>Landscaping stock according to §L of this regulation for the entire area</i>
<i>1 acre or greater</i>	<i>At least 50 percent of area in landscaping stock according to §L of this regulation, with the remainder according to §N of this regulation</i>

[12-01-50]

# Special Documents

## DEPARTMENT OF THE ENVIRONMENT

**NOTE:** The following document is provided as a technical reference to the amendments to water quality standards regulations (COMAR 26.08.02.03-3) proposed in this issue of the Maryland Register.

### **Technical Documentation of the Evaluation of the Lower Chester River's and the Eastern Bay's Deep-Channel Designated Uses Non-attainment of Existing Dissolved Oxygen Criteria at the Bay TMDL Level of Effort Loads**

#### **Background**

EPA identified that there were only two tidal segments—the deep channels of the lower Chester River and Eastern Bay—where the Bay water quality model did not show attainment of applicable dissolved oxygen standards at loading levels consistent with the existing Bay TMDL (191.57 million pounds nitrogen and 14.55 million pounds phosphorus) (“Bay TMDL Level of Effort”). At that Bay TMDL Level of Effort, the updated Bay water quality model showed achievement of applicable water quality standards in the rest of the Bay’s tidal waters. Based on EPA’s reexamination of the current and past modeling results, as well as other lines of evidence (e.g., analysis of long term monitoring data, hydrodynamics and bathymetry), EPA believes that the August 1, 2011 Phase II revised target allocations are adequate to restore the designated water uses and achieve applicable water quality standards.

#### **Draft Target Allocations—Jurisdiction Feedback**

On June 20, 2011, EPA proposed 2011 target allocations of 187.25 million pounds nitrogen and 14.16 million pounds phosphorus (U.S. EPA 2011c). EPA received detailed feedback from the seven watershed jurisdictions on the proposed allocations. Based on EPA’s review of the jurisdictions feedback and the results of the analyses described here, EPA distributed Phase II revised target allocations totaling 191.57 million pounds nitrogen and 14.55 million pounds phosphorus to the seven watershed jurisdictions on August 1, 2011 (U.S. EPA 2011b). Those allocations were the expression of the existing Bay TMDL basin allocations run through the updated Bay Model Version 5.3.2 (“Bay TMDL Level of Effort or LOE”).

#### **Non-Attaining Segments at Bay TMDL LOE**

EPA identified that there are only two tidal segments—the deep channels of the lower Chester River and Eastern Bay—where the Bay water quality model did not show attainment of applicable existing dissolved oxygen standards at loading levels consistent with the existing Bay TMDL (191.57 million pounds nitrogen and 14.55 million pounds phosphorus) (“Bay TMDL Level of Effort or LOE”). At that Bay TMDL level of effort, the updated Bay water quality model shows achievement of applicable water quality standards in the rest of the Bay’s tidal waters. Based on EPA’s reexamination of the current and recent past modeling results, as well as other lines of evidence (e.g., analysis of long term monitoring data, hydrodynamics and bathymetry), EPA believes that the final target allocations are adequate to restore the designated water uses and achieve applicable water quality standards.

During development of the Bay TMDL in 2009 and 2010, EPA and its seven jurisdictional partners did not see evidence of an unacceptable level of non-attainment in the Eastern Bay based on results from the prior versions of the Bay models at the Bay TMDL level of nutrient load reductions. With the lower Chester River deep-channel and middle Maryland Bay deep-water and deep-channel variances in place, EPA determined in 2010 that the allocations provided in the December 29, 2010 Chesapeake Bay TMDL would achieve the applicable water quality standards in the lower Chester River, Eastern Bay as well as the rest of the Bay’s tidal waters (USEPA 2011a).

#### **Lower Chester River's Deep Channel Designated Use Segment**

The implementing regulations of the Clean Water Act provide tools for states to redesignate certain beneficial uses in waters for which specific designated uses may not be attainable now or in the future. Maryland, as well as other states, have made such several such redesignations that EPA approved. In Maryland, a restoration variance is the allowable exceedance of a specific water quality criteria based on the best available scientific understanding consistent with Clean Water Act requirements. Restoration variances are temporary and are reviewed at a minimum of every three years, as required by the Clean Water Act and EPA regulations, and may be modified based on new scientific findings.

In 2010, Maryland adopted (and EPA approved) a restoration variance of 14 percent for the lower Chester River’s deep channel designated use habitat that recognized that the dissolved oxygen criteria would be achieved only 86 percent of the combined summer time and volume in the lower river’s deep channel (COMAR 26.08.02.03-3(c)(8)(e)(vi)). That restoration variance is Maryland’s determination of the appropriate uses reflecting the best scientific understanding of the dissolved oxygen conditions which could be achieved in the deepest section of the tidal river and a level of pollutant reductions based upon a use attainability analysis.

Based on application of the partnership’s updated Bay models, EPA believes these same physical conditions present in the lower Chester River’s deep channel still prevent full attainment of Maryland’s applicable dissolved oxygen standard, but the updated Bay models are representing that nonattainment at a slightly higher level (16%) (Table 1).

**Table 1.** Chesapeake Bay Water Quality Model simulated dissolved oxygen criteria percent space/time non-attainment for the lower Chester River segment's deep-channel designated use across different nitrogen loading scenarios.

<b>Nitrogen Load</b> (millions lbs/yr)	318	196	194	193	191	190	189	188	187	184
<b>Percent Non-attainment</b>	16%	16%	16%	16%	16%	16%	16%	16%	15%	15%

Source: U.S. EPA Chesapeake Bay Program Office.

Upon reexamination of these modeling results, EPA believes that reasonable further nutrient load reductions would not result in more attainment of Maryland's dissolved oxygen standard in this deepest portion of the lower Chester River than would the August 1, 2011 Phase II revised target allocations based on the Bay TMDL level of effort. In other words, EPA believes the August 1, 2011 Phase II revised target allocations are adequate to restore the designated water uses in the lower Chester River's deep channel as well as the rest of the Bay.

#### **Eastern Bay's Deep Channel Designated Use Segment**

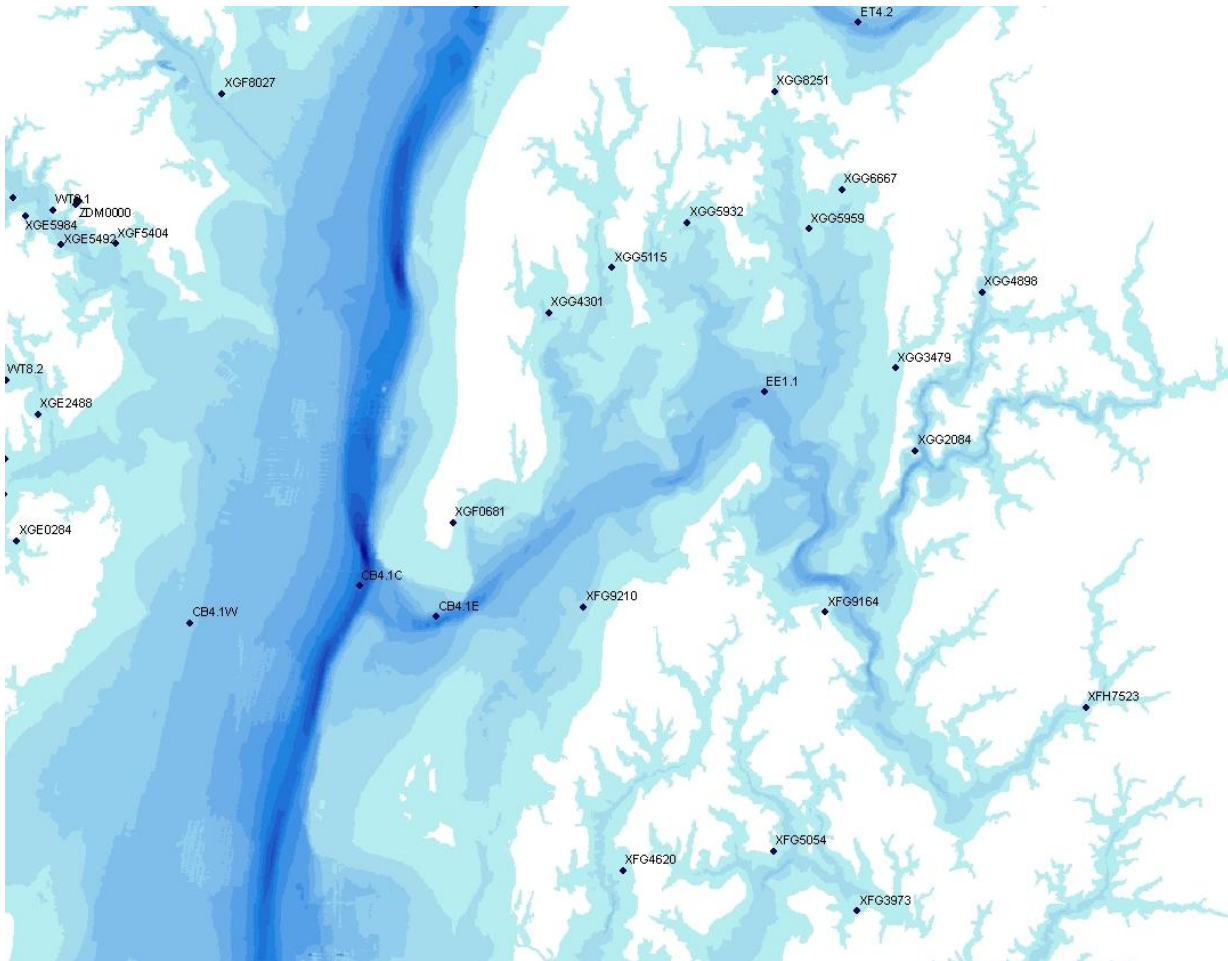
At the nutrient loading levels resulting from applying the Bay TMDL's level of effort across the entire Bay watershed, the updated Bay water quality model indicated that the deep channel leading into Eastern Bay was at 2 percent non-attainment of Maryland's applicable dissolved oxygen standard (Table 2). EPA has evaluated the hydrodynamic, water quality, and bathymetric connections between the mainstem Bay and Eastern Bay through the shared deep channel and arrived at the following conclusions.

**Table 2.** Chesapeake Bay Water Quality Model simulated dissolved oxygen criteria percent space/time non-attainment for Eastern Bay's deep-water and deep-channel designated uses across different nitrogen loading scenarios.

<b>Nitrogen Load</b> (millions lbs/yr)	318	196	194	193	191	190	189	188	187	184
<b>% Non-attainment deep-water</b>	6%	1%	1%	1%	1%	1%	1%	1%	1%	1%
<b>% Non-attainment deep-channel</b>	39%	4%	3%	2%	2%	2%	2%	2%	1%	1%

Source: U.S. EPA Chesapeake Bay Program Office.

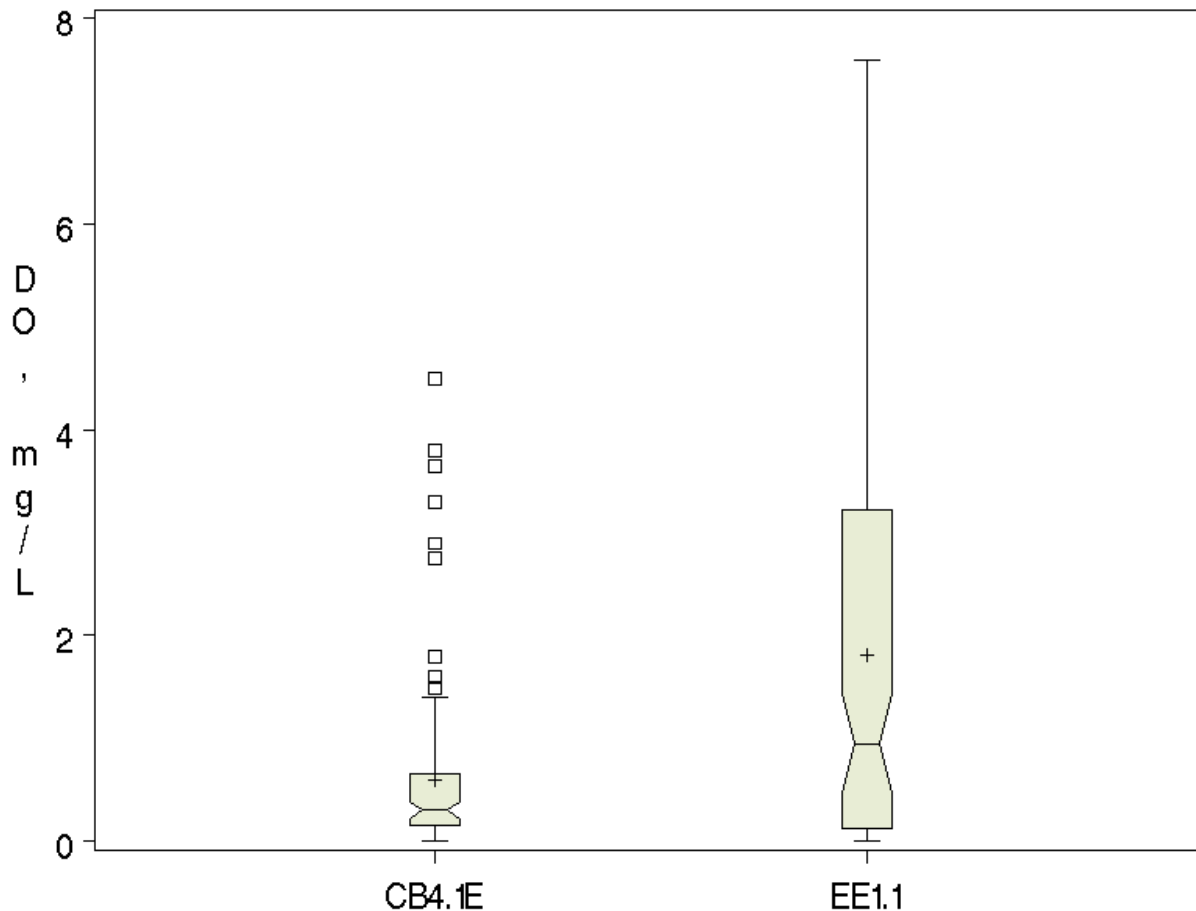
The deep channel running up into the mouth of Eastern Bay is a natural extension from the adjacent mainstem Chesapeake Bay deep shipping channel (Figure 1). Dissolved oxygen levels within this shared deep channel are governed by water quality conditions in the adjacent Chesapeake Bay mainstem not Eastern Bay. Clear evidence of this fact is illustrated below in an evaluation of Chesapeake Bay water quality monitoring data conducted by Maryland Department of Natural Resources (Bill Romano, Maryland Department of Natural Resources, personal communication).



**Figure 1.** Bottom bathymetry in the middle Chesapeake Bay and the adjacent Eastern Bay, with the darker blue colors illustrating deeper depths and channels.

Source: U.S. EPA Chesapeake Bay Program Office GIS Team.

Mean monthly summer (June-September) bottom dissolved oxygen concentration data from 1985-2010 were compared for the station characterizing the “elbow” the deep channel—CB4.1E—where it first extends southeast from the middle Bay mainstem channel then up into Eastern Bay and station EE1.1 located in the middle of Eastern Bay (Figure 1). The 103 bottom dissolved oxygen concentrations measured at station CB4.1E over the past 26 years had a mean of 0.6 mg/L, with 90 percent of the observations below 1.5 mg/L (Figure 2)(Personal Communication, Bill Romano, Maryland Department of Natural Resources). Whereas station EE1.1, with 104 individual observations, had a mean of 1.8 mg/L with 90 percent of the observations below 5.1 mg/L (Figure 2). Based on further examination of the univariate statistics, these two stations clearly characterize different bottom water habitats (Appendix A).



**Figure 2.** Mean monthly summer (June-September) bottom dissolved oxygen concentration data from 1985-2010 for stations CB4.1E (located in the middle mainstem Bay, lower deep channel) and EE1.1 located in the middle of Eastern Bay (see Figure 1 for actual locations).

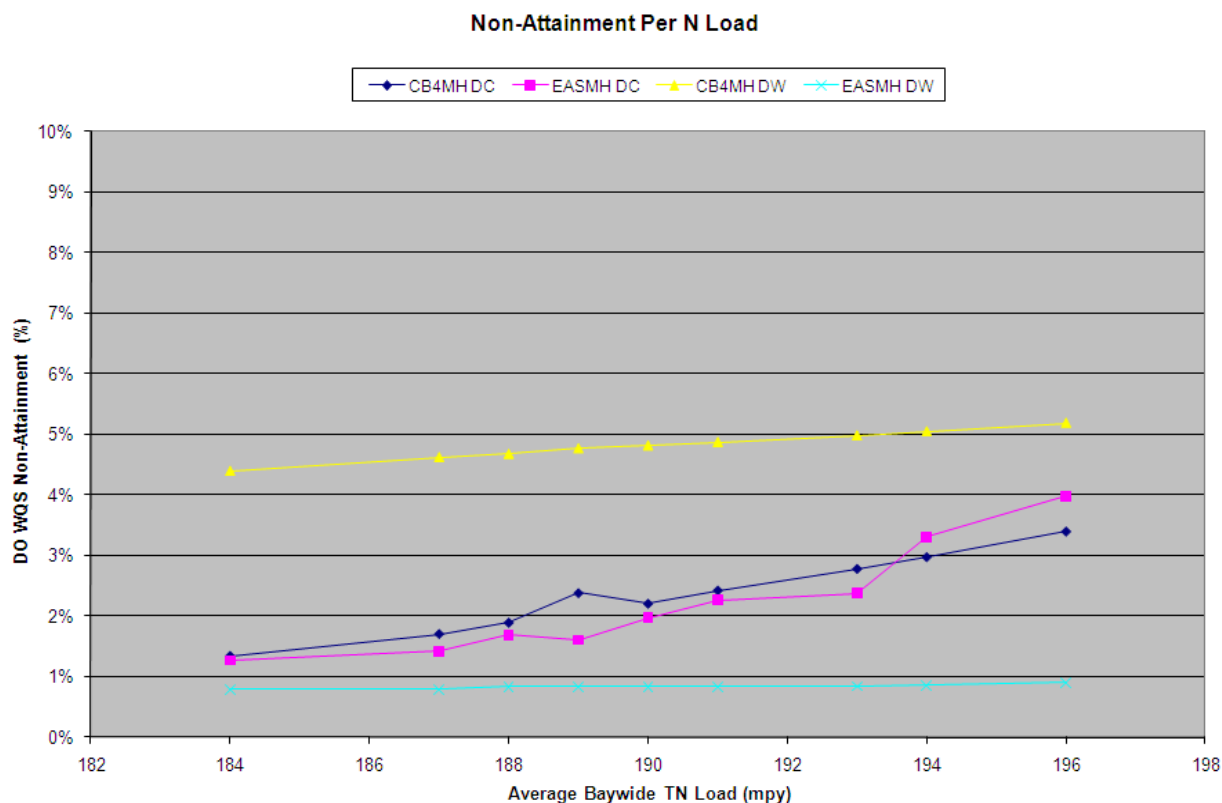
Source: Bill Romano, Maryland Department of Natural Resources.

The only reason this portion of the deep channel is considered part of the Eastern Bay segment is the artificial segment boundary based on the 'mouth' of Eastern Bay (see page 20, Figure 4 in U.S. EPA 2004).

Similar to the restoration variance Maryland adopted for the lower Chester River deep-channel designated use, in 2005 Maryland adopted (and EPA approved) a restoration variance for the deep-water and deep-channel designated uses of this middle section of the Maryland's portion of Chesapeake Bay (CB4MH) (COMAR 26.08.02.03-3(c)(8)(e)(vi)). This segment's deep-channel restoration variance was set at 2 percent. Given the water quality conditions within deep channel running up into the mouth of Eastern Bay are governed by adjacent mainstem Chesapeake Bay deep shipping channel, this entire contiguous deep channel habitat should be considered a natural extension of the deep-channel which starts in Maryland's Chesapeake Bay mainstem segment CB4MH (see Figure 1).

Based on the Maryland Department of Natural Resources analyses, the water column within the central portion of Eastern Bay characterized by water quality monitoring station EE1.1 reflects a different set of dissolved oxygen conditions (Figure 2). This deep-water designated use habitat comes into full attainment at the Bay TMDL LOE (Table 2).

Further evidence for treating the deep-channel within Eastern Bay as a part of the larger contiguous deep-channel extending eastward from the mainstem channel is provided in Figure 3. In a graphic relating the percent non-attainment of the applicable dissolved oxygen criteria to average basinwide total nitrogen load, the deep-channel designated uses in both segments CB4MH and EASMH have very similar patterns of non-attainment with increasing nitrogen loads. However, in the case of the deep-water designated uses, the two segments follow different patterns, with EASMH's non-attainment remaining below 1 percent over the 12 million pounds per year change in nitrogen loads and CB4MH's non-attainment between 4 to 5 percent over the same range of loads.



**Figure 3.** Percent non-attainment of the applicable dissolved oxygen criteria across average baywide total nitrogen load (million pounds per year) for segments CB4MH and EASMH deep-water and deep-channel designated uses.

Source: U.S. EPA Chesapeake Bay Program Office.

### Findings

In the lower Chester River deep channel, EPA believes the additional nutrient load reductions as provided in the June 20, 2011 proposed target allocations would not result in more attainment of the dissolved oxygen standard in the deepest portion of the river.

For the Eastern Bay deep channel, based on comments from New York and Maryland, EPA further evaluated the water quality connection through the shared deep channel between Chesapeake Bay and the Eastern Bay. Part of that reevaluation included consideration of how past Bay water quality modeling results and the bay bottom bathymetry represented the dynamics of nutrients and dissolved oxygen in the deepest waters. This was because the Eastern Bay deep channel attained water quality standards under the prior versions of the Chesapeake Bay models. Given the water quality conditions within deep channel running up into the mouth of Eastern Bay are governed by adjacent mainstem Chesapeake Bay deep shipping channel, this contiguous deep channel habitat should be considered a natural extension of the deep-channel which starts in Maryland's Chesapeake Bay mainstem segment CB4MH.

Based on a review of several lines of evidence (including current and recent past modeling as well as analysis of monitoring data), EPA believes that the August 1, 2011 Phase II revised target allocations are adequate to restore the designated water uses and achieve applicable water quality standards (USEPA 2011b).

### Literature Cited

USEPA (U.S. Environmental Protection Agency). 2004. *Chesapeake Bay Program Analytical Segmentation Scheme: Revisions, Decisions and Rationales 1983–2003*. EPA 903-R-04-008. CBP/TRS 268/04. U.S. Environmental Protection Agency, Region 3, Chesapeake Bay Program Office, Annapolis, MD.

USEPA (U.S. Environmental Protection Agency). 2011a. Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment—Established by the U.S. Environmental Protection Agency. Philadelphia, PA.

USEPA (U.S. Environmental Protection Agency). 2011b. Letter from Region 3 Administrator Shawn M. Garvin to Secretary Robert Summers, Maryland Department of the Environment, August 1, 2011.

USEPA (U.S. Environmental Protection Agency). 2011c. Letter from Region 3 Administrator Shawn M. Garvin to Secretary Robert Summers, Maryland Department of the Environment, June 20, 2011.

**Appendix A.**  
Univariate Statistics from the Analysis of Mean Monthly  
Summer Bottom/12 Meter Depth Dissolved Oxygen at  
Three Stations



*Univariate statistics for mean monthly summer bottom DO at EE1.1  
and a 12 meter depth for CB4.1C and CB4.1E (1985-2010 data)*

The UNIVARIATE Procedure

Variable: DO

STATION=CB4.1C

Moments			
N	103	Sum Weights	103
Mean	1.75286408	Sum Observations	180.545
Std Deviation	1.62880153	Variance	2.65299441
Skewness	1.22384494	Kurtosis	1.10695647
Uncorrected SS	587.076275	Corrected SS	270.60543
Coeff Variation	92.9222948	Std Error Mean	0.16049058

Basic Statistical Measures			
Location		Variability	
Mean	1.752864	Std Deviation	1.62880
Median	1.350000	Variance	2.65299
Mode	0.500000	Range	7.40000
		Interquartile Range	2.20000

Tests for Location: Mu0=0				
Test	Statistic		p Value	
Student's t	t	10.92191	Pr >  t	<.0001
Sign	M	50	Pr >=  M	<.0001
Signed Rank	S	2525	Pr >=  S	<.0001

Quantiles (Definition 5)	
Quantile	Estimate
100% Max	7.40
99%	6.00
95%	5.10
90%	4.25
75% Q3	2.60
50% Median	1.35
25% Q1	0.40
10%	0.15
5%	0.10
1%	0.00
0% Min	0.00

*Univariate statistics for mean monthly summer bottom DO at EE1.1  
and a 12 meter depth for CB4.1C and CB4.1E (1985-2010 data)*

*The UNIVARIATE Procedure*  
Variable: DO

STATION=CB4.1C

Extreme Observations			
Lowest		Highest	
Value	Obs	Value	Obs
0.00	42	5.6	72
0.00	26	5.6	80
0.00	18	5.8	103
0.05	47	6.0	36
0.10	65	7.4	45

*Univariate statistics for mean monthly summer bottom DO at EE1.1  
and a 12 meter depth for CB4.1C and CB4.1E (1985-2010 data)*

*The UNIVARIATE Procedure  
Variable: DO*

STATION=CB4.1E

Moments			
<b>N</b>	103	<b>Sum Weights</b>	103
<b>Mean</b>	1.94228155	<b>Sum Observations</b>	200.055
<b>Std Deviation</b>	1.69212504	<b>Variance</b>	2.86328715
<b>Skewness</b>	1.12389884	<b>Kurtosis</b>	0.82089101
<b>Uncorrected SS</b>	680.618425	<b>Corrected SS</b>	292.055289
<b>Coeff Variation</b>	87.1204813	<b>Std Error Mean</b>	0.16673003

Basic Statistical Measures			
Location		Variability	
<b>Mean</b>	1.942282	<b>Std Deviation</b>	1.69213
<b>Median</b>	1.650000	<b>Variance</b>	2.86329
<b>Mode</b>	0.100000	<b>Range</b>	7.00000
		<b>Interquartile Range</b>	2.55000

Tests for Location: Mu0=0				
Test	Statistic		p Value	
<b>Student's t</b>	<b>t</b>	11.64926	<b>Pr &gt;  t </b>	<.0001
<b>Sign</b>	<b>M</b>	51	<b>Pr &gt;=  M </b>	<.0001
<b>Signed Rank</b>	<b>S</b>	2626.5	<b>Pr &gt;=  S </b>	<.0001

Quantiles (Definition 5)	
Quantile	Estimate
<b>100% Max</b>	7.00
<b>99%</b>	6.80
<b>95%</b>	5.50
<b>90%</b>	4.10
<b>75% Q3</b>	2.95
<b>50% Median</b>	1.65
<b>25% Q1</b>	0.40
<b>10%</b>	0.20
<b>5%</b>	0.10
<b>1%</b>	0.05
<b>0% Min</b>	0.00

*Univariate statistics for mean monthly summer bottom DO at EE1.1  
and a 12 meter depth for CB4.1C and CB4.1E (1985-2010 data)*

*The UNIVARIATE Procedure  
Variable: DO*

STATION=CB4.1E

Extreme Observations			
Lowest		Highest	
Value	Obs	Value	Obs
0.00	137	5.6	171
0.05	150	5.7	119
0.05	121	6.7	175
0.10	186	6.8	139
0.10	164	7.0	183

*Univariate statistics for mean monthly summer bottom DO at EE1.1  
and a 12 meter depth for CB4.1C and CB4.1E (1985-2010 data)*

*The UNIVARIATE Procedure  
Variable: DO*

STATION=EE1.1

Moments			
<b>N</b>	104	<b>Sum Weights</b>	104
<b>Mean</b>	1.81471154	<b>Sum Observations</b>	188.73
<b>Std Deviation</b>	2.11072525	<b>Variance</b>	4.45516108
<b>Skewness</b>	1.21613892	<b>Kurtosis</b>	0.38536015
<b>Uncorrected SS</b>	801.3721	<b>Corrected SS</b>	458.881591
<b>Coeff Variation</b>	116.311888	<b>Std Error Mean</b>	0.20697364

Basic Statistical Measures			
Location		Variability	
<b>Mean</b>	1.814712	<b>Std Deviation</b>	2.11073
<b>Median</b>	0.950000	<b>Variance</b>	4.45516
<b>Mode</b>	0.100000	<b>Range</b>	7.60000
		<b>Interquartile Range</b>	3.10000

Tests for Location: Mu0=0				
Test	Statistic		p Value	
<b>Student's t</b>	<b>t</b>	8.767839	<b>Pr &gt;  t </b>	<.0001
<b>Sign</b>	<b>M</b>	48	<b>Pr &gt;=  M </b>	<.0001
<b>Signed Rank</b>	<b>S</b>	2328	<b>Pr &gt;=  S </b>	<.0001

Quantiles (Definition 5)	
Quantile	Estimate
<b>100% Max</b>	7.600
<b>99%</b>	7.400
<b>95%</b>	6.400
<b>90%</b>	5.100
<b>75% Q3</b>	3.225
<b>50% Median</b>	0.950
<b>25% Q1</b>	0.125
<b>10%</b>	0.050
<b>5%</b>	0.000
<b>1%</b>	0.000
<b>0% Min</b>	0.000

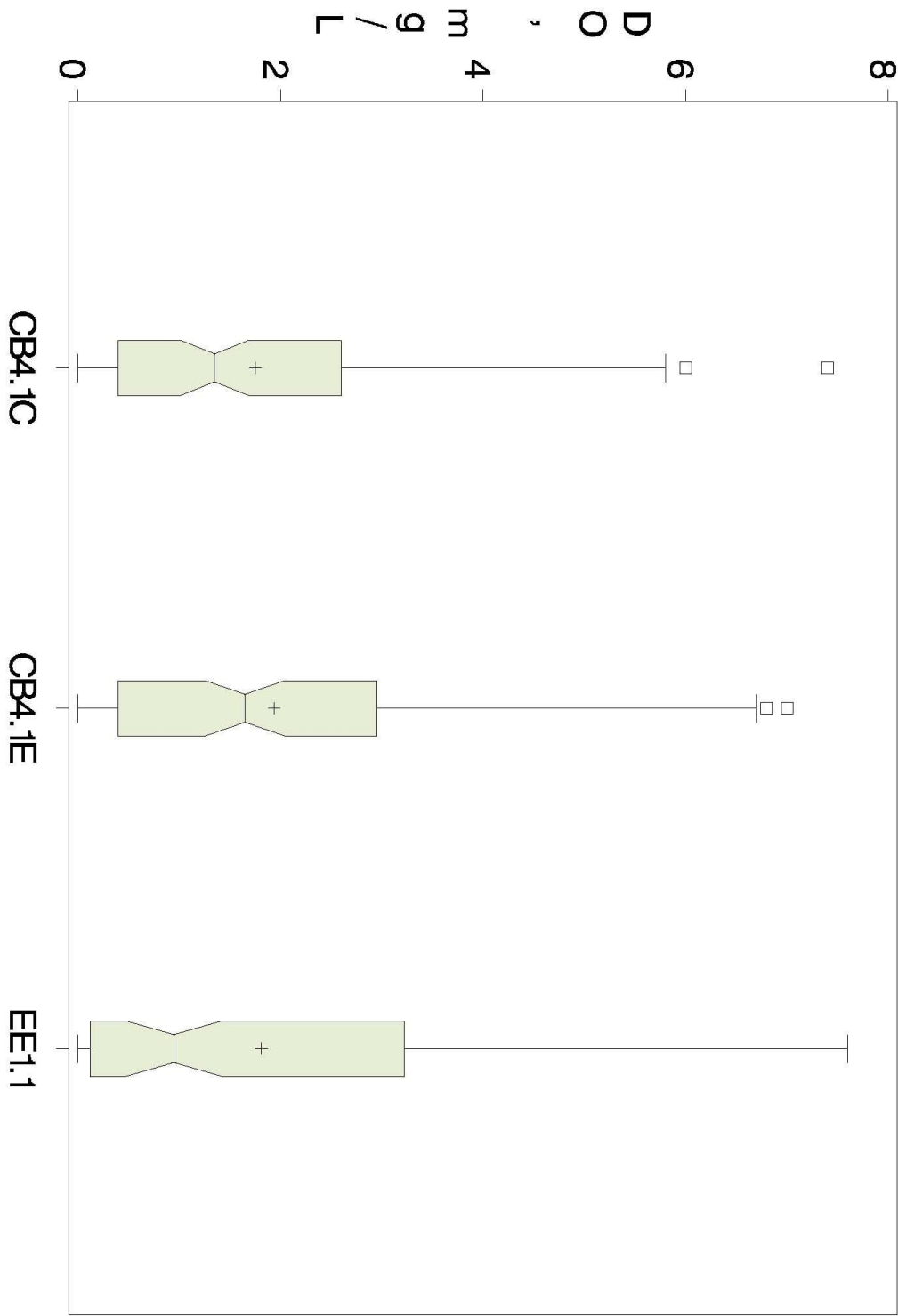
*Univariate statistics for mean monthly summer bottom DO at EE1.1  
and a 12 meter depth for CB4.1C and CB4.1E (1985-2010 data)*

*The UNIVARIATE Procedure  
Variable: DO*

STATION=EE1.1

Extreme Observations			
Lowest		Highest	
Value	Obs	Value	Obs
0	307	6.5	286
0	289	6.8	242
0	285	7.2	266
0	284	7.4	306
0	279	7.6	294

Mean monthly summer (June through September) bottom dissolved oxygen at EE1.1 and dissolved oxygen at a 12 meter depth for CB4.1C and CB4.1E (1985–2010 data)



[12-01-13]

## FINAL CALENDAR YEAR 2012 STANDARD PERMIT APPLICATION TURNAROUND TIMES

As required by Section 1-607(A)(2) of the Environment Article, the Maryland Department of the Environment (MDE) has established, in consultation with interested parties, the following standard turnaround times for all types of permit applications.

MDE has made the following changes to the 2011 turnaround times for calendar year 2012.

**Initial Part 70 (Title V) Permit to Operate** – Reduce the turnaround time from 36 months to 18 months. This is consistent with COMAR 26.11.03.13 for new initial Title V permits. All of the initial Title V permits that were subject to the 36 month turnaround time have been issued.

**New Source Review Approval** – Increase from 10 months to 12 months

**Prevention of Significant Deterioration (PSD)** – Decrease from 14 months to 12 months

Many projects trigger both New Source Review and PSD at the same time; therefore, the two approvals should have consistent permit turnaround times since one approval will not be issued without the other. In addition, EPA federal regulations 40 CFR 124 specify a one-year permit turnaround time for PSD approvals issued by EPA (from the date of a complete application).

**Tidal Wetland Licenses and Permits** – A new category is being added for major projects that require a public hearing with a proposed turnaround time of 11 months. During the development of the Program's new Application Processing Standards, it became clear that it was impossible to complete the review of a project that requires a public hearing within 240 days or 8 months. Consequently, this new category is being added with a turnaround time of 11 months.

**Groundwater Discharge Permit for Unlined Rubble Landfills** – Increase from 6 months to 18 months. This more accurately reflects actual processing times for these permits when public meetings and hearings are requested. This permit category is only renewals so this will have minimal impact on applicants.

MDE reviews and adjusts these turnaround times annually to give permit applicants current information regarding the processing time.

Please note the following important points about these standard times:

- 1) These standards refer to the time between MDE's receipt of a complete permit application and MDE's issuance or denial of the permit, excluding delays caused by factors beyond MDE's control. Many applications are incomplete when they first arrive at MDE. The appropriate MDE permit writer can provide guidance on how to ensure that an application is complete when submitted.
- 2) In most permitting programs, each application has unique characteristics that influence its processing time. For each program listed, the standard time represents the time in which 90% of applications can be processed. Many applications will require less time; a few will require more time due to unusual circumstances.

Program Name	2012 Standard Application Processing Time
<b>Air and Radiation Management Administration</b>	
General Permit to Construct	30 days
Air Quality Permit to Construct	3 months - without expanded public review
	4 months – synthetic minor permits without expanded public review
	6 months - with expanded public review but limited public interest
	11 months - with expanded public review and extensive public interest
New Source Review Approval	12 months
Prevention of Significant [air quality] Deterioration	12 months
Air Quality State Permit to Operate	3 months
Part 70 (Title V) Permit to Operate	18 months for new permits



Program Name	2012 Standard Application Processing Time
	12 months for renewals
Asbestos Contractor License	60 days
Asbestos Training Provider Approval	3 months
Incinerator Operator Certification	30 days
Incinerator Training Course Approval	60 days
Fleet Inspection Station License	30 days
Certified Emissions Repair Facility Certification	30 days
Master Certified Emissions Technician Certificate	30 days
Radiation Machine Facility Registration	90 days for dental and veterinary machines
	6 months for all other machines
Certification of Machines Emitting Radiation	6 months
Radioactive Materials License	7 months
	45 days for amendments and terminations
Private Inspector License For Inspecting X-Ray Machines	60 days
Reciprocal Recognition of Out-of-State Radioactive Material Licenses	21 days

Land Management Administration	
Refuse Disposal Permit	7 months for transfer stations
	9 months for processing facilities
	9 months for processing facilities & transfer stations
	12 months for incinerators
	12 months for land-clearing debris landfills
	24 months for industrial landfills
	36 months for rubble landfills
	36 months for municipal landfills
Groundwater Discharge Permit for Rubble Landfill	18 months
Sewage Sludge Utilization Permit	45 days – research project
	4 months – transportation
	5 months – utilization or disposal at a sanitary landfill
	6 months – handling/distribution
	10 months – land application
	23 months – treatment, incineration or storage

Program Name	2012 Standard Application Processing Time
	36 months – sewage sludge landfill
	24 months – innovative projects
General Discharge Permit for Animal Feeding Operations	180 days
Natural Wood Waste Recycling Facility Permit	9 months
Natural Wood Waste Recycling Facility General Permit	60 days
Scrap Tire Hauler	60 days
Scrap Tire Collection Facilities (General and Secondary)	60 days
Scrap Tire Solid Waste Acceptance Facility	7 months
Scrap Tire TDF/Substitute Fuel Facility	7 months
Scrap Tire Primary Collection Facility	9 months
Scrap Tire Recyclers	9 months
Oil Operations Permit	90 days
Oil Operations Permit for Oil-Contaminated Soils	90 days
Oil Transfer License	30 days
General Permits for Oil Control Program Wastewater Discharge Permit	30 days
Surface Water Discharge Permit for Oil Terminals	180 days
Ground Water Discharge Permit for Oil Terminals	180 days
Underground Storage Tank (UST) Technician and Remover Certification	40 days
Controlled Hazardous Substances Facility Permit	26 months
Hazardous Waste; EPA Identification Number	30 days
Controlled Hazardous Substances Hauler, Vehicle and Driver Certification	30 days
Special Medical Waste (SMW) Hauler and Vehicle Certification	30 days
Coal Mining Permit	12 months
Surface Coal Mining Blaster Certification	immediately on passing exam
Coal Mining Operator License	30 days
Non-Coal Mining Permit	7 months
Non-Coal Mining License	30 days
Oil and Gas Exploration and Production	5 months
Lead Paint Accreditations	30 days
Lead Paint Training Course Approvals	60 days

Program Name	2012 Standard Application Processing Time
Lead Paint Instructor Approvals	30 days
Voluntary Cleanup Program	45 days to determine if application is accepted
	75 days to review action plan

Water Management Administration	
General Discharge Permit Registrations (excluding Construction Activities and Animal Feeding Operations)	120 days for all general permits
Individual Permit for Wastewater Discharges	12 months for new minor surface facilities
	18 months for new surface major facilities
	24 months for renewal surface discharge facilities
	18 months for new groundwater discharge facilities
	34 months for renewal groundwater discharge facilities
Toxic Materials Permit	45 days
Water and Sewerage Construction Permit	3 months
Water Appropriation and Use Permit	120 days for under 10,000 gallons per day
	24 months for over 10,000 gallons per day
Well Construction Permit	30 days
Drinking Water Laboratory Certification	4 months
Nontidal Wetlands (Nontidal Wetlands and Waterways Permits)	10 months for minor projects
	12 months for major projects
Tidal Wetland Licenses and Permits	90 days for minor projects
	8 months for major projects
	11 months for major projects with a hearing
Erosion/Sediment Control and Stormwater Management Plan Approvals	6 months
Erosion and Sediment Control - Responsible Personnel Certification	2 weeks
Erosion and Sediment Control - Responsible Personnel Training Program Approval	4 weeks
General Permit for Stormwater Associated with Construction Activity	60 days for projects less than 3 acres
	90 days for projects between 3 and 150 acres
Individual Permit for Stormwater Associated with Construction Activity	6 months
Municipal Separate Storm Sewer Permit	18 months
Dam Safety Permit	6 months

## SPECIAL DOCUMENTS

Program Name	2012 Standard Application Processing Time
Environmental Sanitarian License	30 days for all licenses
Waterworks and Waste Systems Operator Certification	30 days for all licenses
Well Driller License	6 months for new licenses
	30 days for renewals

[12-01-42]

# 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:** January 25, 2012, 10 a.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6262

[12-01-44]

### MARYLAND STATE ARTS COUNCIL

**Subject:** Public Meeting  
**Date and Time:** January 27, 2012, 9 a.m. — 12 p.m.  
**Place:** Maryland State Arts Council Offices, 175 W. Ostend St., Baltimore, MD  
**Contact:** Ms. Keena Stephenson (410) 767-8832

[12-01-25]

### MARYLAND STATE ARTS COUNCIL

**Subject:** Public Meeting  
**Date and Time:** March 20, 2012, 9 a.m. — 3 p.m.  
**Place:** Maryland State Arts Council Offices, 175 W. Ostend St., Baltimore, MD  
**Contact:** Ms. Sharon Blake (410) 767-6536

[12-01-24]

### MARYLAND STATE ARTS COUNCIL

**Subject:** Public Meeting  
**Date and Time:** March 28, 2012, 8:30 a.m. — 5 p.m.  
**Place:** Maryland State Arts Council, 175 W. Ostend St., Ste. E, Baltimore, MD  
**Contact:** Mr. Cliff Murphy (410) 767-6450

[12-01-23]

### ATHLETIC COMMISSION

**Subject:** Public Meeting  
**Date and Time:** January 26, 2012, 2 — 4:30 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Patrick Pannella (410) 230-6223

[12-01-34]

### BOARD OF AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE PATHOLOGISTS

**Subject:** Public Meeting  
**Date and Time:** January 19, 2012, 4 — 6 p.m.

**Place:** Metro Executive Bldg., 4201 Patterson Ave., Baltimore, MD  
**Contact:** Christopher Kelter (410) 764-4725

[12-01-08]

### ADVISORY COUNCIL ON CEMETERY OPERATIONS

**Subject:** Public Meeting  
**Date and Time:** January 26, 2012, 10 a.m. — 1 p.m.

**Place:** Department of Labor, Licensing, and Regulation, AIDS Administration, 500 N. Calvert St., 2nd Fl. Conf. Rm., Baltimore, MD

**Contact:** Patricia Tress (410) 230-6229

[12-01-20]

### BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

**Subject:** Public Meeting  
**Date and Time:** February 10, 2012, 9:30 a.m. — 12 p.m.; Snow Date: February 17, 2012  
**Place:** 4201 Patterson Ave., Rm. 105, Baltimore, MD

**Contact:** Carol Johnson (410) 764-5996

[12-01-14]

### BOARD FOR THE CERTIFICATION OF RESIDENTIAL CHILD CARE PROGRAM ADMINISTRATORS

**Subject:** Special Test Document  
**Date and Time:** February 15, 2012, 10 a.m. — 12 p.m.  
**Place:** 4201 Patterson Ave., Rm. 105, Baltimore, MD  
**Add'l. Info:** Individuals who are taking the Standards Examination should arrive at least 15 minutes early, at 9:45 a.m., and present photo ID.

**Contact:** Carol Johnson (410) 764-5996

[12-01-15]

### CONSUMER COUNCIL OF MARYLAND

**Subject:** Public Meeting  
**Date and Time:** February 3, 2012, 9:15 — 11 a.m.  
**Place:** 200 St. Paul Pl., 16th Fl., Baltimore, MD  
**Contact:** Stephanie Hodge (410) 576-6557

[12-01-41]

### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** March 12, 2012, 3 — 5 p.m.

**Place:** Baltimore Co. Loch Raven Library, Baltimore, MD

**Contact:** Debra Arnold (410) 821-2852

[12-01-09]

### GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION

**Subject:** Public Meeting  
**Date and Time:** May 14, 2012, 3 — 5 p.m.  
**Place:** Baltimore Co. Loch Raven Library, Baltimore, MD

**Contact:** Debra Arnold (410) 821-2852

[12-01-10]

### BOARD OF MASTER ELECTRICIANS

**Subject:** Public Meeting  
**Date and Time:** March 27, 2012, 10 a.m. — 12 p.m.

**Place:** 500 N. Calvert St., Baltimore, MD  
**Contact:** Gae Herzberger (410) 230-6163

[12-01-18]

### BOARD OF EXAMINING ENGINEERS

**Subject:** Public Meeting  
**Date and Time:** February 21, 2012, 10 a.m. — 12 p.m.

**Place:** 500 N. Calvert St., Baltimore, MD  
**Contact:** Gae Herzberger (410) 230-6163

[12-01-19]

### DEPARTMENT OF THE ENVIRONMENT/AIR AND RADIATION MANAGEMENT ADMINISTRATION

**Subject:** Public Hearing  
**Date and Time:** February 9, 2012, 10:30 a.m.

**Place:** Maryland Dept. of the Environment, 1800 Washington Blvd., 1st Fl. Conf. Rm., Baltimore, MD

**Add'l. Info:** Notice of Public Hearing on Air Quality Plan

The Maryland Department of the Environment (MDE) gives notice of a Public Hearing concerning the proposed Maryland Regional Haze State Implementation Plan (SIP).

## GENERAL NOTICES

A public hearing will be held on February 9, 2012, at the Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230 — First Floor Conference Room — 10:30 AM.

The hearing will focus on the proposed Regional Haze State Implementation Plan, which complies with the national goal to preserve the future visibility and remedy any existing impairment of visibility by addressing the combined impact of various air pollutions over a large geographic region.

The Public Hearing will be held as required by federal law (Clean Air Act at 42 U.S.C. 7410(a) and 40 CFR 51.102). Interested persons are invited to attend and express their views. After the Department considers the comments received, and revises the proposal if necessary, all related items will be submitted to the U.S. Environmental Protection Agency.

An electronic copy of the proposed SIP will be available on the Maryland Department of the Environment's website at [http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograi/air\\_planning/index.aspx](http://www.mde.state.md.us/programs/Air/AirQualityPlanning/Pages/programs/airprograi/air_planning/index.aspx)

Note: The public library systems in Maryland can be used for Internet access to view the document. An electronic copy of the document can also be obtained via email by writing to Randall Carroll at [rcarroll@mde.state.md.us](mailto:rcarroll@mde.state.md.us).

Copies of the document can also be viewed at the Maryland Department of the Environment Main Office, Air and Radiation Management Administration, 1800 Washington Boulevard, Baltimore, Maryland — Hard Copy Contact: Randall Carroll.

Written comments may be presented at the hearing, faxed to 410-537-4223, emailed to [rcarroll@mde.state.md.us](mailto:rcarroll@mde.state.md.us), or mailed to Randall Carroll, MDE ARMA, 1800 Washington Boulevard, Ste. 730, Baltimore, MD, 21230. Comments must be received before the close of business on February 9, 2012.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

For more information contact Randall Carroll, Natural Resources Planner, at (410) 537-3252. Toll free in Maryland call 1-(800) 633-6101 ext. 3252.

Maryland Department of the Environment  
Air and Radiation Management  
Administration  
1800 Washington Boulevard, Ste. 730  
Baltimore, Maryland 21230

**Contact:** Randall Carroll (410) 537-3252  
[12-01-46]

#### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting  
**Date and Time:** February 1, 2012, 10 a.m. — 4:30 p.m.  
**Place:** Howard Co. Bureau of Utilities, 8270 Old Montgomery Rd., Columbia, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Pat Kratochvil (410) 537-3597  
[12-01-02]

#### BOARD OF ENVIRONMENTAL SANITARIANS

**Subject:** Public Meeting  
**Date and Time:** February 23, 2012, 10 a.m. — 4 p.m.  
**Place:** WSSC Hocevar Bldg., Laurel, MD  
**Add'l. Info:** A portion of this meeting may be held in closed session.  
**Contact:** Pat Kratochvil (410) 537-3597  
[12-01-04]

#### DEPARTMENT OF HEALTH AND MENTAL HYGIENE/MARYLAND BOARD OF PHYSICIANS

**Subject:** Public Meeting  
**Date and Time:** January 25, 2012, 9 — 10 a.m.  
**Place:** 4201 Patterson Ave., Rms. 108/109, Baltimore, MD  
**Add'l. Info:** Appropriate auxiliary aids services provided for qualified individuals upon request. Call Ellen D. Smith at (410) 764-2477.  
**Contact:** Tammy Austin (410) 764-4769  
[12-01-37]

#### BOARD OF HEATING, VENTILATION, AIR-CONDITIONING, AND REFRIGERATION CONTRACTORS (HVACR)

**Subject:** Public Meeting  
**Date and Time:** February 8, 2012, 9:30 a.m. — 12 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Steve Smitson (410) 230-6169  
[12-01-16]

#### BOARD OF CERTIFIED INTERIOR DESIGNERS

**Subject:** Public Meeting  
**Date and Time:** January 23, 2012, 2 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Contact:** Pamela J. Edwards (410) 230-6262  
[12-01-43]

#### MARYLAND STATE LOTTERY COMMISSION

**Subject:** Public Meeting  
**Date and Time:** January 26, 2012, 10 a.m. — 12 p.m.  
**Place:** Montgomery Park Business Center, 1800 Washington Blvd., Ste. 330, Baltimore, MD  
**Contact:** Marie A. Torosino (410) 230-8790  
[12-01-47]

#### MARYLAND HEALTH CARE COMMISSION

**Subject:** Public Meeting  
**Date and Time:** January 19, 2012, 1 p.m.  
**Place:** Maryland Health Care Commission, 4160 Patterson Ave., Conf. Rm. 100, Baltimore, MD  
**Contact:** Valerie Wooding (410) 764-3460  
[12-01-21]

#### MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE

**Subject:** Public Meeting  
**Date and Time:** January 18, 2012, 8:30 a.m. — 5 p.m.  
**Place:** Harry R. Hughes Dept. of Transportation Bldg., 7201 Corporate Center Dr., Hanover, MD  
**Contact:** Pam Gregory (410) 865-1253  
[12-01-11]

#### BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

**Subject:** Public Meeting  
**Date and Time:** February 8, 2012, 9:30 a.m.  
**Place:** 4201 Patterson Ave., Rm. 109, Baltimore, MD  
**Contact:** Patricia Hannigan (410) 764-4750  
[12-01-45]

#### BOARD OF EXAMINERS IN OPTOMETRY

**Subject:** Public Meeting  
**Date and Time:** January 25, 2012, 9:30 a.m. — 12:30 p.m.  
**Place:** Metro Executive Bldg., 4201 Patterson Ave., Rm. 105, Baltimore, MD  
**Add'l. Info:** Health Occupations Article, Title 11, Annotated Code of Maryland, and COMAR 10.28 amendments, additions, and revisions maybe discussed/voted on. Budget information may also be discussed. It may be necessary to go into executive session.  
**Contact:** Patricia G. Bennett (410) 764-4710

[12-01-35]

**STATE ADVISORY COUNCIL ON  
QUALITY CARE AT THE END OF LIFE**

**Subject:** Public Meeting  
**Date and Time:** January 25, 2012, 10 a.m. — 12 p.m.  
**Place:** Maryland Office on Aging, 301 W. Preston St., Rm. 1007, Baltimore, MD  
**Contact:** Kathy Izdeb (410) 576-6327

[12-01-22]

**REAL ESTATE COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** February 15, 2012, 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

[12-01-06]

**REAL ESTATE COMMISSION**

**Subject:** Public Hearing  
**Date and Time:** February 15, 2012, 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

[12-01-07]

**STATE BOARD OF INDIVIDUAL TAX  
PREPARERS**

**Subject:** Public Meeting  
**Date and Time:** January 24, 2012, 1 — 5 p.m.  
**Place:** 500 N. Calvert St., 3rd Fl. Conf. Rm., Baltimore, MD  
**Add'l. Info:** Final action on proposed regulations published in the Maryland Register, Vol. 38, Issue 25, Friday, Dec. 02, 2011, will be considered by the Board at this meeting. Please note change of date and time.  
**Contact:** Douglas Blackstone (410) 230-6244

[12-01-36]

**MARYLAND TRANSPORTATION  
AUTHORITY**

**Subject:** Public Meeting  
**Date and Time:** January 26, 2012, 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:** Shirley Hill (410) 537-1002

[12-01-12]

**BOARD OF WELL DRILLERS**

**Subject:** Public Meeting  
**Date and Time:** February 22, 2012, 9 a.m. — 4:30 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

[12-01-03]

**WORKERS' COMPENSATION  
COMMISSION**

**Subject:** Public Meeting  
**Date and Time:** February 9, 2012, 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

[12-01-05]



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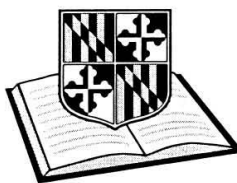
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