STATE OF MARYLAND

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To: Commissioners

From : Paul Parker, Director
Center for Hospital Services

Date: January 17, 2013

Re: **Final Action**
Amendments to COMAR 10.24.14.
State Health Plan for Facilities and Services: Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services

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Staff recommends that the Commission adopt as final regulations the amendments to COMAR 10.24.12, the Commission's State Health Plan chapter that governs the review of Certificate of Need applications by Intermediate Care Facilities ("ICF") treating alcoholism and other substance abuse disorders. The Commission adopted these changes as proposed permanent regulations at its September 20, 2012 meeting.

The amendments responded to a petition filed on June 13, 2012 by Father Martin's Ashley, Inc. ("FMA"), an ICF located in Harford County,.

The Petition That Led to the Adoption of Proposed Regulatory Changes

FMA wants to expand its ICF through construction of new building space and renovation of existing space, adding 15 beds. This project requires CON approval.

In its petition, FMA asked the Commission to amend this State Health Plan ("SHP") chapter because of two docketing requirements in the current Chapter. The first requirement, COMAR 10.24.14.04A, addresses the occupancy rate that must be attained by an ICF in order to docket an application for expansion. The second, COMAR 10.24.14.04B, addresses the percentage of total proposed bed days that a "Track One" ICF applicant must propose for indigent and "gray area" patients to obtain docketing of an application to establish a "Track One" ICF or expand a "Track One" ICF. This rule specifies the percentage of total existing bed days that an existing "Track One" ICF must demonstrate were generated by charity care, indigent, or "gray area' population, including publicly-funded patients, in the preceding 12 months to obtain

docketing of an application to increase the number of beds in an existing "Track One" ICF. It also addresses the commitment that must be made for serving such patients.

The existing COMAR 10.24.14 defines "charity care" as "care for which there is no means of payment by the patient or any third party payor, except public funding." The definition specifies that "charity care does not mean the uninsured or partially insured days designated as deductibles or copayments in patient insurance plans, nor that portion of charges not paid as a consequence of either a contract or agreement between a provider and an insurer or between a provider and a patient, or a waiver of payment due to family relationship, friendship, or professional courtesy." The current Chapter defines "indigent population" as "those persons who qualify for services under the Maryland Medical Assistance Program, regardless of whether Medical Assistance will reimburse for alcohol and drug abuse treatment." Finally, the Chapter defines "gray area population" as "those persons who do not qualify for services under the Maryland Medical Assistance Program but whose annual income from any source is no more than 180 percent of the most current Federal Poverty Index, and who have no insurance for alcohol and drug abuse treatment services."

FMA requested a plan amendment because it was concerned that it would not be viewed as meeting the bed occupancy rate requirement for docketing, because it does not use some of its licensed bed capacity, and because it does not meet the minimal requirement for service to indigent or "gray area" patients.

The amendment proposed by FMA was the addition of a new Part D. of Section .04 of COMAR 10.24.14 that would read as follows.

> ***D. An applicant that is an existing Track 1 (private) Intermediate Care Facility may show evidence as to why the standards in this § .04 should not be applied to the applicant.***

Response to the Petition

Commission staff posted FMA's June 13, 2012 petition for amendment of the SHP on the MHCC web site and, on July 27, 2012, posted a request for public comment on the petition, that was also sent to all of the substance abuse ICFs in the state and to the Alcohol and Drug Abuse Administration ("ADAA"), a division of the Department of Health and Mental Hygiene's Mental Hygiene Administration. No comments on the petition were received. In a conference call with the Acting Director of ADAA, Kathleen Rebbert-Franklin, she indicated that ADAA did not object to amending COMAR 10.24.14 in a manner that would allow FMA to obtain review of their expansion plan by MHCC but stressed that charity care requirements should continue to be included in the Plan Chapter. On September 10, 2012, MHCC posted draft amendments to COMAR 10.24.14 on the MHCC web site, requesting informal comments and, again, sent this request to all Maryland substance abuse ICFs and ADAA. No comments were received. On September 20, 2012, the Commission adopted the amendments as proposed permanent

regulations and they were published in the *Maryland Register* on DATE for formal review and comment. No comments were received on the proposed regulations.

Staff Recommendation

Staff recommends that the proposed amendments be adopted as final regulations of the Commisison. Enclosed are the two sections of the Chapter, the Section .04 Docketing Requirements and the Section .05 Approval Rules and Review Standards, containing the amendments. The Table of Contents has also been provided for context.

In summary, the amendment of the occupancy rate docketing rule addresses FMA's concern with respect to how bed occupancy will be considered. Additionally, the docketing rule that incorporated a charity care and service to the indigent and gray area population standard as a requirement for docketing has been eliminated. Consistent with the approach taken in most SHP chapters, the financial access requirements have now been placed in the project review standards section of the Chapter, Section .05, and that project review standard will allow FMA to address their historic and proposed commitment to serving the indigent and gray area population in a CON application that can be docketed for review and given appropriate consideration by the Commission in acting on the CON application.

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STATE HEALTH PLAN FOR FACILITIES AND SERVICES:

ALCOHOLISM AND DRUG ABUSE INTERMEDIATE CARE FACILITY TREATMENT SERVICES

COMAR 10.24.14

Effective January 21, 2002

Final Supplement 1

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APPENDIX

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.04 Docketing Requirements for Certificate of Need Applications to Establish Intermediate Care Facilities Providing Substance Abuse Treatment Services

The Commission reviews Certificate of Need applications to establish new ICFs or to expand existing ICFs providing substance abuse treatment services, depending on the level of publicly-funded treatment provided in the facility. Private beds, ("Track One") as defined at Regulation .08, refers to facilities that admit a majority of private-pay patients, and Publicly-funded beds, ("Track Two") also defined at Regulation .08, refer to those facilities with 50 percent or more of their beds funded by any combination of public funds.

A. The following requirements apply to both Track One and Track Two Certificate of Need applications.

(1) The Commission will docket Certificate of Need applications from applicants that apply only for either private bed capacity (Track One) or publicly-funded bed capacity (Track Two).

(2) The Commission will docket a Certificate of Need application for expansion of an existing intermediate care facility only if the applicant has been operating the facility for at least two years and is documented by the Alcohol and Drug Abuse Administration's Substance Abuse Management Information System (SAMIS) or by the applicant as having an 85 percent average annual occupancy rate of its beds for two consecutive years prior to the applicant's letter of intent. Occupancy calculated on the basis of physical bed capacity deemed usable by the applicant, when this differs from licensed bed capacity, can be found to comply with this standard, based on the applicant's documentation of physical bed capacity.

B. The following docketing requirements apply only to applicants to establish a Track Two intermediate care facility for substance abuse treatment.

(1) The Commission will docket a Certificate of Need for publicly-funded beds, as defined in Regulation .08 of this Chapter, only if the applicant proposes to reserve 50 percent or more of its proposed annual adolescent or adult intermediate care facility bed days for indigent and gray area patients.

(2) The Commission will docket a Certificate of Need application for new publicly-funded beds, as defined in Regulation .08 of this Chapter, to establish a new intermediate care facility, or to expand an existing facility only if the applicant:

(a) Provides a signed letter of commitment from the Alcohol and Drug Abuse Administration, or a signed agreement with one or more state or jurisdictional authorities that documents sufficient funding for the bed and service capacity proposed at the new facility, and

(b) Documents, through Memoranda of Understanding (MOUs), linkages with related state and local government agencies, defining:

(i) Areas of cooperation and shared responsibilities; and

(ii) The applicant's agreement to screen, evaluate, diagnose, and treat individuals with alcohol or drug diagnoses, including uninsured, underinsured, and court-committed persons;

(c) Documents that if the affected jurisdiction or region has a written plan that shows the need for the applicant's proposed service and that the applicant's proposal is consistent with the local plan(s);

(d) Documents that the applicant, in cooperation with the Mental Hygiene Administration and the Alcohol and Drug Abuse Administration will use approved admission criteria, to assure proper placement of mentally ill substance abusers, and will:

(i) Treat mildly mentally ill substance abusers;

(ii) Treat or refer the moderately mentally ill substance abuser to a more appropriate facility and program; and

(iii) Refer the severely mentally ill substance abuser to a facility with a medically appropriate level of care.

(e) Documents that the applicant will provide priority to each affected jurisdiction's residents for admission to the facility, regardless of their ability to pay for treatment.

(f) Documents that the entire facility, including existing and proposed intermediate care facility beds, will meet the annualized indigent and gray area requirements as specified in Regulation .08.

.05 Certificate of Need Approval Rules and Review Standards for New Substance Abuse Treatment Facilities and for Expansions of Existing Facilities

A. Approval Rules Related To Facility Size. Unless the applicant demonstrates why a relevant standard should not apply, the following standards apply to applicants seeking to establish or to expand either a Track One or a Track Two intermediate care facility.

(1) The Commission will approve a Certificate of Need application for an intermediate care facility having less than 15 beds only if the applicant dedicates a special population as defined in Regulation .08.

(2) The Commission will approve a Certificate of Need application for a new intermediate care facility only if the facility will have no more than 40 adolescent or 50 adult intermediate care facility beds, or a total of 90 beds, if the applicant is applying to serve both age groups.

(3) The Commission will not approve a Certificate of Need application for expansion of an existing alcohol and drug abuse intermediate care facility if its approval would result in the facility exceeding a total of 40 adolescent or 100 adult intermediate care facility beds, or a total of 140 beds, if the applicant is applying to serve both age groups.

B. Identification of Intermediate Care Facility Alcohol and Drug Abuse Bed Need.

(1) An applicant seeking Certificate of Need approval to establish or expand an intermediate care facility for substance abuse treatment services must apply under one of the two categories of bed need under this Chapter:

(a) For Track One, the Commission projects maximum need for alcohol and drug abuse intermediate care beds in a region using the need projection methodology in Regulation .07 of this Chapter and updates published in the *Maryland Register*.

(b) For Track Two, as defined at Regulation .08, an applicant who proposes to provide 50 percent or more of its patient days annually to indigent and gray area patients may apply for:

(i) Publicly-funded beds, as defined in Regulation .08 of this Chapter, consistent with the level of funding provided by the Maryland Medical Assistance Programs (MMAP), Alcohol and Drug Abuse Administration, or a local jurisdiction or jurisdictions; and

(ii) A number of beds to be used for private-pay patients in accordance with Regulation .08, in addition to the number of beds projected to be needed in Regulation .07 of this Chapter.

(2) To establish or to expand a Track Two intermediate care facility, an applicant must:

(a) Document the need for the number and types of beds being applied for;

(b) Agree to co-mingle publicly-funded and private-pay patients within the facility;

(c) Assure that indigents, including court-referrals, will receive preference for admission, and

(d) Agree that, if either the Alcohol and Drug Abuse Administration, or a local jurisdiction terminates the contractual agreement and funding for the facility's clients, the facility will notify the Commission and the Office of Health Care Quality within 15 days that that the facility is relinquishing its certification to operate, and will not use either its publicly- or privately-funded intermediate care facility beds for private-pay patients without obtaining a new Certificate of Need.

C. Sliding Fee Scale. An applicant must establish a sliding fee scale for gray area patients consistent with the client's ability to pay.

D. Provision of Service to Indigent and Gray Area Patients.

(1) Unless an applicant demonstrates why one or more of the following standards should not apply or should be modified, an applicant seeking to establish or to expand a Track One intermediate care facility must:

(a) Establish a sliding fee scale for gray area patients consistent with a client's ability to pay;

(b) Commit that it will provide 30 percent or more of its proposed annual adolescent intermediate care facility bed days to indigent and gray area patients; and

(c) Commit that it will provide 15 percent of more of its proposed annual adult intermediate care facility bed days to indigent or gray area patients.

(2) An existing Track One intermediate care facility may propose an alternative to the standards in Regulation D(1) that would increase the availability of alcoholism and drug abuse treatment to indigent or gray area patients in its health planning region.

(3) In evaluating an existing Track One intermediate care facility's proposal to provide a lower required minimum percentage of bed days committed to indigent or gray area patients in Regulation D(1) or an alternative proposal under Regulation D(2), the Commission shall consider:

(a) The needs of the population in the health planning region; and

(b) The financial feasibility of the applicant's meeting the requirements of Regulation D(1).

(4) An existing Track One intermediate care facility that seeks to increase beds shall provide information regarding the percentage of its annual patient days in the preceding 12 months that were generated by charity care, indigent, or gray area patients, including publicly-funded patients.

E. Information Regarding Charges. An applicant must agree to post information concerning charges for services, and the range and types of services provided, in a conspicuous place, and must document that this information is available to the public upon request.

F. Location. An applicant seeking to establish a new intermediate care facility must propose a location within a 30-minute one-way travel time by automobile to an acute care hospital.

G. Age Groups.

(1) An applicant must identify the number of adolescent and adult beds for which it is applying, and document age-specific treatment protocols for adolescents ages 12-17 and adults ages 18 and older.

(2) If the applicant is proposing both adolescent and adult beds, it must document that it will provide a separate physical, therapeutic, and educational environment consistent with the treatment needs of each age group including, for adolescents, providing for continuation of formal education.

(3) A facility proposing to convert existing adolescent intermediate care substance abuse treatment beds to adult beds, or to convert existing adult beds to adolescent beds, must obtain a Certificate of Need.

H. Quality Assurance.

(1) An applicant must seek accreditation by an appropriate entity, either the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), in accordance

with CFR, Title 42, Part 440, Section 160, the CARF…The Rehabilitation Accreditation Commission, or any other accrediting body approved by the Department of Health and Mental Hygiene. The appropriate accreditation must be obtained before a Certificate of Need-approved ICF begins operation, and must be maintained as a condition of continuing authority to operate an ICF for substance abuse treatment in Maryland.

(a) An applicant seeking to expand an existing ICF must document that its accreditation continues in good standing, and an applicant seeking to establish an ICF must agree to apply for, and obtain, accreditation prior to the first use review required under COMAR 10.24.01.18; and

(b) An ICF that loses its accreditation must notify the Commission and the Office of Health Care Quality in writing within fifteen days after it receives notice that its accreditation has been revoked or suspended.

(c) An ICF that loses its accreditation may be permitted to continue operation on a provisional basis, pending remediation of any deficiency that caused its accreditation to be revoked, if the Office of Health Care Quality advises the Commission that its continued operation is in the public interest.

(2) A Certificate of Need-approved ICF must be certified by the Office of Health Care Quality before it begins operation, and must maintain that certification as a condition of continuing authority to operate an ICF for substance abuse treatment in Maryland.

(a) An applicant seeking to expand an existing ICF must document that its certification continues in good standing, and an applicant seeking to establish an ICF must agree to apply for certification by the time it requests that Commission staff perform the first use review required under COMAR 10.24.01.18.

(b) An ICF that loses its State certification must notify the Commission in writing within fifteen days after it receives notice that its accreditation has been revoked or suspended, and must cease operation until the Office of Health Care Quality notifies the Commission that deficiencies have been corrected.

(c) Effective on the date that the Office of Health Care Quality revokes State certification from an ICF, the regulations at COMAR 10.24.01.03C governing temporary delicensure of a health care facility apply to the affected ICF bed capacity.

I. Utilization Review and Control Programs.

(1) An applicant must document the commitment to participate in utilization review and control programs, and have treatment protocols, including written policies governing admission, length of stay, discharge planning, and referral.

(2) An applicant must document that each patient's treatment plan includes, or will include, at least one year of aftercare following discharge from the facility.

J. Transfer and Referral Agreements.

(1) An applicant must have written transfer and referral agreements with facilities capable of managing cases which exceed, extend, or complement its own capabilities, including facilities which provide inpatient, intensive and general outpatient programs, halfway house placement, long-term care, aftercare, and other types of appropriate follow-up treatment.

(2) The applicant must provide documentation of its transfer and referral agreements, in the form of letters of agreement or acknowledgement from the following types of facilities:

(a) Acute care hospitals;

(b) Halfway houses, therapeutic communities, long-term care facilities, and local alcohol and drug abuse intensive and other outpatient programs;

(c) Local community mental health center or center(s);

(d) The jurisdiction's mental health and alcohol and drug abuse authorities;

(e) The Alcohol and Drug Abuse Administration and the Mental Hygiene Administration;

(f) The jurisdiction's agencies that provide prevention, education, driving-while-intoxicated programs, family counseling, and other services; and,

(g) The Department of Juvenile Justice and local juvenile justice authorities, if applying for beds to serve adolescents.

K. Sources of Referral.

(1) An applicant proposing to establish a new Track Two facility must document to demonstrate that 50 percent of the facility's annual patient days, consistent with Regulation .08 of this Chapter, will be generated by the indigent or gray area population,

including days paid under a contract with the Alcohol and Drug Abuse Administration or a jurisdictional alcohol or drug abuse authority.

(2) An applicant proposing to establish a new Track One facility must document referral agreements to demonstrate that 15 percent of the facility's annual patient days required by Regulation .08 of this Chapter will be incurred by the indigent or gray area populations, including days paid under a contract with the Alcohol or Drug Abuse Administration or a jurisdictional alcohol or drug abuse authority, or the Medical Assistance program.

L. In-Service Education. An applicant must document that it will institute or, if an existing facility, maintain a standardized in-service orientation and continuing education program for all categories of direct service personnel, whether paid or volunteer.

M. Sub-Acute Detoxification. An applicant must demonstrate its capacity to admit and treat alcohol or drug abusers requiring sub-acute detoxification by documenting appropriate admission standards, treatment protocols, staffing standards, and physical plant configuration.

N. Voluntary Counseling, Testing, and Treatment Protocols for Human Immunodeficiency Virus (HIV). An applicant must demonstrate that it has procedures to train staff in appropriate methods of infection control and specialized counseling for HIV-positive persons and active AIDS patients.

O. Outpatient Alcohol & Drug Abuse Programs.

(1) An applicant must develop and document an outpatient program to provide, at a minimum: individual needs assessment and evaluation; individual, family, and group counseling; aftercare; and information and referral for at least one year after each patient's discharge from the intermediate care facility.

(2) An applicant must document continuity of care and appropriate staffing at off-site outpatient programs.

(3) Outpatient programs must identify special populations as defined in Regulation. 08, in their service areas and provide outreach and outpatient services to meet their needs.

(4) Outpatient programs must demonstrate the ability to provide services in the evening and on weekends.

(5) An applicant may demonstrate that outpatient programs are available to its patients, or proposed patient population, through written referral agreements that meet the

requirements of (1) through (4) of this standard with existing outpatient programs.

P. Program Reporting. Applicants must agree to report, on a monthly basis, utilization data and other required information to the Alcohol and Drug Abuse Administration's Substance Abuse Management Information System (SAMIS) program, and participate in any comparable data collection program specified by the Department of Health and Mental Hygiene.