



MEMORANDUM

DATE: May 21, 2026

TO: Commissioners

FROM: Wynnee Hawk, Director, Health Planning

RE: Proposed Action: COMAR 10.24.01.03 and 04 *Proposed Regulations - CON Exemption for Intermediate Care Facilities*

The Certificate of Need (CON) program is intended to ensure that new health care facilities and services are developed only as needed and requires review and approval by the Maryland Health Care Commission (MHCC or Commission). With certain exceptions, a CON is required to establish, or relocate a health care facility, or change the type or scope of any health care service or bed capacity of an existing facility.

An Intermediate Care Facility (ICF) provides American Society of Addiction Medicine (ASAM) Level 3.7, medically managed residential treatment for substance use disorders (SUD), which is one step below inpatient hospital addictions treatment. A statutory change in 2019 eliminated the requirement that an existing ICF obtain a CON and undergo MHCC review prior to adding beds.

The ability for an ICF to add beds without review created a disconnect between a project initially presented for CON review and the project ultimately implemented. As an example, an applicant obtained a CON approval to establish a 21 bed ICF and within one year of opening, the facility provided notice of its plan to add 81 beds, making the ultimate bed capacity almost five times the capacity that had been initially approved in the CON. MHCC did not have the authority to prevent an expansion of capacity once the project received a CON.

More troubling, some ICFs increased bed capacity by adding more beds to existing rooms without changing the physical space or environment of the physical facility. There is no regulatory limit on the number of beds that can be added to each room, and some facilities have placed six people to a room, jeopardizing patient care.

Senate Bill 444/House Bill 498 (Chs. 68 and 69) Certificate of Need – Intermediate Health Care Facilities passed in the 2026 legislative session and reestablished the requirement that ICFs obtain approval from the Commission before adding bed capacity. The bill also establishes an expedited review process to either create a new ICF or expand bed capacity at

any existing facility. Rather than full CON review, an applicant must demonstrate that its project meets certain standards and serves the public interest. The Governor signed the bill on April 14, 2026, with an effective date of October 1, 2026.

The legislative changes require the MHCC to amend two sets of regulations: the Procedural Regulations for Health Care Facilities and Services, COMAR 10.24.01 and the State Health Plan for Facilities and Services: Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services, COMAR 10.24.14. The proposed regulations before the Commission today are COMAR 10.24.01.03 and .04, the Procedural Regulations to address the exemption process in that chapter. The State Health Plan Chapter will be amended as part of a more comprehensive scheduled update.

Staff Recommendation

Commission staff recommend that the Commission approve the proposed revisions to COMAR 10.24.01.03 and 04 to allow a Notice of the Proposed Action on the regulations to be published in the Maryland Register with an opportunity for public comment.