



**MARYLAND HEALTH CARE COMMISSION**

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**STATE HEALTH PLAN FOR FACILITIES AND SERVICES:**

**SPECIAL HOSPITAL - CHRONIC SERVICES**

**COMAR 10.24.08**

**PROPOSED PERMANENT REGULATION**

*Written Public Comments  
Accepted Until 4:30 pm on January 7, 2019  
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**Table of Contents**

	<b>Page</b>
.01 Incorporation by Reference.....	1
.02 Introduction.....	1
A. Purposes of the State Health Plan for Facilities and Services .....	1
B. Legal Authority for the State Health Plan.....	1
C. Organizational Setting of the Commission .....	2
D. CON Applicability to a Chronic Hospital.....	2
.03 Special Hospital-Chronic Standards .....	3
A. Chronic Hospitals.....	3
.04 Definitions.....	4

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**State Health Plan for Facilities and Services: Special Hospital-Chronic Services**

**.01 Incorporation by Reference.**

This Chapter is incorporated by reference in the Code of Maryland Regulations.

**.02 Introduction.**

**A. Purposes of the State Health Plan for Facilities and Services.**

The Maryland Health Care Commission (Commission) has prepared this Chapter of the State Health Plan for Facilities and Services (“State Health Plan” or “Plan”) to ensure that actions by the Commission with respect to special hospital-chronic services, commonly known as chronic hospitals, are guided by the objective of meeting the current and future needs of Maryland residents.

The State Health Plan serves two purposes:

(1) It establishes health care policy to guide the Commission's actions. Maryland law requires that all State agencies and departments involved in regulating, funding, or planning for the health care industry carry out their responsibilities in a manner consistent with the State Health Plan and available fiscal resources.

(2) It is the foundation for the Commission's decisions in its regulation of health care facilities and services in order to ensure that changes in health care facilities and services are appropriate and consistent with the Commission's policies. The State Health Plan articulates the policies guiding the Commission's regulation of health care facilities and services, establishes the criteria and standards that state the Commission's expectations about the facility or service development proposals it considers, and may contain methodologies that forecast need or demand for health care facilities or services, to inform the Commission and the public about appropriate considerations for Certificate of Need (CON) decisions.

The State Health Plan should provide a vision for positive change in the delivery of health care services. It should also provide useful guidance for resource allocation decisions that appropriately balance the population's need for available, accessible, affordable, and high quality health care services.

**B. Legal Authority for the State Health Plan.**

The State Health Plan is adopted under Maryland's health planning law, Health-General Article §19-114, *et seq.*, Maryland Code Annotated (Health-General). This Chapter partially fulfills the Commission's responsibility to adopt a State Health Plan at least every five years and to review and amend the State Health Plan as necessary. Health-General §19-118(a)(2) provides that the State Health Plan shall include:

(1) The methodologies, standards, and criteria for Certificate of Need review;  
and

PROPOSED PERMANENT REGULATION COMAR 10.24.08

(2) Priority for conversion of acute care capacity to alternative uses where appropriate.

**C. Organizational Setting of the Commission.**

The Commission is an independent agency, which is located within the Maryland Department of Health for budgetary purposes. The purposes of the Commission, as provided under §19-103(c) are to:

(1) Develop health care cost containment strategies to help provide access to appropriate quality health care services for all Marylanders, after consulting with the Health Services Cost Review Commission; and

(2) Promote the development of a health regulatory system that provides, for all Marylanders, financial and geographic access to quality health care services at a reasonable cost by advocating policies and systems to promote the efficient delivery of and improved access to health care services, and enhancing the strengths of the current health care service delivery and regulatory system.

Health-General §19-110(a) provides that the Secretary of the Maryland Department of Health does not have power to disapprove or modify any regulation, decision, or determination that the Commission makes regarding or based upon the State Health Plan. The Commission has sole authority to prepare and adopt the State Health Plan and to issue Certificate of Need decisions and exemptions based on the State Health Plan. Health-General §19-118(e) provides that the Secretary shall make annual recommendations to the Commission on the State Health Plan and permits the Secretary to review and comment on the specifications used in its development. The Commission pursues effective coordination with the Secretary and State health-related agencies in its development of the State Health Plan and amendments.

**D. Certificate of Need Applicability to a Chronic Hospital.**

This Special Hospital - Chronic Services Chapter comprises one component of the overall State Health Plan for Maryland, which also addresses acute care, ambulatory surgery, obstetric, comprehensive rehabilitation, comprehensive care facility, acute psychiatric, addictions, hospice, home health agency and other services.

Under Health-General §19-120 and COMAR 10.24.01.02, a Certificate of Need is required for the establishment or expansion of a chronic hospital.

This replacement Chapter regarding special hospitals – chronic services, in conjunction with new COMAR 10.24.20, which contains replacement regulations regarding comprehensive care facilities, partially fulfills the Commission’s responsibility to adopt a State Health Plan at least every five years.

**.03 Special Hospital - Chronic Standards.**

**A. Chronic Hospitals.** The Commission will use the standards in this section to review applications for special hospital-chronic beds:

(1) **Need.** An applicant shall quantitatively demonstrate the specific unmet needs it proposes to meet in its service area, by number of patients, principal and additional diagnoses, and expected length of stay.

(2) **Financial Access.** An applicant shall agree to accept patients whose primary payer source is Medicare and Medicaid.

(3) **Facility Occupancy.** An applicant shall propose to serve and maintain at least an 85 percent average annual occupancy level.

(4) **Jurisdictional Occupancy.**

a. The Commission may approve a Certificate of Need application for a new chronic hospital or a new chronic hospital service at an existing health care facility only if every chronic hospital in the jurisdiction has maintained, on average, an 85 percent or higher occupancy level, for the most recent fiscal year, as shown in the Chronic Hospital Occupancy Report published by the Commission in the *Maryland Register*. Each December, the Commission will issue a report on chronic hospital occupancy.

b. The applicant may show evidence why this standard should not apply.

(5) **Financial Viability.** Any applicant proposing to develop a new chronic hospital or a new chronic hospital service at an existing health care facility must demonstrate that it can meet the Medicare Conditions of Participation as a Long-Term Care Hospital consistent with 42 CFR Part 412.

(6) **Expansion.**

a. The Commission may approve a chronic hospital for expansion only if all of its beds are available for use and it has been operating at 85 percent or higher average occupancy for the two most recent fiscal years, as shown in the Commission's Chronic Hospital Occupancy Report.

b. An applicant may show evidence why this standard should not apply.

**.04 Definitions.**

**A. In this Chapter, the following terms have the meanings indicated.**

**B. Terms Defined.**

(1) “*Certificate of Need-Approved (CON-approved) beds*” means those beds for which a Certificate of Need has been obtained from the Maryland Health Care Commission, consistent with COMAR 10.24.01, but which are not yet licensed.

(2) “*Chronic Hospital*” means a facility licensed as special hospital-chronic disease in accordance with COMAR 10.07.01 that serves patients who do not need acute care or care in another kind of specialty hospital, whose needs for frequency of monitoring by a physician and for frequency and duration of nursing care exceeds the requirements of COMAR 10.07.02 for care in a comprehensive care or extended care facility, and whose expected length of stay, typically exceeds 25 days.

(3) “*Comprehensive Care Facility*” means a facility licensed in accordance with COMAR 10.07.02 that admits patients suffering from disease or disabilities, or advanced age, requiring medical service and nursing service rendered by or under the supervision of a registered nurse.

(4) “*Existing Beds*” means licensed or CON-approved beds, but does not mean waiver beds determined not to require a Certificate of Need under COMAR 10.24.01.03 or temporarily delicensed beds under COMAR 10.24.01.03 C.

(5) “*Extended Care Facility (ECF)*” means a facility licensed in accordance with COMAR 10.07.02 that offers sub-acute care, providing treatment services for patients requiring inpatient care but who do not currently require continuous acute care services, and admitting patients who require convalescent or restorative services, or rehabilitative services, or patients with terminal disease requiring maximal nursing care.

(6) “*Jurisdiction*” means any of the 23 Maryland counties or Baltimore City.

(7) “*Licensed*” means a facility that has received approval to operate from the Office of Health Care Quality of the Maryland Department of Health.

(8) “*Long Term Care Hospital*” means the federal classification of hospitals that provide medically complex care to individuals who, because of chronic illness, require an inpatient average length of stay of greater than 25 days. Long-term care hospitals are licensed in Maryland as special hospital-chronic disease facilities.

(9) “*Medicaid*” means the Maryland Medical Assistance Program administered by the State under Title XIX of the Social Security Act to reimburse comprehensive medical and other health-related care for categorically eligible and medically needy persons.

PROPOSED PERMANENT REGULATION COMAR 10.24.08

(10) “*Medicare*” means the federal health insurance program administered under Title XVIII of the Social Security Act that pays for certain health care expenses for people who are 65 years or older, certain younger people with disabilities, and people with end-stage renal disease.

(11) “*Person*” means an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind and any partnership, firm, association, limited liability company, limited liability partnership, public or private corporation, or other entity.