



**MEMORANDUM**

**DATE:** February 22, 2024

**TO:** Commissioners

**FROM:** Wynee Hawk, Director, Health Care Facilities Planning and Development  
Alexa Bertinelli, Assistant Attorney General

**RE:** Proposed Regulations: COMAR 10.24.01.12, *Procedural Regulations for Health Care Facilities and Services: Holder Responsibilities and Penalties for Noncompliance*

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Staff of the Maryland Health Care Commission (Commission) recommend that the Commission amend Regulation .12 of COMAR 10.24.01, *Procedural Regulations for Health Care Facilities and Services*, to add financial penalties for noncompliance with the regulations governing certificates of need (CON) and other health planning approvals. Under the current regulations, the Commission's only means of enforcement is to withdraw its approval, which could have the effect of closing a health care facility or service and jeopardizing the public's access to health care. The proposed regulations would give the Commission additional means of enforcement.

**I. Background**

In 2023, the Commission adopted major revisions to its procedural regulations for health care facilities and services. The final regulations, which became effective on December 1, 2023, streamlined the CON process, added new CON review criteria, clarified the Commission's regulatory oversight of non-CON projects, and increased flexibility during the post-approval process.

Under the current regulations the Commission's options for noncompliance are limited to withdrawal of a CON or other Commission approval based on specified grounds, including a finding that the holder made material misrepresentation upon which the Commission relied in approving its application or a finding that the project differs materially from what was approved. COMAR 10.24.01.12E. In recent months, the Commission has had to consider whether to withdraw its approval for projects that were not in conformance with their approval. For example, at the November 2023 Commission meeting, the Commission considered the post-approval project change request of Baltimore Detox Center, which had significantly changed the design of its project and exceeded the budget approved in its CON. Baltimore

Detox Center had already begun offering substance use disorder treatment services to the public and a denial of its project change request would have required the facility to close its facility. The changes to the regulations offer a less drastic method of enforcement.

The Commission already imposes fines under COMAR 10.25.12 in other circumstances for a person's failure to timely file a report or other information required by the Commission. These include a reporting entity's failure to file data reports to the Medical Care Data Base (COMAR 10.25.06.18), and for an untimely performance measures report (COMAR 10.25.08.06).

## **II. Key Changes to the Regulations**

The proposed regulations permit the Commission to impose financial penalties not to exceed \$100 per day for failure to timely submit a semi-annual progress report and \$50,000 for any other violation. The Commission must consider various factors in determining the amount of any financial penalty, including the willfulness of the improper conduct, the extent of public harm, the holder's record of noncompliance, the project budget, the amount of any overrun, and the holder's ability to pay. The proposed regulations also slightly expand and clarify the grounds for the Commission to take enforcement action.

## **III. Staff Recommendation**

Staff recommends the Commission approve COMAR 10.24.01, *Procedural Regulations for Health Care Facilities and Services*, for publication as proposed regulations.

