Regulatory Review and Evaluation Act
Evaluation Report Form
2020 – 2028

Chapter Codification: 10.59

Chapter Name: Catastrophic Health Emergencies

Authority: Health General Article, §§18-904—18-907, Annotated Code of Maryland; Ch. 1, Section 4, Acts of 2002

Date Originally Adopted or Last Amended: June 19, 2006

Purpose: This chapter outlines Maryland's health regulations for catastrophic health emergencies, specifically detailing the procedures for the care, isolation, and quarantine of individuals exposed to deadly agents.

A. Review Criteria. (State Government Article, §10-132(1)(i), Annotated Code of Maryland; COMAR 01.01.2003.20E)

(1) Do the regulations continue to be necessary for the public interest? ◉ Yes ○ No

(2) Do the regulations continue to be supported by statutory authority and judicial opinion? ◉ Yes ○ No

(3) Are the regulations obsolete or otherwise appropriate for amendment or repeal? ○ Yes ◉ No

(4) Are the regulations effective in accomplishing their intended purpose? ◉ Yes ○ No

B. Outreach and Research. (State Government Article, §10-135(a)(2)(i) – (viii), Annotated Code of Maryland)

(1) List any stakeholders invited to review the regulations and provide a summary of their participation in and input into the review process.

A survey was sent to stakeholders for input into the review process. The draft Evaluation Report, incorporated survey comments, and was also sent to stakeholders for review. The survey and draft report were also posted on the MDH Office of Regulation & Policy Coordination (ORPC) website with a request for input. Stakeholders included local Health Officers, local EMS, local emergency management, the healthcare coalitions, and hospitals.

(2) List any other affected agencies that were invited to review the regulations and provide a summary of their participation in and input into the review process.

A survey was sent to affected agencies for input into the review process. The draft Evaluation Report, incorporated survey comments, and was also sent to affected agencies for review. Affected agencies included Local Health Departments, MDH Office of Health Care Quality, MDH Healthcare Systems, MDH Infectious Disease Epidemiology and Outbreak Response Bureau, MDH Environmental Health Bureau, Maryland Institute for Emergency Medical Services Systems, Maryland Department of Emergency Management, Maryland Department of Human Services, Maryland Department of Disabilities, Maryland Insurance Administration, Maryland Coordination and Analysis Center, Maryland Department of State Police, and Maryland Department of Transportation.

(3) Describe the process used to solicit public comment, including:
(a) any notice published in the Maryland Register;
(b) any notice published in newspapers of general circulation;
(c) any notice posted on the unit's website or on a Statewide website created for units to post notices of regulations review;
(d) any mailing by the adopting authority; and
(e) any public hearing held.

The survey and draft evaluation report were posted on the MDH Office of Regulation & Policy Coordination (ORPC) website with a request for public comment.

(4) Provide summaries of:
(a) all comments received from stakeholders, affected units, or the public; and
(b) the adopting authority's responses to those comments.

36 individuals responded to the survey. 13 of those 36 respondents did not indicate their organizational affiliation. Of those who did respond, 6 were affiliated with state-level organizations like MDH and other state agencies. 5 responses came from individuals affiliated with hospitals or other medical facilities. The remaining 12 responses came from local health departments, local emergency management, and local EMS.

- 81% indicated familiarity with and applicability of COMAR 10.59
- 86% reported that COMAR 10.59 was either essential and must be retained or necessary and should be retained
- 94% found the regulations to be moderately effective, effective, or highly effective
- 50% said the regulations were actionable and feasible, but 47% were uncertain

- A majority of respondents (58%) reported that COMAR 10.59 was either fully reflected in current practices or mostly reflected with minor gaps, while 22% said the regulations were only partially reflected, with notable gaps:
    - Does not address supply chain resiliency, crisis standards of care, and civil rights protections
    - How to manage large populations - enforcement for those that refuse isolation or quarantine orders or resources for implementing isolation and quarantine
- 83% recommended retaining the regulations as they are or with minor or moderate amendments

Overall, survey responses were generally positive in their assessments of COMAR 10.59. Survey data contained the following themes in the responses:

- Many respondents assessed COMAR 10.59 primarily through the lens of its implementation during the COVID-19 pandemic.
- Several respondents expressed concerns about how the regulatory framework addresses (or fails to address) enforcement processes and individual rights.
- Several responses identified resource management and supply chain issues as being relevant to the regulatory framework.
- Regardless of perceived need to alter COMAR 10.59, respondents frequently requested agency guidance and education on the regulations for the public, practitioners, and state personnel.

(5) Describe any interunit conflict reviewed and the resolution or proposed resolution of that conflict.

n/a

(6) Provide a summary of any relevant scientific data gathered.

n/a

(7) Provide a summary of any relevant information gathered related to the regulations of other states or the federal government.

The Maryland tuberculosis quarantine/isolation regulation (COMAR 10.06.01.20) has its own associated statutes (Md. Code Health-Gen. §§ 18-324, 18-325) separate from the catastrophic health emergency surveillance program statutes (Md. Code Health-Gen. §§ 18-905, 18-906), so any changes to COMAR 10.59 could require changes to COMAR 10.06.01.20.

Review of other state regulations identified provisions that are not found in Maryland's regulations, including provisions requiring quarantine and isolation to use the least restrictive means; granting specific state or district health officials the legal power to declare isolation and quarantine for individuals, groups, or entire areas during a public health threat; adopting an all-hazards approach for triggering emergency health regulations, such as natural disasters, toxic spills, or any general "communicable disease of public health significance". None of these were determined to require amending COMAR.

Summary of relevant judicial opinions:

- *Jacobson v. Massachusetts (U.S. Supreme Court 1905)* - landmark Supreme Court case acknowledging broad state power to protect public health by imposing reasonable requirements on individuals.
    - "At the very core of the states' police power is the authority to 'protect the public health and the public safety' by 'enact[ing] quarantine laws and health laws of every description.'" Perry v. Marteney, 172 F.4th 315, 320 (4th Cir. 2026) (quoting Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905)).
    - "Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others." Antietam Battlefield KOA v. Hogan, 461 F. Supp. 3d 214, 223 (D. Md. 2020) (quoting Jacobson 197 U.S. at 26).
- *Livingston v. State (Maryland Court of Special Appeals 2010)* - the appellate court upheld the conviction of a confined tuberculosis patient for behaving in a disorderly manner and refusing to follow health facility rules, finding that the statutory prohibition against acting in a "disorderly manner" is sufficiently clear when interpreted within the specific context and environment of a restricted medical quarantine facility.
- *Catchings v. Wilson (U.S. District Court for the District of Maryland 2021)* - a federal class-action civil rights lawsuit filed in the U.S. District Court for the District of Maryland against prison officials, challenging the conditions inside the Chesapeake Detention Facility in Baltimore. State officials reached a settlement with detainees of Baltimore's Chesapeake Detention Facility, establishing COVID-19 safety protocols and a vaccination schedule for the prison. According to the terms of the settlement, the Maryland Department of Public Safety and Correctional Services agreed to provide educational materials on COVID-19, enforce mask-wearing and social distancing among staff and inmates, enact sanitization protocols for common areas "in full compliance with CDC guidelines," and "ensure that all detainees/residents, staff, and contracted staff are administered a ... COVID test on a weekly basis." The defendants agreed to institute a policy of isolation and quarantine for residents testing positive, and the Chesapeake Detention Facility agreed to provide COVID-19 vaccines to all detainees and staff.

Recent Supreme Court cases announced a precedent that will continue to beg the question of what basic regulatory powers agencies actually have in an emergency. Among the judicial decisions as a group, the claim with the highest rate of plaintiff success contended that the emergency rule in question should have gone through the formal notice-and-comment promulgation process that is the norm for regulations. This does not impact current regulations, however, may need to be considered during future long-duration health emergencies.

(8) Provide a summary of any other relevant information gathered.

Based on the comments received in the survey, there is a need for continued education and coordination with other agencies and partners regarding the regulations in COMAR 10.59 for Catastrophic Health Emergencies. These efforts do not require amending the regulations, but could be addressed through continued collaboration and coordination with stakeholders. Continued coordination should include discussions regarding enforcement, guidance for special populations, resource needs, transportation requirements, mutual-aid processes, and building public trust.

If a decision is made to amend these regulations in the future, Md. Code Ann., Health-Gen. § 18-102(a) and Md. Code Ann., Pub. Safety §§ 14-3A-01–14-3A-08 (Catastrophic Health Emergencies Act) should be considered for inclusion as authorities under COMAR 10.59. In addition, the CDC's Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings should be reviewed to ensure that its recommendations are reflected in any future amendments to COMAR 10.59.01.04, Isolation in a Health Care Facility. The current regulations do not conflict with the CDC's 2007 updates to these guidelines. Neither the statutory authorities nor the CDC updated guidance identify any deficiencies that would require amending COMAR 10.59 at this time.

C. Under COMAR 01.01.2003.20E(3), does the agency have any existing policy statements, guidelines, or standards being applied or enforced which should be promulgated as regulations, in accordance with the Administrative Procedure Act? ○ Yes ◉ No

Has the agency promulgated all regulations required by recent legislation? ◉ Yes ○ No

Provide explanations of the above responses, as needed:

There are no existing policy statements, guidelines, or standards being applied or enforced which requires promulgation of regulations. Nor is there any recent legislation that requires promulgation of regulations.

D. **Actions Needed.** (State Government Article, §10-135(a)(2)(ix) – (xi), Annotated Code of Maryland) (check all that apply)

- ☑ no action
- ☐ amendment
- ☐ repeal
- ☐ repeal and adopt new regulations
- ☐ reorganization

Summary:

COMAR 10.59 continues to be necessary for the public interest, is supported by statutory authority, and effective in accomplishing its intended purpose. Therefore, no regulatory action is required.

Person performing review:

Title: