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February 25, 2025

Alyssa Lord
Deputy Secretary for Behavioral Health
Maryland Department of Health
Behavioral Health Administration

RE: COMAR 10.63.08 Proposed Civil Monetary Penalty Regulations

Dear Ms. Lord:

This letter is in response to the Department's letter to CBH dated February 21, 2025, in reply to our comments on proposed regulations for civil monetary penalties. We have never before replied to the Department's response, but the misstatements in the Department's letter cannot go unaddressed. We are disappointed that the proposed regulations were released without dialogue about the substantive changes from previous versions, and with such a significant detour in approach.

As a preliminary matter, we note that the Department already has authority to levy civil monetary penalties on Medicaid providers (via COMAR 10.66) who violate Medicaid conditions of payment for behavioral health programs (COMAR 10.09.59), as well as the behavioral health licensing standards (10.63.06.18). We are not aware that the Department has availed itself of these tools in the face of the "massive amount of fraud" described in your February 25 letter.

Likewise, we note that falsifying documents and forging signatures are state crimes, with significant financial penalties and potential prison time (Criminal Law 8-600 *et seq.*). In some circumstances, such activity may also give rise to federal criminal liability. Criminal prosecution may prove a more effective deterrent of such activity than civil monetary penalties and is certainly an appropriate response to criminal behavior.

We note the proposed regulations would levy penalties for immaterial violations of laws and regulations that do not result in patient harm, with separate liability accruing for each program and each site. The scope of the proposed regulation is breathtakingly larger than penalties in any other sector of health care. No other area of healthcare is held to such a low threshold nor faces such steep penalties. In other health care settings, incidents reportable to licensing authorities are only those rising to a high level of seriousness.¹ Accreditation standards require

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providers to have an internal infrastructure to address and correct less serious incidents.²

The proposed regulations require providers to turn every non-serious critical incident into a reportable sentinel event. This will overburden both providers and regulatory authorities without appreciable benefit, and it will render existing compliance programs less effective by distorting their capacity to focus on important events.

To single out the behavioral health field to be held to a higher, costlier standard than any other sector of health care is not equitable, and we believe the proposed regulations may raise questions about the state's compliance with the prohibition on non-quantitative treatment limits (NQTLs) under parity law.

For these reasons, CBH strenuously objects to the proposed regulations as currently framed. We respectfully request that the Department delay these regulations pending further discussion with the provider community about effective approaches to oversight.

Sincerely,

Shannon Hall
Executive Director

¹ See, e.g., COMAR 07.02.11.23 (reporting abuse and neglect in out-of-home foster care placements), COMAR 10.07.14.31 (assisted living required reports of death, injury, assault, abuse or medication errors resulting in harm). See also CARF requirements to report sentinel events (death, serious injury or risk thereof).

² See, e.g., CARF, "2023 Behavioral Health Standards Manual," at Section 1.H.10 at p. 73 (July 1, 2023 – June 30, 2024).