

Craig Tanio, M.D.  
CHAIR



Ben Steffen  
ACTING EXECUTIVE DIRECTOR

**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

**MEMORANDUM**

**To:** Commissioners

**From:** Paul Parker *pep*

**Date:** July 19, 2012

**Re: ManorCare Health Services, LLC**  
Docket No. 11-16-2324 and  
**525 Glenburn Avenue Operations, LLC d/b/a Chesapeake Woods Center**  
Docket No. 12-09-2331  
Errata

\*\*\*\*\*

ManorCare

Unfortunately, an appendix intended for attachment to the ManorCare Health Services, LLC Staff Report and Recommendation concerning its proposed comprehensive care facility project was not attached when this report was posted and mailed last week. That appendix, the decision of Commissioner Schneider in the request for interested party status by the Fairwood Community Association, is attached.

I would also like to bring the following errors in this same report to your attention. On page 10, "MCHS-Fairwood" is referenced as having a "star" rating under the CMS quality rating program for nursing homes. Obviously, this proposed facility, which does not yet exist, does not have such a rating. Also, on that page, a summary of star ratings for existing Prince George's County nursing home was provided that was erroneous. As corrected, that summary statement should be as follows:

*Three are rated as "1 Star" facilities, six are rated as "2 Star" facilities, and four are rated as "3 Star" facilities. Three facilities have "4 Star" ratings and five have a "5 Star" rating. The distribution of the Stars is allocated as follows: 23.8% of all facilities are rated as 5 Star; 61.9% fall within the middle range of 2 to 4 Stars; and 14.3% are rated as 1 Star.*

Finally, while the source of project funding was correctly identified in the Introductory Project Description of the Staff Report as HCR HealthCare, LLC, the applicant's parent, the source was misidentified on page 23 as "MCHS-Fairwood Gardens, LLC." The audited financial statement documenting the availability of this cash resource was that of HCR HealthCare, LLC, not the applicant entity.

Chesapeake Woods

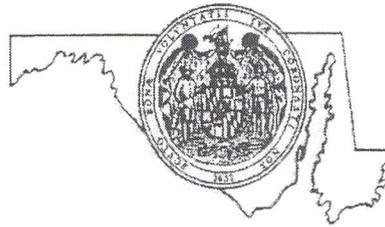
Table 13, on page 25 of the Staff Report and Recommendation provided projected payor mix at the expanded Chesapeake Woods Center for Fiscal Years 2013 and 2014. This payor mix was mislabeled as "Patient Days" by payor source. The percentages shown are actually "Revenue" by payor source.

## Appendix F

June 13, 2012 Decision in re  
Interested Party Status

Marilyn Moon, Ph.D.  
CHAIR

STATE OF MARYLAND



Ben Steffen  
ACTING EXECUTIVE DIRECTOR

**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-356-1236

June 13, 2012

By E-Mail and U.S. Mail

Cheryle A. Mines, M.S.A., M.P.H.  
Fairwood Community Association  
12800 Libertys Delight Drive, Apt. 305  
Bowie, Maryland 20720

Jack C. Tranter, Esquire  
Gallagher, Evelius and Jones  
218 North Charles Street  
Baltimore, Maryland 21201

Re: Request for Interested Party Status; Pending Motions  
ManorCare Health Services, LLC  
Docket No. 11-16-2324

Dear Ms. Mines and Mr. Tranter:

I have considered the request for interested party status, comments, and response made by the Fairwood Community Association (“FCA”) in this review of an application for Certificate of Need (“CON”) filed by ManorCare Health Services, LLC (“ManorCare”). I have also considered four filings made by ManorCare, including both a letter and a motion opposing FCA’s request for interested party status, a response to FCA’s comments, and a Motion to Strike FCA’s May 3 filing.

Under Commission regulations at COMAR 10.24.01.01B(20), the qualification for interested party status is narrowly delimited. Because it does not fit into any more specific category, to qualify as an interested party, FCA must demonstrate that it will be “adversely affected,” in an issue area over which the Commission has jurisdiction, by the approval of the project. Under this qualification, at COMAR 10.24.01.01B(2), FCA must demonstrate that it could “suffer a potentially detrimental impact” from the approval of the project.

In addition, the regulations at COMAR 10.24.01.08F require that persons seeking interested party status “state with particularity the State Health Plan standards or the review criteria in §G of this regulation that the person seeking interested party status believes have not been met by the applicant and the reasons why the applicant does not meet those standards or criteria.” The reference criteria are the State Health Plan, need, availability of more cost effective alternatives, viability of the proposal, compliance with conditions of previous CONs, and impact on existing providers and the health care delivery system. An attachment to this

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Jack C. Tranter, Esquire  
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letter reproduces the entire text of COMAR 10.24.01.08G. The regulations also state that "factual assertions made in comments by a person seeking interested party status that are not included in the record shall be accompanied by appropriate documentation or sworn affidavit, or both."

FCA's letter of April 9, 2012 recommends denial of the CON application on the basis of concerns that "embrace a larger issue." The concerns expressed by FCA include "the delivery of quality geriatric care services in our Prince George's community and the reputation of the service providers." FCA concludes its letter by noting that it "would welcome a more non-traditional long term care service model in our County that would position itself to provide exceptional care and services to the residents of twenty year from now. HCR Manor Care Services, Inc. may not be able to provide such level of service to our Prince George's County seniors."

On May 3, FCA responded to ManorCare's motion opposing FCA's request for interested party status. On May 4, ManorCare moved to strike FCA's May 3 filing. I deny ManorCare's motion to strike. The comments filed by FCA will remain in the record of this review. However, I conclude that FCA does not qualify for interested party status in this review because it has not demonstrated that it will suffer a potentially detrimental impact, in an issue area over which the Commission has jurisdiction, if this proposed project is approved.

In its motion in opposition to FCA's request for interested party status, ManorCare argues that a "homeowners association" or "community association" cannot meet the regulatory criteria to be designated as an interested party because of a previous ruling by MHCC that such associations cannot be granted status as "participating entities." I disagree with ManorCare's position; each determination of interested party or participating entity status is limited to the facts before the reviewer. For example, if FCA substantiated that ManorCare delivers sub-quality care in its existing facilities, I may have been swayed, even though granting interested party status under such circumstances would be unusual.

FCA's filings are primarily devoted to statements of concern regarding the poor functioning of the full spectrum of health care facilities and programs operating in Prince George's County and the lack of innovation and higher quality of care in the provision of long-term care facilities and programs, locally, at a statewide level, and nationally. Poor or inadequate State regulation is identified as an important cause of these problems. While I am familiar with and agree, to some extent, with some of the observations made by FCA, these aspects of the filings do not meet the threshold for proof that it or its members will be "adversely affected," in an issue area over which the Commission has jurisdiction, by the approval of the project. FCA appears to argue that almost any nursing home project that involves replacement and relocation of bed capacity will have a detrimental effect on the surrounding community because nursing home facilities and services, as currently configured, are not structured to meet community needs.

With respect to FCA's comments that speak more specifically to the project under review, I have concluded that they also lack the specificity and documentation required by the

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applicable regulations and fail to demonstrate, in any definitive manner, the detrimental impact that will result from the project, if implemented. Considering the applicable review criteria, the FCA comments also do not speak with particularity to any standards of the State Health Plan, the viability of the project, the track record of the applicant in implementing previously awarded CONs, or the impact of the project.

The comments can be viewed as speaking, in a general manner, to the criteria of need and the effectiveness of alternatives. In summary, my reading of the comments indicates that FCA does not believe the project is needed because it does not believe that it meets the desires of the residents of the community it will serve for more innovative and less conventional long term care services. FCA does not believe the applicant has shown itself to be an effective provider of comprehensive care facility ("CCF" or nursing home) services because it has not achieved the highest quality ratings possible in two evaluation forums: the Center for Medicare and Medicaid Services ("CMS") *Nursing Home Compare* Five Star Rating System and the *U.S. News and World Report* magazine's list of Best Nursing Homes in the U.S.A.

While there may be some validity to FCA's point that the development of a greater range of alternative community-based long-term care resources might better fit the needs and desires of Prince George's County and Maryland residents, this does not demonstrate that FCA is likely to suffer a detrimental impact as a result of the modernization of a portion of the physical plants of the comprehensive care facilities that the applicant operates in Prince George's County. I note that the proposed project does not increase the applicant's CCF bed capacity in Prince George's County. The applicant seeks to downsize two old physical plants and replace the bed capacity eliminated at these facilities, placing them in a new building designed to better meet the needs of short-term CCF patients seeking rehabilitative services rather than long-term residential and maintenance care. ManorCare states that this model responds to changes in the demand for CCF services that have occurred since the time in which its existing facilities were developed. While one can believe that having more programs that facilitate the ability of aging Americans to avoid or delay reliance on nursing home care is an important objective, it is not clear that achieving this objective is furthered by withholding the ability of nursing home operators to invest in approaches that improve the quality and functionality of service capacity that is currently in operation nor is it clear that making such changes in the current system for delivering CCF services will harm any residents of Prince George's County.

Rating systems applied to nursing homes, undertaken by CMS and other organizations, can be a useful tool for consumers and regulators. However, a failure of the applicant's facilities to achieve the highest possible ratings in two rating systems does not demonstrate that FCA will be harmed by the applicant's proposed establishment of a new nursing home to replace and relocate a portion of the applicant's bed capacity in Prince George's County. This may be the most cost-effective alternative to meet the needs that can be identified for the proposed project. The interested party filing does not indicate, with particularity, that a more cost-effective approach to meeting the objectives of the proposed project exists.

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Jack C. Tranter, Esquire  
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While I find that FCA does not qualify as an interested party, its comments are accepted as part of the record in this review and will be addressed in the report and recommendation on this project made to the Commission. If you have any questions, please call Suellen Wideman, Assistant Attorney General, at 410-764-3326.

Sincerely yours,



Glenn Schneider  
Commissioner/Reviewer

attachment

cc: Paul E. Parker  
Suellen Wideman, AAG  
Pamela B. Creekmur, Prince George's County Health Department

#### 10.24.01.08G. Criteria for Review of Application.

(1) In proceedings on a Certificate of Need application, the burden of proof that the project meets the applicable criteria for review, by a preponderance of the evidence, rests with the applicant.

(2) Issuance of a Certificate of Need by the Commission. In reviewing an application for a Certificate of Need, the Commission shall consider the applicant's submissions, the responses of each other applicant and interested party, the recommendation, if any, of the local health department, and the information gathered during the Commission's review of the application, to which each applicant and interested party shall have been afforded an opportunity to respond.

(3) Criteria for Review of an Application for Certificate of Need.

(a) State Health Plan. An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards, policies, and criteria.

(b) Need. The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.

(c) Availability of More Cost-Effective Alternatives. The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

(d) Viability of the Proposal. The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.

(e) Compliance with Conditions of Previous Certificates of Need. An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.

(f) Impact on Existing Providers and the Health Care Delivery System. An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region,

including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.