

IN THE MATTER OF	*	
SEASONS HOSPICE & PALLIATIVE	*	BEFORE THE
CARE OF MARYLAND, INC.	*	MARYLAND
AND OPTUM PALLIATIVE AND	*	HEALTH CARE
HOSPICE CARE	*	COMMISSION

**STAFF REPORT AND RECOMMENDATION
PROPOSED EXEMPTION FROM CERTIFICATE OF NEED REVIEW**

I. INTRODUCTION

This matter involves a request by Seasons Hospice & Palliative Care of Maryland, Inc. (“Seasons”), a general hospice program, for an exemption from Certificate of Need (“CON”) review for its proposed merger with Optum Palliative and Hospice Care (“Optum”). Seasons proposes to purchase the Maryland general hospice operations of Optum, which is authorized to provide general hospice services in three jurisdictions; Baltimore, Montgomery, and Prince George’s Counties and merge those operations into Seasons. Optum is also authorized to provide hospice care to certain HMO patients without respect to the patient’s jurisdiction of residence but this authorization has not accounted for any substantial number of patients in recent years and is authority that cannot be acquired by Seasons.

Seasons provides general hospice services in Baltimore City and the counties of Anne Arundel, Baltimore, Carroll, Cecil, Harford, Howard, and Prince George’s.

Under the terms of the proposed agreement, Seasons would combine Optum’s Baltimore and Prince George’s County hospice programs with Seasons’ existing programs operating in these jurisdictions, and Seasons would expand its operations to include Montgomery County. Optum would cease operations as a general hospice program in Maryland.

While the proposed transaction is identified as the acquisition of Optum’s hospice assets by Seasons, the objective of this transaction is merge the two hospices, with Seasons as the surviving general hospice program, serving all of the jurisdictions currently served by Seasons and adding Montgomery County to Seasons’ authorized service area. Therefore, meeting this objective requires considering this transaction as a merger of two health care facilities, given that Seasons is not authorized to serve Montgomery County. Expanding the number of jurisdictions served by a general hospice requires Commission approval, either through a CON or, in this case, through an exemption from CON review, pursuant to the merger or consolidation of health care facilities.

COMAR 10.24.01.04A provides that, “subject to the procedural requirements of this regulation, the Commission may exempt from the requirement of Certificate of Need review and approval” certain “actions proposed by a health care facility or merged asset system comprised of two or more health care facilities.” Among those actions eligible for exemption from CON review is the “merger or consolidation of two or more hospitals or other health care facilities.”

II. Legal Qualification for an Exemption of Certificate of Need Review

The regulation in paragraph .04B requires that facilities or organizations requesting such an exemption give the Commission a 45-day written notice of their intent to merge or consolidate. Seasons provided written notice of the proposed merger with Optum on March 19, 2015. With the closing of the proposed transaction, Seasons will be the sole surviving provider of hospice services in Maryland.

This merger will not involve: any renovation or new construction to an existing facility; the relocation or reconfiguration of existing medical services; or a change in bed capacity. The transaction is anticipated to close no later than August 1, 2015. There is no outstanding public body obligations associated with these facilities.

III. Notice by the Commission to the Public

On April 24, 2015, staff requested publication of notices of receipt of the request for the exemption in the *Baltimore Sun* and the *Washington Times*. The notice was also published in the *Maryland Register* on May 15, 2015 as required. No comments were received in response to these notices.

IV. Public Information Hearing

A public information hearing is required under certain circumstances when a hospital requests an exemption from CON review for the closure or partial closure of a hospital or for the conversion of a general hospital to a limited service hospital. Because the current request involves the consolidation of hospice services and not hospital services, a public information hearing is not required.

V. Determination of Exemption from Certificate of Need Review

The regulation at COMAR 10.24.01.04E directs the Commission to issue a determination of exemption from CON review, if the merged asset system has provided the required information and the Commission finds that the proposed action:

- A. Is in the public interest;
- B. Is not inconsistent with the State Health Plan; and
- C. Will result in more efficient and effective delivery of health services.

A. Is in the Public Interest

Seasons states that its acquisition of Optum will enable the residents of Montgomery County to benefit from its broad experience and existing systems and infrastructure as a hospice provider.

Seasons states that the merger with Optum will allow Seasons to operate more efficiently. Seasons plans to close Optum's main office. This office closure is expected to reduce its fixed costs and spread its reduced overhead over a larger number of patients. It also envisions the potential for improved staff productivity, through increased numbers of patients seen per staff member.

Seasons does not project that this merger will have a significant impact on consumer choice. This merger will leave ten hospices operating in Baltimore County, twelve in Montgomery County, and eleven programs in Prince George's County.

As shown in the following table, among the three counties affected by this merger, only one hospice care provider, Seasons, has significant market share in one of the three Counties, Baltimore. Merging with Optum will not dramatically increase Season's market share in this jurisdiction. (Optum served only two percent of the hospice patients originating in Baltimore County in 2013.) The same can be said of Prince George's County, where the combined market share of the two merging hospice programs in 2013 was only 7.7%. Seasons was the fifth largest provider of hospice services in Prince George's County in 2013 and its rank will probably be the same following the proposed merger. Finally, Seasons will not be acquiring a major player in Montgomery County. Optum's market share of Montgomery County in 2013 was only 2%.

Market Share and Jurisdictional Relevance - Three Selected Jurisdictions
Seasons and Optum, CY 2013

County	Total Hospice Patients	Market Share of the Jurisdiction's Total Patients	Proportion of Total Patients Generated from the Jurisdiction
Baltimore	Optum	2.0%	39.1%
	Seasons	25.2%	46.6%
Montgomery	Optum	2.0%	28.2%
	Seasons	0.0%	0.0%
Prince George's	Optum	3.7%	32.3%
	Seasons	4.0%	3.3%

Source: MHCC Annual Hospice Survey

Medicare is, by far, the major payor for hospice services. Thus, the merger will not have an impact on the charges paid for hospice care by the vast majority of hospice patients.

B. Is not inconsistent with the State Health Plan or the institution-specific plan developed by the Commission

Commission Staff's review of this request for exemption does not indicate that it is inconsistent with the applicable State Health Plan ("SHP") standards at COMAR 10.24.13. The Appendix to this report reviews and comments on each of the SHP's project review standards for hospice services with respect to this proposed consolidation.

C. Will result in the delivery of more efficient and effective health care services

Seasons served 2,667 patients in eight jurisdictions in CY 2013,¹ while Optum served a total of 248 patients (70 in Montgomery County). Seasons states that, as one of the larger hospice providers in the State already authorized to serve Baltimore County and Prince George's County, it can easily expand its hospice services to Montgomery County in an efficient and effective manner. Seasons will keep its office in Glen Burnie open and plans to close the Optum office in Elkridge, reducing administrative costs.

VI. CONCLUSION AND STAFF RECOMMENDATION

For the reasons set forth in this report, Staff recommends that the Commission **APPROVE** the request for an exemption from CON review for the merger of the hospice services of Seasons and Optum. With this exemption, Seasons, the surviving hospice, will acquire authority to provide hospice care to the residents of Montgomery County.

¹ The MHCC CY 2013 Hospice Survey reports that a total of 23,876 patients received hospice services in Maryland in that year.

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HOSPICE CARE	*	COMMISSION

ORDER

Having reviewed and considered the information and analysis contained in the Staff Report and Recommendation, it is, this 18th day of June, 2015, hereby **ORDERED** that:

The request for exemption from Certificate of Need review filed by Seasons Hospice and Palliative Care of Maryland, Inc. and Optum Palliative and Hospice Care for the merger of the two hospices, with Seasons as the surviving general hospice program, is hereby **GRANTED**.

MARYLAND HEALTH CARE COMMISSION

APPENDIX: CONSISTENCY WITH THE STATE HEALTH PLAN

Proposed Consolidation of Seasons Hospice & Palliative Care of Maryland, Inc. with Optum Palliative and Hospice Care

The following review of the SHP standards contained in COMAR 10.24.13 includes comments on the standards at

COMAR 10.24.13.05 Hospice Standards. The Commission shall use the following standards, as applicable, to review an application for a Certificate of Need to establish a new general hospice program, expand an existing hospice program to one or more additional jurisdictions, or to change the inpatient bed capacity operated by a general hospice.

A. Service Area. An applicant shall designate the jurisdiction in which it proposes to provide services.

Optum is currently authorized to provide general hospice care in Baltimore, Montgomery, and Prince George's Counties and to serve certain health maintenance organization ("HMO") members of its parent company's HMOs, irrespective of their jurisdiction of residence . With the approval of this transaction, Optum will cease to operations as a general hospice program in Maryland. Seasons will obtain authorization to serve Montgomery County.

B. Admission Criteria. An applicant shall identify:

- (1) Its admission criteria; and
- (2) Proposed limits by age, disease, or caregiver.

Season's admission criteria states that "patients are accepted for care and treatment on the basis of reasonable criteria and under the expectation that the physical, emotional, social, and spiritual needs of patients and families can be met adequately by Seasons." The hospice's medical director or in consultation with the patient's attending physician will recommend admission for palliative treatment/services for a terminally ill patient with a prognosis of six months or less. The patient or their legal representative must make an informed decision to forego curative treatment for the terminal illness. At the time of admission, the patient must be under the care of a physician who will be responsible for medical care; Seasons does not require that the patient have a primary caregiver. With regard to home care, the physical facilities must be adequate for proper care and a safe environment for the patient and hospice staff. The only limitations to admissions are the patient must live in the geographic areas served by Seasons Hospice, and that Seasons will not provide care to pediatric patients.

C. Minimum Services.

- (1) An applicant shall provide the following services directly:
 - (a) Skilled nursing care;
 - (b) Medical social services;
 - (c) Counseling (including bereavement and nutrition counseling);
- (2) An applicant shall provide the following services, either directly or through contractual arrangements:
 - (a) Physician services and medical direction;

- (b) Hospice aide and homemaker services;
 - (c) Spiritual services;
 - (d) On-call nursing response
 - (e) Short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom management);
 - (f) Personal care;
 - (g) Volunteer services;
 - (h) Bereavement services;
 - (i) Pharmacy services; COMAR 10.24.13
 - (j) Laboratory, radiology, and chemotherapy services as needed for palliative care;
 - (k) Medical supplies and equipment; and
 - (l) Special therapies, such as physical therapy, occupational therapy, speech therapy, and dietary services.
- (3) An applicant shall provide bereavement services to the family for a period of at least one year following the death of the patient.

As an existing provider of hospice services, Seasons directly provides skilled nursing care, medical social services, and counseling services. With regard to the services listed in Paragraph C(2), Seasons provides each of the services listed in this standard either directly or contractually. Seasons provides bereavement services to the family for no less than 13 months following the patient's death.

D. Setting. An applicant shall specify where hospice services will be delivered: in a private home; a residential unit; an inpatient unit; or a combination of settings.

Seasons provides hospice care in both the home and inpatient settings through arrangements with nursing homes and assisted living facilities. Seasons currently operates inpatient hospice beds in Baltimore County at Northwest Hospital Center, MedStar Franklin Square Medical Center, and in Baltimore City at Sinai Hospital of Baltimore. In Montgomery County, Seasons will establish contracts with nursing homes and assisted living facilities to provide inpatient hospice services on an as-needed, "scattered bed" basis.

E. Volunteers. An applicant shall have available sufficient trained caregiving volunteers to meet the needs of patients and families in the hospice program.

Seasons states that it operates an active volunteer program.

F. Caregivers. An applicant shall provide, in a patient's residence, appropriate instruction to, and support for, persons who are primary caretakers for a hospice patient.

Seasons will provide instruction and support to the primary caregiver in the person's home.

G. Impact. An applicant shall address the impact of its proposed hospice program, or change in inpatient bed capacity, on each existing general hospice authorized to serve each jurisdiction affected by the project. This shall include projections of the project's impact on future demand for the hospice services provided by the existing general hospices authorized to serve each jurisdiction affected by the proposed project.

Seasons and Optum are both existing hospice programs, with Season's acquisition of Optum's assets not involving any inpatient hospice beds. This transaction will not have a significant adverse impact in the near term on hospice services offered by other existing hospice providers in either of the jurisdictions currently served by Seasons or Optum. (See the table provided in the report on market share and jurisdictional relevance of Baltimore, Montgomery, and Prince George's Counties.)

H. Financial Accessibility. An applicant shall be or agree to become licensed and Medicare-certified, and agree to accept patients whose expected primary source of payment is Medicare or Medicaid.

Seasons is licensed and certified with both the Medicare and Medicaid programs.

I. Information to Providers and the General Public.

(1) General Information. An applicant shall document its process for informing the following entities about the program's services, service area, reimbursement policy, office location, and telephone number:

- (a) Each hospital, nursing home, home health agency, local health department, and assisted living provider within its proposed service area;
- (b) At least five physicians who practice in its proposed service area;
- (c) The Senior Information and Assistance Offices located in its proposed service area; and
- (d) The general public in its proposed service area. COMAR 10.24.13

(2) Fees. An applicant shall make its fees known to prospective patients and their families before services are begun.

As an existing provider, Seasons states that it currently provides general information on its home health and inpatient hospice programs in every jurisdiction in which it provides care. Seasons will provide this general information to the residents of Montgomery County.

The hospice will make its fees known to clients and their families before services are begun.

J. Charity Care and Sliding Fee Scale. Each applicant shall have a written policy for the provision of charity care for indigent and uninsured patients to ensure access to hospice services regardless of an individual's ability to pay and shall provide hospice services on a charitable basis to qualified indigent persons consistent with this policy. The policy shall include provisions for, at a minimum, the following:

(1) Determination of Eligibility for Charity Care. Within two business days following a patient's request for charity care services, application for medical assistance, or both, the hospice shall make a determination of probable eligibility.

(2) Notice of Charity Care Policy. Public notice and information regarding the hospice's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the population in the hospice's service area, and in a format understandable by the service area population. Notices regarding the hospice's charity care policy shall be posted in the business office of the hospice and on the hospice's website, if such a site is maintained. Prior to the provision of hospice services, a hospice shall address any financial concerns of patients and patient families, and provide individual notice regarding the hospice's charity care policy to the patient and family.

(3) Discounted Care Based on a Sliding Fee Scale and Time Payment Plan Policy. Each hospice's charity care policy shall include provisions for a sliding fee scale and time payment plans for low-income patients who do not qualify for full charity care, but are unable to bear the full cost of services.

(4) Policy Provisions. An applicant proposing to establish a general hospice, expand hospice services to a previously unauthorized jurisdiction, or change or establish inpatient bed capacity in a previously authorized jurisdiction shall make a commitment to provide charity care in its hospice to indigent patients. The applicant shall demonstrate that:

(a) Its track record in the provision of charity care services, if any, supports the credibility of its commitment; and

(b) It has a specific plan for achieving the level of charity care to which it is committed.

Seasons protocol in Maryland for charity care and sliding fee scale include the procedure for qualifying for charity care, the time frame for a determination of eligibility for charity care and/or reduced fees (within two business days of the initial request), annual publication of information on the charity care policy through a regional newspaper and posting in the business office, and the sliding fee scale and arrangements for time payment plans for low-income patients who do not qualify for full charity care.

According to the 2013 MHCC Hospice Survey, Seasons provided 0.3% of its total patient days as charity care. This compares to 0.8% of total hospice patient days being delivered as charity care statewide.

K. Quality.

(1) An applicant that is an existing Maryland licensed general hospice provider shall document compliance with all federal and State quality of care standards. COMAR 10.24.13

(2) An applicant that is not an existing Maryland licensed general hospice provider shall document compliance with federal and applicable state standards in all states in which it, or its subsidiaries or related entities, is licensed to provide hospice services or other applicable licensed health care services.

(3) An applicant that is not a current licensed hospice provider in any state shall demonstrate how it will comply with all federal and State quality of care standards.

(4) An applicant shall document the availability of a quality assurance and improvement program consistent with the requirements of COMAR 10.07.21.09.

(5) An applicant shall demonstrate how it will comply with federal and State hospice quality measures that have been published and adopted by the Commission.

As an existing provider of care, Seasons states that it is in compliance with all federal and state Quality of Care standards. Seasons recently documented their quality assurance plan in a CON decision for the establishment of a 12-bed General Inpatient Hospice Unit at Sinai Hospital (Docket No. 13-24-2346).

L. Linkages with Other Service Providers.

(1) An applicant shall identify how inpatient hospice care will be provided to patients, either directly, or through a contract with an inpatient provider that ensures continuity of patient care.

(2) An applicant shall agree to document, before licensure, that it has established links with hospitals, nursing homes, home health agencies, assisted living providers, Adult Evaluation and Review

Services (AERS), Senior Information and Assistance Programs, adult day care programs, the local Department of Social Services, and home delivered meal programs located within its proposed service area.

Seasons currently has established links with hospitals, nursing homes, home health agencies, assisted living providers, Adult Evaluation and Review Services, Senior Information and Assistance, adult day care programs, the local Department of Social Services, and home delivered meal programs located in the jurisdictions with which the hospice currently provides services. Seasons will establish these linkages with providers in Montgomery County.

M. Respite Care. An applicant shall document its system for providing respite care for the family and other caregivers of patients.

Currently, Seasons provides respite care through contractual arrangements with nursing homes. The three inpatient hospice programs operated at Northwest Hospital Center, Sinai Hospital, and MedStar Franklin Square Hospital also provide respite care. Seasons will establish contracts with nursing homes and assisted living facilities in Montgomery County to provide this service.

N. Public Education Programs. An applicant shall document its plan to provide public education programs designed to increase awareness and consciousness of the needs of dying individuals and their caregivers, to increase the provision of hospice services to minorities and the underserved, and to reduce the disparities in hospice utilization. Such a plan shall detail the appropriate methods it will use to reach and educate diverse racial, religious, and ethnic groups that have used hospice services at a lower rate than the overall population in the proposed hospice's service area.

Seasons utilizes a number of modalities in educating the public. The hospice maintains both a toll-free telephone number that is accessible 24 hours per day, 7 days a week and a website² with answers to frequently asked questions about hospice and the services offered. Season's staff attends senior fairs and community events and has conducted classes attended by other health care professionals and the public to educate and provide outreach regarding hospice, its services, and how palliative services are used when curative care no longer is an option. Staff also conducts in-service education and makes presentations before numerous hospitals, skilled nursing facilities, assisted living facilities, physician groups, governmental agencies, professional agencies and groups, and religious groups on issues related to end of life care. Finally, each jurisdiction where Seasons offers care has committees that provide education and work to increase access to hospice services.

O. Patients' Rights. An applicant shall document its ability to comply with the patients' rights requirements as defined in COMAR 10.07.21.21.

Seasons has a policy in place that addresses Patient/Family Rights and Responsibilities. The policy ensures that each patient or their representative are informed of the patient's rights in advance of furnishing care, and that a signature from the patient or representative acknowledges that these rights have been presented and are understood. The patient rights presented to the patient are consistent with COMAR 10.07.21.21.

² Available at: www.seasons.org.

P. Inpatient Unit: In addition to the applicable standards in .05A through O above, the Commission will use the following standards to review an application by a licensed general hospice to establish inpatient hospice capacity or to increase the applicant's inpatient bed capacity.

(1) Need. An applicant shall quantitatively demonstrate the specific unmet need for inpatient hospice care that it proposes to meet in its service area, including but not limited to:

- (a) The number of patients to be served and where they currently reside;
- (b) The source of inpatient hospice care currently used by the patients identified in subsection (1) (a); and
- (c) The projected average length of stay for the hospice inpatients identified in subsection (1) (a).

(2) Impact. An applicant shall quantitatively demonstrate the impact of the establishment or expansion of the inpatient hospice capacity on existing general hospices in each jurisdiction affected by the project, that provide either home-based or inpatient hospice care, and, in doing so, shall project the impact of its inpatient unit on future demand for hospice services provided by these existing general hospices.

(3) Cost Effectiveness. An applicant shall demonstrate that:

- (a) It has evaluated other options for the provision of inpatient hospice care, including home-based hospice care, as well as contracts with existing hospices that operate inpatient facilities and other licensed facilities, including hospitals and comprehensive care facilities; and
- (b) Based on the costs or the effectiveness of the available options, the applicant's proposal to establish or increase inpatient bed capacity is the most cost-effective alternative for providing care to hospice patients. COMAR 10.24.13

<p>This standard is not applicable to this exemption review. No new or expanded inpatient facilities are proposed as part of this consolidation of two hospices.</p>
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