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ARGUMENT

THE MODIFIED CON APPLICATION CANNOT BE APPROVED AND SHOULD BE DE-DOCKETED BECAUSE AHC FAILED TO SEEK CERTIFICATE OF NEED APPROVAL FOR THE PROPOSED SPECIAL HOSPITAL TO BE ESTABLISHED AT THE TAKOMA PARK CAMPUS

AHC's Modified Application is not approvable and should be de-docketed because the proposed project, if implemented, will result in two health care facilities, but CON approval is sought for only one. A CON is required before "a new health care facility is built, developed, or established." MD. CODE ANN., HEALTH-GEN. §19-120(f) (2014); COMAR §10.24.01.02A(1). HCH has separately submitted comments regarding the proposed relocation of WAH. HCH makes this request to de-docket AHC's application for failure to apply for a CON for its proposal to establish a new special hospital for psychiatric care.

A. AHC Seeks Approval of Only One Health Care Facility in the Modified CON Application.

Unlike the proposal advanced in the 2009 CON application for the relocation of WAH, AHC now intends to leave 40 acute care psychiatric beds in Takoma Park rather than relocate them to White Oak with the rest of the acute care beds. Modified Application ("Appl."), p. 6. AHC acknowledges that what it intends to leave behind in Takoma Park will constitute a special hospital for psychiatric care. *Id.* at 34 (describing the options for development, AHC explains that the behavioral health services to remain in Takoma Park will operate as a "specialty hospital service"). Yet, AHC states that the Takoma Park campus "is not a formal element of the application." *Id.* at 9.

In the pending application, AHC does not seek CON approval for the special hospital it intends to establish in Takoma Park – it seeks Commission approval only for the partially relocated general acute care facility in White Oak. The problem with this approach is that the

special hospital for psychiatric care in Takoma Park cannot be established without a CON. Thus, the Modified Application is neither feasible nor approvable without CON approval of the psychiatric beds that will be left in Takoma Park.

AHC did not submit a letter of intent for the proposed Takoma Park special hospital project, nor did it seek approval pursuant to a CON application as required by Commission regulation. *See* COMAR §10.24.01.07C. Although AHC responded to a series of questions posed by the Commission Staff concerning various standards and review criteria that would apply to the approval of the special hospital (*see* AHC letter dated December 12, 2014 and AHC responses to questions dated December 22, 2014), AHC has made no request for a CON for that facility and disclaims the special hospital as a “formal element” of the pending application. Appl. at 6.

B. The Proposed Special Psychiatric Hospital that will Remain in Takoma Park following WAH’s relocation is a Separate Health Care Facility.

There is no question that the psychiatric bed facility to be left in Takoma Park will be a health care facility that is separate and distinct from the proposed partially relocated WAH. First, as noted by the Office of Health Care Quality in a letter from Renee Webster dated February 27, 2014 (attached to the Modified Application as Exhibit 4), the special hospital in Takoma Park will need its own separate license because, pursuant to COMAR §10.07.01.06A, “[s]eparate licenses are required for institutions maintained on separate premises, even though both institutions are operated under the same management.”

Second, as a matter of law, the Takoma Park facility cannot be operated as a part of a general acute care hospital because it will provide only a specialized service. A health care facility may be classified as a general acute care hospital only if it “at least has the facilities and provides the services that are necessary for the general medical and surgical care of patients.”

MD. CODE ANN., HEALTH-GEN., §19-307(a)(1)(i). AHC concedes the Takoma Park hospital will not be a general acute care hospital. *See* AHC responses to Commission Staff questions dated December 22, 2014, response 4 (in addressing Standard AP 2a, AHC states that ABH Takoma Park will not be “an acute general hospital.”)

C. AHC is Not Permitted to Modify the Pending Application to Add a Second Health Care Facility.

Knowing that it intended to leave behind the psychiatric beds as a part of the proposed project, AHC should have sought CON approval for the resulting special hospital in Takoma Park, either as part of the pending proposal or in a separate CON application. At this time, AHC cannot modify its application to seek approval of a second health care facility because modification of this type, *i.e.*, adding a second hospital to be approved, would change the fundamental nature of the facility or the services to be provided. By regulation, such a change requires a new CON. COMAR 10.24.01.08E(5)(a).¹

Furthermore, the letter of intent and application were filed on behalf of “Adventist HealthCare, Inc. d/b/a Washington Adventist Hospital.” This is appropriate for the part of the project involving the partial relocation of WAH to White Oak because WAH is the licensee of the existing general acute care hospital. *See* Appl., Exhibit 15 (licensee is “Washington Adventist Hospital”). COMAR §10.24.01.07D(1) states:

¹ Moreover, the new CON would have to address all of the review criteria relevant to special psychiatric hospitals, including not only financial viability, which AHC has addressed to a limited extent in completeness questions, but also the cost effectiveness of the project, need, and the impact on existing providers. COMAR § 10.24.01.09G. AHC would also need to provide detailed project drawings and commit to a project schedule that is more detailed than the vague schedule it describes for the Takoma Park campus renovations to date, which begin in “Year 1” without any indication of when exactly it will begin. Appl., Exhibit 6; COMAR §10.24.01.07A (An applicant “shall submit a formal application for [CON] in the form and manner prescribed by the Executive Director”).

- (1) If a proposed facility would require licensure after Certificate of Need approval, the applicant is the person or persons who will be the licensee as specified in Health-General Article, §19-318 et seq., Annotated Code of Maryland. A person may file a letter of intent and an application in the person's own name, and, before docketing, designate an alternate legal entity that the person owns or controls as the intended licensee.

However, AHC will not be the licensee of the new special hospital. AHC states that the behavioral health services remaining in Takoma Park will “be licensed as part of Adventist Behavioral Health.” Appl. at 6. The new special hospital will be licensed under its own name, presumably Adventist Behavioral Health - Takoma Park (following the naming convention of the other Adventist Behavioral Health (“ABH”) facilities. AHC’s decision to have its existing psychiatric beds be developed into a new special psychiatric hospital should have resulted in AHC withdrawing its current application and waiting until the next review cycle to file a letter of intent and CON application with two co-applicants, or, alternatively, proceeding with two applications in a consolidated review. COMAR §10.24.01.07D(1) makes clear that changes to the applicant must occur before an application is docketed. WAH cannot now change the applicants.

D. The Partial Relocation to White Oak Cannot be Separated from the Establishment of a New Special Psychiatric Hospital.

Because the projects are intertwined, the two applications should proceed together, either as co-applicants or separate applications consolidated for review. The establishment of a new specialty hospital in Takoma Park is a necessary result of the proposed partial relocation of WAH, if it is approved. According to AHC’s pending application, WAH will relocate all of its beds, except for its existing behavioral health beds, to White Oak, and ABH will begin providing inpatient psychiatric treatment at the Takoma Park facility without any interruption of behavior health services.

AHC has confirmed the relationship between its pending application and the establishment of a new facility at Takoma Park by assuming that the existing behavioral health beds will continue to be an available service to the community instead of addressing the regulations required for a hospital to terminating an existing service line. Indeed, it would be impossible for the Commission to approve AHC's application to relocate a portion of WAH without assuming that the new specialty hospital will be established at Takoma Park, since AHC has not provided the information necessary for the Commission to make a determination that the closure of WAH's acute psychiatric services best meets the needs of the population. *Id.*

E. AHC has not Provided the Information Required for the Establishment of a New Special Psychiatric Hospital

Not only must the proposal set forth in the application be de-docketed for failure to comply with the formal requirements of submitting a letter of intent and application for a CON to operate a special hospital at Takoma Park, but for failure to provide the types and quality of information required for a CON review.

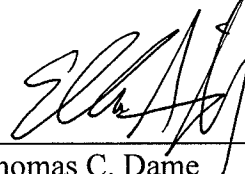
Neither AHC nor ABH has provided complete assumptions and tables required for the Commission and interested parties to determine whether the special hospital would be financially feasible or viable. Nor has ABH provided any project drawings. Furthermore, neither AHC nor ABH has addressed how psychiatric patients brought to its proposed ED will be cared for without the on-site psychiatric unit. Also, AHC has not addressed whether the closure of its acute psychiatric unit at WAH will change EMS transport patterns and the impact it would have on other hospitals. Nor has it discussed how patients with both psychiatric and medical diagnoses will be cared for. These issues are critically important to both the pending WAH application and to an application for the new specialty hospital.

Accordingly, the current CON application should be de-docketed, and AHC and ABH should submit applications (or a single application as co-applicants) in the next review cycle, if they choose to pursue approval.

CONCLUSION

For the reasons set forth above, HCH respectfully asks that AHC's Modified Application proposing to partially replace WAH with a new hospital in White Oak be de-docketed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February 2015, a copy of the foregoing Request to De-docket AHC's Modified Application was sent via email and first-class mail to:

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