

January 24, 2017

**VIA EMAIL & REGULAR MAIL**

Craig Tanio, MD, MBA, Chairperson  
c/o Ms. Ruby Potter  
[ruby.potter@maryland.gov](mailto:ruby.potter@maryland.gov)  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Re: Baltimore Washington Medical Center, Inc.  
t/a University of Maryland Baltimore Washington Medical Center  
Anne Arundel Medical Center  
Cardiac Surgery Program CON Reviews  
Docket Nos. 15-02-2360 and 12-02-2361

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Dear Commissioner Tanio:

On behalf of Baltimore Washington Medical Center, Inc. t/a University of Maryland Baltimore Washington Medical Center (“UM BWMC”), we write in response to your January 23, 2017 letter regarding in the above-referenced Certificate of Need (“CON”) review proceedings.

Thank you for providing more information about the data that you used in developing the forecast model for assessing whether the applicants complied with the cardiac surgery minimum volume standard (COMAR § 10.24.17.05A(1)). Respectfully, UM BWMC requests an additional two weeks to obtain and review all of the data that you relied upon before submitting its comments. Thus, we ask that you extend the comment deadline to February 15, 2017. We make this request because UM BWMC does not have all of the District of Columbia discharge data or the historical population data that you used. We did not obtain this data previously because we did not anticipate that it would be used to develop a new minimum volume forecast model that was first revealed in the Recommended Decision. We understand the application procedure for obtaining the District of Columbia discharge data takes approximately two weeks.

As explained in our previous submissions, we do not believe the forecast model you used is a valid method of assessing whether UM BWMC demonstrated the ability to meet a projected volume of 200 cardiac surgery cases by the second year of operation. Thus, we expect that we will object to the entry into the record of any of the data on relevance grounds. Specifically, the data are not relevant because they do not support an analysis that has a tendency to make the finding of compliance with the minimum volume standard more

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or less probable. However, because you may overrule our objection, we must review and analyze all of the data. We also expect to object to the entry of any data into the record unless the parties were provided an opportunity to comment on the data prior to the determination to enter it.

Also, we note that if you determine to enter the data into the record, it should be entered in a manner that will make it available for possible judicial review. It is insufficient to merely refer the parties to the Health Services Cost Review Commission or the Maryland Health Care Commission to obtain access to the data because a reviewing court will be unable to review the data as part of the record when assessing whether the decision is supported by substantial evidence. We recognize that some of the data may require protection from public disclosure, so it may be necessary to enter those data under seal.

Thank you for your consideration of this request.

Sincerely,



Thomas C. Dame



Ella R. Aiken

cc: Kevin McDonald, Chief, Certificate of Need  
Paul Parker, Director, Center for Health Care Facilities Planning & Development,  
MHCC  
Suellen Wideman, Esq., Assistant Attorney General, MHCC  
Jinlene Chan, M.D., Health Officer, Anne Arundel County (w/ enclosures)  
Leana S. Wen, M.D., Health Commissioner, Baltimore City (w/ enclosures)  
Leland D. Spencer, M.D, Health Officer, Caroline County (w/ enclosures)  
Fredia Wadley, Health Officer, Talbot County (w/ enclosures)

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