

Consumer Choice and Market Concentration
(Background for discussion of Agenda Item 2
March 18, 2015 Meeting of MHCC's HHA Advisory Group)

In Maryland, for the most part, a home health agency's service area is based on its authority to serve certain jurisdictions. An agency's capacity is premised on the number of authorized jurisdictions actually served.

There are currently five agencies with authority to serve all 24 jurisdictions.¹ However, not all authorized jurisdictions are actually served (refer to Tables 1 and 2 in the White Paper) by all the HHAs authorized to serve the jurisdiction. Furthermore, three of the six hospital-based agencies² have authority to follow patients upon discharge from its acute care hospital, regardless of their county of residence.³ Finally, there are six agencies designated as serving a specialty population with restricted authority; four are continuing care retirement community (CCRC)-based agencies with authority to serve only its own CCRC residents, and two are specialty agencies with authority to serve pediatric clients.⁴

The White Paper introduces the concept of determining need for additional HHA providers to serve a certain jurisdiction based, in part, on whether there is consumer choice of quality performing providers in a jurisdiction. For planning purposes, the White Paper suggested that the basis for need should move away from a strictly defined methodological approach for forecasting and toward a more dynamic approach to create opportunities both for an existing agency to expand, and for a new entrant to establish a home health agency.

Operational Definition of Sufficient Consumer Choice

In order to determine when MHCC should accept Certificate of Need applications to expand or establish an HHA, consideration must be given to what constitutes sufficient (and, thus, insufficient) consumer choice for HHA services. There are a few points of observation. First, the factor of cost/price for HHA services is somewhat muted from the consumer's equation of choice as Medicare is the primary payer of HHA services. Second, a consumer's demand or preference

¹ The five licensed home health agencies with authority to serve all 24 jurisdictions are: Johns Hopkins Home Health Services (HH License 7081); Johns Hopkins Pediatrics at Home (HH License 7131); MedStar Health Visiting Nurse Association (Baltimore) (HH License 7068); MedStar Health Visiting Nurse Association (Calverton) (HH License 7150); and Stella Maris (HH License 7072).

² HHAs reported as hospital-based agencies include: Carroll Home Care; Frederick Memorial Hospital Home Health; HealthSouth Chesapeake Rehabilitation Home Health; Meritus Home Health; Shore Home Care; and western Maryland Health System Home Care. Of the six, five are general acute hospital-based agencies.

³ Three hospital-based HHAs with authority to follow patients to their county of residence upon discharge from its hospital include: Carroll Home Care; Frederick Memorial Hospital Home Health Services; and Meritus Home Health.

⁴ The two specialty HHAs authorized to serve pediatric clients are: Comprehensive Home Health Services, with authority to serve pediatric and mother/newborn clients in seven jurisdictions, and Home Health Connection, with authority to serve pediatric clients in two jurisdictions and medically fragile children and their families in a third jurisdiction.

for HHA services may be restricted should the consumer/patient not meet certain eligibility requirements for the Medicare home health benefit. Also, as a post-acute care service, patients may go where referred by their physician and access to HHAs may be directed by hospital discharge planners to specific agencies. Third, while information on the quality of HHAs based on certain performance measures is available to consumers on CMS' Home Health Compare and the Commission's Consumer Guide to Long Term Care, there remains uncertainty as to whether HHA consumers are aware of these resources and are able to navigate the websites to obtain comparative HHA quality information that will enable them to make informed decisions.

Commission staff suggests that sufficient consumer choice is achieved when a consumer has a choice of three or more high performing agencies in a jurisdiction that does not have an extremely concentrated market of HHA providers. A market concentration measure such as the Herfindahl-Hirschman Index could be used to determine whether the HHA market in a jurisdiction is extremely concentrated – that is, whether a disproportionate market share of clients are served by some agencies.

Herfindahl-Hirschman Index (HHI)

The HHI is a widely accepted measure of market concentration that is used by the U. S. Department of Justice (DOJ), the Federal Trade Commission (FTC), and many state attorneys general for purposes of evaluating mergers in the context of antitrust enforcement. The HHI of a market is calculated by summing the squares of the percentage market shares held by the respective firms. The HHI can have a value ranging from close to zero to 10,000. In a market where there only exists one provider, that provider would have 100% of the market share, and the HHI for that market would be 10,000 (that is, 100 squared) indicating a monopoly. In a market with many providers with each having a market share of almost 0%, then the HHI would be close to zero, indicating nearly perfect competition.

According to the DOJ-FTC *2010 Horizontal Merger Guidelines*, a market with HHI below 1500 is considered as “unconcentrated,” between 1500 – 2500 as “moderately concentrated,” and above 2500 as “highly concentrated.” For purposes of considering the impact of mergers on existing market share and HHI, DOJ/FTC state that if a merger produces an increase in the HHI of more than 100 points in a moderately concentrated market, or between 100 and 200 points in a highly concentrated market, then there is cause for “significant competitive concerns.”⁵

Applying the HHI to determine the market concentration of HHAs within its authorized jurisdiction in Maryland (see Table 1), the competition index is divided by 10,000 for ease of interpretation. For instance, in a single-provider jurisdiction with 100% market share, its HHI is 10,000 divided by 10,000 to equal a value of 1. If the DOJ/FTC parameters for horizontal mergers are applied to HHI scores for HHAs, then 15 jurisdictions with HHI greater than 0.25 would be considered as “highly concentrated.” If an HHI of 0.25 or greater were established as

⁵ <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>

the threshold, fifteen jurisdictions⁶ would be viewed as having a high level of market concentration and, on that basis, would be eligible for the initiation of CON reviews in those jurisdictions.

⁶ The fifteen jurisdictions identified as having an HHI greater than 0.25 include: two jurisdictions (Allegany and Kent Counties) each having only a single HHA provider actually serving at least one client; one jurisdiction (Garrett County) having two HHAs serving at least one client; four jurisdictions (Caroline, Somerset, Talbot and Dorchester Counties) having three HHAs serving at least one client; and three jurisdictions (Washington, Wicomico, and Worcester Counties) having four HHAs serving at least one client., The remaining five jurisdictions with a HHI greater than 0.25 (Queen Anne's, Cecil, Calvert, Frederick and Saint Mary's Counties) each have more than four HHAs serving at least one client.