



Maryland
Hospital Association

July 7, 2016

Ben Steffen
Executive Director
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Dear Mr. Steffen:

On behalf of the Maryland Hospital Association's (MHA) 64 member hospitals and health systems, we appreciate the opportunity to comment on the Maryland Health Care Commission's (MHCC) proposed State Health Plan (SHP) for Freestanding Medical Facilities (FMFs). This letter aims to clarify the types of services that a FMF may provide, as well as the difference between the requirements to establish these services during a general hospital conversion to a FMF and the creation of a "new" FMF.

Background

Known as "freestanding emergency rooms" in many other states, FMFs are a separate licensure category in Maryland. They were originally created as satellite providers of emergency services, to be utilized when a parent hospital's emergency department (ED) became overcrowded, or to improve access to emergency medical care within the service area of a parent hospital. From 2005 to 2007, two pilot facilities were issued licenses and a license was issued to a pre-existing third FMF. Beginning in 2007, the establishment of any new FMF required Certificate of Need (CON) approval. The 2007 law that mandated CON approval also required MHCC to create a State Health Plan for FMFs.

In 2016, General Assembly legislation granted MHCC the authority to issue an exemption from CON approval when a licensed general hospital seeks to convert to a FMF. This legislation was intended to allow hospitals and health systems to reduce inpatient capacity, where appropriate, while maintaining services. Under Maryland's new all-payer model, and in line with national trends, inpatient utilization is declining, reducing the demand for inpatient beds and the fixed costs associated with them. Maryland's hospitals supported this streamlined FMF process as a way to trim excess inpatient capacity. Maryland's hospitals also strongly supported the continued CON approval requirement to establish a "new" FMF, or one that did not result from a hospital conversion.

Services Permitted in a Freestanding Medical Facility

Maryland Health General 19-3A-02 requires that a FMF be open 24 hours per day, seven days per week and provide emergency services. Code of Maryland Regulations (COMAR) 10.07.08 further requires laboratory services and radiology services at a FMF. COMAR 10.07.08 states that pharmacy services for FMF patients may be provided at the parent hospital or a contracted

pharmacy. The 2016 legislation explicitly established medical observation as an allowable service in an FMF.

No statute or regulation explicitly prohibits other medical services from being provided in a FMF. We ask MHCC **to clarify if services other than those identified in the existing statutes and regulations are permissible in a FMF, particularly ambulatory surgical services.**

Hospital Conversion vs. Establishment of a “New” FMF

The 2016 legislation was intended to help hospitals and health systems reduce excess inpatient capacity, where appropriate, while maintaining services. Existing licensed general hospitals can use FMFs as a vehicle to remove inpatient beds while still providing emergency access and other services communities may need. Allowing MHCC to grant a CON exemption for this specific circumstance is a powerful aid to eliminate unneeded inpatient services, thereby improving system-wide efficiency and helping the state meet the goals of the Medicare waiver by reducing unnecessary utilization.

The existing general hospital has already received CON approval to operate the services it provides. Converting a hospital to a FMF allows existing general hospitals to reduce their footprint of current services. Since these hospitals are *reducing* services from what was already approved in a prior CON process, such hospitals should not be required go through *another* CON process to continue to provide these already-approved services in a new FMF. CON approval **is still clearly required** if a “new” FMF is established where a licensed general hospital does not currently exist, including any services allowable in a FMF.

Converting an existing hospital to a FMF should be treated as an incentive under the Medicare waiver. Requiring approval for services that are already provided by a general hospital in a given community would be a barrier to this incentive, discouraging hospitals to pursue innovative alternatives and improve efficiency.

The Freestanding Medical Facility State Health Plan will be an important guide to implement Maryland’s emerging care delivery model and we appreciate your consideration of our input. Should you have any questions, please call me at 410-540-5060.

Sincerely,



Brett McCone,
Vice President