UNIVERSITY of MARYLAND MEDICAL SYSTEM

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VIA EMAIL < Paul.Parker@maryland.gov >
Paul Parker
Director, Center for Health Care Facilities
Planning & Development
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Re: ***Draft State Health Plan for Facilities and Services: General Surgical Services, COMAR 10.24.11***

Informal Comments Submitted on behalf of the University of Maryland Medical System

Dear Mr. Parker:

I write on behalf of the University of Maryland Medical System ("UMMS") to provide informal comments on the proposed draft State Health Plan for Facilities and Services: General Surgical Services, COMAR 10.24.11 (the "Draft Chapter"), which was presented for informal review and comment on March 21, 2017.

UMMS generally supports the Draft Chapter and urges the Commission to propose and adopt the Draft Chapter as a permanent regulation with the modifications discussed below. UMMS also supports and incorporates the comments to the Draft Chapter submitted by the Maryland Hospital Association ("MHA") as supplemented herein.

I. The Draft Chapter Should Provide Greater Flexibility for the Location of an Ambulatory Surgical Facility Established in Conjunction with the Conversion of an Acute General Hospital to a Freestanding Medical Facility and Greater Flexibility Regarding the Timing of an Exemption Application to Establish such an Ambulatory Surgical Facility.

The Draft Chapter provides an exemption process by which a hospital converting to a freestanding medical facility ("FMF") may also seek an exemption from CON review to establish an ambulatory surgical facility ("ASF") with up to two operating rooms. UMMS supports the exemption process because the operating rooms at a hospital converting to an FMF already exist in the State's surgical services inventory and surgical capacity will, therefore, not be expanded. *See* MD. CODE ANN., HEALTH-GEN. § 19-120(k)(9) ("Nothing in this subsection may be construed to permit a hospital to build or expand its ambulatory surgical capacity in any setting owned or controlled by the hospital without obtaining a certificate of need from the Commission if building or expansion would increase surgical capacity of the State's health care system.").

Further, the communities formerly served by a hospital converting to an FMF will continue to require ambulatory surgical capacity either at the FMF itself or through a separately licensed ASF. However, the Draft Chapter should provide greater flexibility concerning where an ASF established in conjunction with a hospital conversion to an FMF may be located and greater flexibility regarding the timing of a hospital's exemption application to establish an ASF in conjunction with conversion to an FMF.

Pursuant to MD. CODE ANN., HEALTH-GEN. § 19-120(o)(3)(i), an FMF established through a hospital conversion must generally remain on the site of, or immediately adjacent to, the site of the converting hospital. If the hospital converting to an FMF is either the only hospital in a county or one of two hospitals in a county that are part of the same merged asset system, an FMF established through a hospital conversion may be located within a five mile radius of the converting hospital and in the primary service area of the converting hospital. Id. § 19-120(o)(3)(ii). Depending on the configuration and size of a site immediately adjacent to a hospital converting to an FMF, these statutory limitations on the location of an FMF established through a hospital conversion could severely limit the ability of a converting hospital to establish an ASF on the same campus as the FMF and for a health system to continue to provide needed surgical services to the community formerly served by the hospital.

Hospitals are considering conversions to FMFs not only due to declining inpatient utilization but also because aging physical plants and campus limitations make further renovations and improvements impractical and not cost effective. Accordingly, it may not be feasible for a hospital converting to an FMF to also establish an ASF on the same site as a converting hospital, at site immediately adjacent, or at a suitable site within five miles, as applicable.

Moreover, the requirement that an ASF established in conjunction with a hospital conversion to an FMF be located on the FMF campus may not be the most cost effective alternative. Instead, a hospital converting to an FMF may identify more cost effective alternatives, including the ability to purchase or lease space that has already been built as an ASF or physician office surgical center ("POSC") or space that could be renovated for less than the cost of new construction on the FMF campus. Given that a hospital's operating rooms already exist in the State's surgical capacity and a hospital's conversion to an FMF will necessarily decrease the State's surgical capacity, the Commission should not arbitrarily confine the location of an ASF established in conjunction with a hospital conversion to an FMF to the FMF campus.

In addition, because a hospital converting to an FMF may require time to identify the most cost effective location to house an ASF established in conjunction with a hospital conversion to an FMF, the Draft Chapter should allow an exemption application to establish an ASF to be filed at any time before a hospital converting an FMF actually closes and converts. For these reasons, we propose the following changes to the Draft Chapter:

A. COMAR § 10.24.11.06(A)(3)

(3) A general hospital that seeks to convert to a freestanding medical facility may be issued an exemption that permits it to establish ~~of~~ an ambulatory surgical facility with two operating rooms on the same campus as the freestanding medical facility, at a site within 5 miles of the hospital converting to the freestanding medical facility, or at a site within 5 miles of the acute general hospital that will serve as the parent hospital of the freestanding medical facility, if it seeks such an exemption in conjunction with an exemption to convert to a freestanding medical facility. An exemption application to establish an ambulatory surgical facility under this subsection may be filed at any time before a hospital converts to a freestanding medical facility.

B. COMAR § 10.24.11.06(C)(3)(c)

(3) A general hospital converting to a freestanding medical facility that is seeking to establish an ambulatory surgical facility through an exemption process shall locate the proposed ambulatory surgical facility on the campus of the freestanding medical facility, at a site within 5 miles of the hospital converting to the freestanding medical facility, or at a site within 5 miles of the acute general hospital that will serve as the parent hospital of the freestanding medical facility.

II. The Draft Chapter Should be Amended to Exempt from CON Review a Hospital's Closure of up to Two Hospital-Based Operating Rooms to Establish an Ambulatory Surgical Facility Located On or Off the Hospital's Campus.

UMMS supports the recommendation by the MHA that the Draft Chapter incorporate an exemption process to allow a hospital to close up to two hospital-based operating rooms to establish an ASF located on or off the hospital's campus. As reflected in the MHA's comments, hospitals and health systems are evaluating ways to operate more efficiently and effectively to reduce health care spending under the State's All-Payer Model. To the extent that closure of hospital-based operating rooms and creation of an non-rate regulated ASF will reduce health care spending and the hospital is able to demonstrate a need for the ASF, hospitals should be permitted to establish an ASF without the burden and cost of CON review, a phased approach of first establishing a POSC before converting it to an ASF, or purchasing and consolidating two existing POSCs. Again, establishing an ASF through closure of two operating rooms will not add to the State's surgical services inventory or expand the hospital's surgical services capacity. *See* MD. CODE ANN., HEALTH-GEN. § 19-120(k)(9).

We propose the following additions to the Draft Chapter:

A. Proposed COMAR § 10.24.11.06(A)(4)

(4) A general hospital may be issued an exemption that permits it to establish an ambulatory surgical facility with two operating rooms on or off the campus of the hospital, if the hospital closes two of the hospital's operating rooms.

B. Proposed COMAR § 10.24.11.06(C)(1)(e)

(e) A general hospital proposing to establish a two-operating room ambulatory surgical facility by closing two of the hospital's operating rooms shall demonstrate optimal capacity will be reached for both operating rooms within three years of establishing the proposed ASF.

C. Proposed COMAR § 10.24.11.06(C)(3)(d)

(d) A general hospital proposing to establish a two-operating room

ambulatory surgical facility by closing two of the hospital's operating rooms may locate the proposed ambulatory surgical facility on or off the campus of the hospital.

III. The Draft Chapter Should Provide Greater Flexibility in the Optimal Utilization Standards.

UMMS supports the MHA's recommendation that the Draft Chapter provide greater flexibility in the Commission's optimal capacity standards for an ASF establish in conjunction with a hospital conversion to an FMF, surgical capacity retained in an FMF by a converting hospital, and at an ASF established by a hospital closing two hospital-based operating rooms. As explained by the MHA, surgical services at such facilities could be provided in a more cost effective and productive manner if operating room staff could use two operating rooms throughout a scheduled day. But, use of such staffing efficiencies could result in the capacity falling below the Commission's current optimal capacity standards. UMMS supports the recommendation of the MHA that optimal capacity for each ASF and FMF retaining surgical capacity be determined on a case-by-case basis.

Thank you for your consideration of these comments. Please contact me if you have any questions.

Sincerely yours,

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