CON Task Force: Phase 2

September 7, 2018

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AGENDA

1. **Call to Order, Welcome and Introductions**
2. **Approval of the August 10, 2018 Task Force Meeting Summary**
3. **General Hospice Services**
   - A. Current State Health Plan: Key policy objectives guiding CON regulation
   - B. Discussion of possible reforms to CON regulation of general hospice services
     - Scope of CON regulation
     - Alternatives for addressing the "gateway" function served by CON regulation
     - Compatibility of CON regulation with Total Cost of Care (TCOC) payment model
     - Scope of review criteria and standards
     - Information requirements
     - Duplication of regulatory effort
4. **Alcoholism and Drug Abuse Treatment Intermediate Care Facility Services**
   - A. Current State Health Plan: key policy objectives guiding CON regulation
   - B. Discussion of possible reforms to CON regulation of Alcohol & Drug Abuse Treatment Intermediate Care Facilities Services
     - Scope of CON regulation
     - Alternatives for addressing the "gateway" function served by CON regulation
5. **Residential Treatment Center Services**
   - A. Current State Health Plan: Key policy objectives guiding CON regulation
   - B. Discussion of possible reforms to CON regulation of general hospice services
     - Scope of CON regulation
     - Alternatives for addressing the "gateway" function served by CON regulation
6. **Discussion of "Cross-Cutting" Recommendations for CON Modernization (continuation of August 10, 2018 meeting agenda)**
7. **Meeting Agendas/Work Plan for Phase Two of the Study going forward: September, 2018 – December, 2018**
8. **Adjournment**

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Principles to Guide CON Reform

1. **Promote the availability of general hospital and long term care services in all regions of Maryland. Assure appropriate availability of specialized services that require a large regional service area to assure viability and quality.**
2. **Complement the goals and objectives of the Maryland Total Cost of Care Model.**
3. **Provide opportunities to enter the Maryland market for innovators committed to the delivery of affordable, safe, and high-quality health care.**
4. **Minimize the regulatory requirements for existing providers to expand existing capacity or offer new services when those providers are committed to the delivery of affordable, safe, and high-quality health care.**
5. **Reduce the burden of complying with CON regulatory requirements to those necessary for assuring that delivery of health care will be affordable, safe, and of high-quality.**
6. **Maintain meaningful review criteria and standards that are consistent with the law and understandable to applicants, interested parties, and the public.**

Note: MHCC staff recommends focusing on the goals for CON reform. We have proposed principles for access, TCOC alignment, affordable high quality safe care, regulatory reform, and internal coherence.

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GENERAL DISCUSSION

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HOSPICE

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POTENTIAL CON REFORMS FOR HOSPICE

- Issues raised
  - The scope of hospice CON regulation may be outdated and need to be appropriate and purposeful. In particular, the use of a capital expenditure threshold should be reconsidered
  - There may be a more efficient means for preserving a key value perceived in CON regulation of general hospices
  - The State Health Plan does not account for nor facilitate total cost of care improvement across the full care continuum
  - The average period of time needed to docket a general hospice application and complete the review of an application is excessive. The process requires streamlining and alignment with the type and scale of the project

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POTENTIAL CON REFORMS FOR HOSPICE

- Issues raised (continued)
  - Charity care requirements for general hospices are not well-aligned with the level of need
  - State Health Plan methodologies for determining unmet need are either too complex or unclear
  - Methodology for inpatient beds needs to be developed
  - Role of CON regulation in promoting quality of care needs to be explored and measured

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POTENTIAL CON REFORMS FOR HOSPICE

- Issues raised (continued)
  - Portions of the CON application are not fully applicable to hospice providers, certain circumstance and projects should be exempted from CON
  - Neither the application nor the review processes fully allow for the leveraging of publicly available State data, quality measures, and patient survey findings.
  - The primary roles and objectives of CON and facilities licensure, as implemented by the Maryland Department of Health (MDH), are potentially duplicative. Role of MDH in CON process should be explored
  - Guidelines for CONs to be awarded in jurisdictions of unmet need must be clear and appropriate

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POTENTIAL CON REFORMS FOR HOSPICE

- Issues raised (continued)
  - CON process and regulations need to be compatible with TCOC Model. Review criteria should be included/modified to achieve these goals
  - Consolidation of hospice and home health regulations should be explored

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POTENTIAL CON REFORMS FOR HOSPICE

- Minimal Reforms
  - Eliminate capital expenditure threshold defining need for CON
  - Eliminate change in bed capacity as a project requiring CON approval for general hospices
  - Update State Health Plan (SHP) to reduce review criteria and standards and expand the ability to provide more than one choice of a general hospice provider in every part of Maryland

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POTENTIAL CON REFORMS FOR HOSPICE

- Moderate Reforms
  - Eliminate capital expenditure threshold defining need for CON
  - Eliminate change in bed capacity as a project requiring CON approval for general hospices
  - Update SHP to reduce review criteria and standards and expand the ability to provide more than one choice of a general hospice provider in every part of Maryland
  - Allow general hospices to expand into contiguous jurisdictions with an expedited review process
    - Eliminate need, cost and effectiveness, viability, and all other criteria and standards, with the exception of impact, in such reviews – limit requirements to operational for two years, accredited, licensed, and Medicare-certified in good standing
    - Allow for interested parties to object on basis of adverse impact in such reviews
    - Limit substance of final action by Commission to consideration of impact – project should be approved unless Commission finds that the project is likely to have an existential negative impact on one or more general hospices in the affected jurisdiction

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POTENTIAL CON REFORMS FOR HOSPICE

- Major Reforms
  - Eliminate CON regulation of general hospice services
  - Mandate Maryland Department of Health (MDH) to deny licensure applications to general hospice applicants with no previous experience in operating a general hospice or specified deficiencies in their health care facility operational track record
  - Mandate MDH to limit number of new general hospice applicants approved within a given time period

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ALCOHOL AND DRUG ABUSE TREATMENT INTERMEDIATE CARE FACILITIES (ICF)

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POTENTIAL CON REFORMS FOR ICF

- Issues raised
  - Scope of CON process should be appropriate, adequate, and purposeful; review whether minimal financial requirement adds to current cost
  - While CON can serve a "gatekeeper function to prevent entry of bad actors into market, it should not act to restrict competition, innovation, and quality of care
  - CON should be compatible with the TCOC Model, supporting model goals and supporting innovation of post-acute care
  - Potential to exempt ICF from CON process, leaving entities subject to jurisdiction of State licensing agencies
    - HB 384, seeking repeal of CON requirements for substance use facilities, was introduced at the 2018 session of GAM, where it remained in Committee

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POTENTIAL CON REFORMS FOR ICF

- Issues raised (continued)
  - CON process should be expedited/streamlined
    - Limiting application burden would benefit market entrants
    - Allow ICF to expand bed capacity without CON
    - Decision appeal process for competing providers
    - Allow MHCC to choose which projects require approval
  - Allow for MHCC flexibility; expand use of existing regulations for emergency CON
    - Given active opioid emergency in State, emergency CON regulations will permit MHCC to act more quickly on review and approval

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POTENTIAL CON REFORMS FOR ICF

- Issues raised (continued)
  - Should definition of “quality of care” be added to COMAR
  - Should a project’s budget be a consideration in setting the complexity of the CON process, and what should be the updated budget calculation formula
  - The scope of CON regulation in the alcohol and substance abuse detoxification and treatment sector is unbalanced, only touching a very narrow part of the treatment spectrum.
  - Demand for inpatient treatment space has increased, due to the opioid crisis, MHCC needs flexibility to act

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POTENTIAL CON REFORMS FOR ICF

- Minimal Reforms
  - Eliminate capital expenditure threshold defining need for CON
  - Eliminate relocation and change in bed capacity as a project requiring CON approval for existing Track 2 ICFs (ICFs that are primarily funded through public funding sources)
  - Update SHP to reduce review criteria and standards

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POTENTIAL CON REFORMS FOR ICF

- Moderate Reforms
  - Eliminate capital expenditure threshold defining need for CON
  - Eliminate all CON requirements for Track 2 ICFs
  - Update SHP to reduce review criteria and standards
  - Eliminate need, cost and effectiveness, viability, and all other criteria and standards, with the exception of impact and financial access for reviews involving establishment or expansion of Track 1 ICFs (ICFs that are primarily funded through private payment sources)
  - Limit substance of final action by Commission on Track 1 ICF projects to consideration of financial access and impact – project should be approved unless Commission finds that the project is not making a sufficient commitment to serve low income clients and/or is likely to have an existential negative impact on one or more existing Track 1 ICFs

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POTENTIAL CON REFORMS FOR ICF

- Major Reforms
  - Eliminate all CON regulation of alcoholism and drug abuse ICF treatment services
  - Mandate MDH to deny licensure applications to ICF applicants with no previous experience in operating an ICF or specified deficiencies in their health care facility operational track record

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RESIDENTIAL TREATMENT CENTERS (RTC)

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POTENTIAL CON REFORMS FOR RTC

- Issues raised
  - The scope of the RTC CON regulation may be outdated. In particular, the necessity of including residential treatment centers in the scope of CON regulation is questionable, given the way in which demand for this service has changed

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POTENTIAL CON REFORMS FOR RTC

- Minimal Reforms
  - Eliminate capital expenditure threshold defining need for CON
  - Eliminate relocation and change in bed capacity as a project requiring CON approval for existing RTCs
  - Develop updated SHP requirements with minimal review criteria and standards for consideration of establishment of RTCs - project should be approved if supported by the state juvenile justice agencies and MDH unless Commission finds that the project is likely to have an existential negative impact on one or more existing RTCs

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POTENTIAL CON REFORMS FOR RTC

- Major Reforms
  - Eliminate CON regulation of RTC services
  - Mandate Maryland Department of Health to deny licensure applications to RTC applicants with no previous experience in operating an RTC or specified deficiencies in their health care facility operational track record

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General
  - Eliminate the capital thresholds across all provider categories
  - Where a facility is modernizing but will not be seeking additional volume:
    - Eliminate CON review
    - Replace CON with a requirement that the facility must make a filing and the MHCC must affirmatively intervene within a set timeframe if it concludes that the project is not in accord with the MHCC standards for such an exemption

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - Modify the standard of review for financial viability of projects – a project need only be feasible in order to be approved
  - Eliminate "impact on competing providers" as a consideration or as a basis for interested party status. If there is a need, and the provider and project meet other qualifications, competitive harm to existing providers or difficulty in competing for staff should not be the basis for a challenge to a CON

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - Modernize COMAR 10.24.01 – CON procedural regulations to account for statutory changes
  - Streamline and clarify exemption requirements: currently, exemption requirements differ by the types of service eligible for exemption
  - Review the limits for changes in health care services that qualify for a CON exemption in 19-120(j)(2) and expand those limits

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - For all projects for which a CON exemption is available, institute "file and use" – if MHCC does not act within a set time, the exemption is deemed approved
  - Require MHCC to update each chapter of the State Health Plan *annually* in accordance with the requirement of an annual review set out in 19-118(b)

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - Modernize CON post-approval reporting processes to eliminate unneeded post-approval requirements
  - Align completion deadlines for replacement and expansion projects (currently, not aligned)

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