



Hearts for Home Care
A BAYADA program supporting quality home health care.



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Mr. Paul Parker
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Maryland Health Care Commission
4160 Patterson Avenue
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January 2, 2018

**Re: Proposed Regulations about Health Planning and Certificate of Need
Comments Requested by January 13, 2018**

Mr. Parker:

Thank you for the opportunity to provide comments in response to the Maryland Health Care Commission's (MHCC) proposed regulations about Health Planning and Certificate of Need (CON). BAYADA Home Health Care (BAYADA) is very proud to provide home health care with an outstanding level of quality to more than 16,000 Marylanders annually, employing 775 skilled dedicated professionals. In 2017, we earned Home Health Care Compare ratings of 4.5 and 5 stars. We credit scores like this to our nationwide focus on continuous reflection, measurement and improvement and on professional development for our employees. BAYADA is a mission-driven organization. Central to the BAYADA Way is our collective belief that our clients and their families deserve home health care delivered with *compassion, excellence, and reliability*, our BAYADA core values. We look forward to 2018 with hopes to be able to serve even more Marylanders in a wider geographical area, with additional services. Home health care serves a vital role in our health care system - reducing health complications, readmissions and overall healthcare cost when used appropriately. BAYADA is proud to serve our clients and our state with consistently high quality.

In response to your questions regarding reform to the CON process for home health care, BAYADA suggests that the MHCC retain home health care CON, but take on certain reforms to improve the process and to increase the assurance of quality for home health care clients statewide.

BAYADA supports the continued use of CON for home health care in Maryland for the primary reason that the process has been proven to reduce the incidence of fraud. Fraud in home health care reduces the standing of all home health care providers by association and may have the impact of limiting the availability of high quality care to clients who need it. In other states that do not have a CON or home health care licensure process, major scandals have been seen in recent years. Massachusetts saw a dramatic increase in the number of new providers, coinciding with a



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dramatic increase in investigations for fraudulent behavior in 2016.¹ New Jersey has seen the introduction of online, unlicensed caregiver registries that threaten the sustainability of tax-paying in-state provider organizations. As recently as December 2017, news from Illinois published findings that federal investigators estimate that home health agencies in the state have collected at least \$104 million of public dollars through improper measures.² BAYADA knows how important high-quality home health care is to a clients' recovery or ongoing health. The home health care CON in Maryland safeguards the continued availability and quality of this care for Marylanders. Without the home health care CON, a rapidly increasing number of providers, undifferentiated in their compliance with state regulatory processes or quality scores, may become a race to the bottom-differentiating primarily in price instead. This diminishes provider incentive to focus on client quality, improvement and innovation. Indeed, there would be no ability to pursue value-based purchasing if there were no CON; a low-performing provider would be able to simply reorganize overnight with a different trade name and escape value-based contract penalties. BAYADA believes that this would not be in clients' best interest, and continued use of CON would be far superior in pursuing high-quality care for Marylanders.

High-quality home health care providers focus on recruiting highly skilled professionals, retaining them, constantly improving client care, and offering continuous training and professional development opportunities. These efforts require economies of scale to be economically feasible with limited reimbursement rates from state and private payers. The MHCC's periodic study of clients' access to home health care in various areas of the state and its considered release of additional home health care CONs safeguards the ability of providers to make investments into these essential programs to continuously improve the quality of home health care clients in Maryland receive, and enhances the opportunities for professionals to improve their skills and potentially step up to additional professional licenses. To this end as well, and recognizing the current trend toward consolidation, the MHCC should retain the exemption review for merged systems. Larger systems will have the benefit of these economies of scale and should be able to offer better care to more people. Encouraging fewer, larger providers will also decrease the administrative burden to the state in the number of providers needing annual state surveys.

With regard to the CON process itself, BAYADA supports an expedited review for providers who have proven to provide high quality care to Marylanders over the previous several years. We support the MHCC's continued use of Home Health Care Compare scores as a quantitative measure of quality, as well as reference to preventable hospital readmission percentages. For providers who are currently, actively providing care within the Maryland regulatory system, with proven quality, an expedited review makes sense. We should be encouraging good providers to care for more people who need this care. We would like to encourage the MHCC to continue its requirement that applicants consider their impact on a market during the application process as well. This is an especially useful portion of the process.

¹ Nelson, Mary Kate, "Large-Scale Home Health Crackdown Begins in Massachusetts." Home Health Care News. <https://homehealthcarenews.com/2016/02/large-scale-home-health-crackdown-begins-in-Massachusetts/>

² Calma, Carlo, "Illinois Home Health Fraud Tops \$100 Million." Home Health Care News. <https://homehealthcarenews.com/2017/12/illinois-home-health-fraud-tops-100-million/> 13December2017.



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As to your question regarding the appropriateness of current timelines and deadlines within the CON process, we fully agree that provider-side deadlines are reasonable to collect all relevant requested data. There may be room for improvement in the timeline for review once the application is completed, as well as communication to providers throughout the review process. It would be wonderful to have better visibility into this process at the MHCC.

BAYADA agrees that (1) need, (2) availability of more cost-effective alternatives, (3) viability, (4) impact, (5) applicant's compliance with previously awarded CONs are good criteria to be used in the evaluation of CON applications. We suggest an additional criterion that relates to prevention of fraud or noncompliance with CMS regulations. As mentioned previously, bad actors within home health care reflect poorly on the industry, other providers and our regulators, as a team. The CON process offers the best opportunity for regulators to carefully choose providers who will serve Marylanders well over the long term. We want our peers to be the best they possibly can be.

As the MHCC examines the home health care CON process, BAYADA suggests that it also look into a process of reclaiming CONs from providers who are not using them to their fullest ability or who are wavering in their commitment to quality. Non-utilization of existing CONs does not benefit those who need access to this care; it makes it more difficult for the MHCC and other providers to recognize a new or increasing need for additional care when it arises, and delays the availability of care to clients in those areas. Non-utilization of existing CONs also encourages the unregulated secondary market for CONs which could lead to lower quality providers entering Maryland without the MHCC's review. For existing CONs that are being used, BAYADA suggests that the MHCC take a more involved stance in ensuring ongoing quality provided to Marylanders. To suggest a metric, maintaining an above-average Home Health Compare score (3.5) should be required to begin an application for a Maryland home health care CON. If a provider drops below a Home Health Compare score of 3.0, that provider should be required to work with the MHCC on a plan of correction, at the risk of having their CON revoked. Client care is of the utmost importance. It is what brings all of us to work each day and should be central to everyone who works in this profession. The MHCC is in the ideal position to ensure that home health care provided in Maryland is of high quality and that fraud is prevented. BAYADA supports the MHCC taking this opportunity to hold all providers to a high standard.

Finally, the MHCC has requested feedback on whether the CON stifles innovation. BAYADA believes it is quite the opposite. Innovation requires presence and scale. A provider organization, to have a real impact on innovation within the health care system, must know the current environment, trends, client needs and existing areas of opportunity. Home health care is more complicated and more complex than many in healthcare realize. BAYADA's recent invitations to engage in joint ventures with hospital systems is evidence of that. If home health care were simply sending nurses, therapists and other professionals who already work in hospital settings into the community, these hospitals would surely have chosen to do the work themselves over partnering with another organization. Our joint ventures have benefitted clients and have led to further conversations about value, organizational strengths and further potential partnerships with hospital-based providers.

Thank you, again, for the opportunity to provide feedback on these proposed regulations. BAYADA is happy to offer our perspectives and ideas in this process and looks forward to being an ongoing partner with the MHCC to improve the quality of home health care, sustainability of the



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Maryland's unique health care system, and provision of the best care to meet the needs of all Marylanders. If you'd like to discuss our comments further, please reach out to me. I would be happy to discuss them with you.

Sincerely,

JoAnn Saxby
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