



KEVIN KAMENETZ  
County Executive

GREGORY WM. BRANCH, M.D., MBA, CPE, FACP  
Director, Department of Health and Human Services

January 12, 2018

Maryland Healthcare Commission  
Mr. Paul Parker  
Director of the Commission's Center for Health Care Facilities Planning and Development  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Dear Mr. Parker:

Please consider this letter an official response to your request dated November 21, 2017 for comments regarding potential reforms of health planning and certificate of need (CON) programs.

#### Scope of CON Regulation

Maryland Health Care Commission approval is required to establish a home health agency or expand the service area of an existing home health agency into new jurisdictions.

#### Need for CON Regulation

Which of these options best fits your view of nursing home (is this supposed to say home health?) CON regulation?

- CON regulation of home health agencies should be eliminated.
- CON regulation of home health agencies should be reformed.
- CON regulation of home health agencies should, in general, be maintained in its current form.

#### ISSUES/PROBLEMS

##### The impact of CON regulation on Home Health Agency Competition and Innovation

1. In your view, would the public and the health care delivery system benefit from more competition among home health agencies?

*Yes.*

2. Does CON regulation impose substantial barriers to market entry for new home health agencies or expansion of home health agency service areas? If so, what changes in CON regulation should be implemented to enhance competition that would benefit the public?

*For profit agencies are too large.*

3. How does CON regulation stifle innovation in the delivery of home health agency services under the current Maryland regulatory scheme?

*Hospital referral patterns only use a few home health agencies.*

4. Outline the benefits of CON given that home health services do not require major capital investment, do not induce unneeded demand, are not high costs and do not involve advanced or emerging medical technologies.

*Home Health services affect readmission rates so represent a cost savings measure that can improve population health. Home Health needs to keep abreast of all new technologies (e.g. wound vacs).*

5. Should the scope of CON regulation be changes?

A. Are there home health agency projects that require approval by the Maryland Health Care Commission that should be deregulated? *No.*

B. Are there home health agency projects that do not require approval by the Maryland Health Care Commission that should be added to the scope of CON regulation?

*Residential Service Agencies that are acting as home care agencies.*

#### The Project Review Process

6. What aspects of the project review process are most in need of reform? What are the primary choke-points in the process?

*The volume of paperwork required.*

7. Should the ability of competing home health agencies or other types of providers to formally oppose and appeal decisions on projects be more limited? *No.*

Are there existing categories of exemption review that should be eliminated? *No.*

Should further consolidation of health care facilities be encouraged by maintaining exemption review for merged asset systems? *No, the Home health (as health facilities) are too large and exclusive and have a monopoly on the hospital referrals.*

8. Are project completion timelines realistic and appropriate?

*Yes.*

#### The State Health Plan for Facilities and Services

9. In general, do State Health Plan regulations for home health agencies provide adequate and appropriate guidance for the commission's decision making? *Yes.*

What are the chief strengths and what do you perceive to be the chief weaknesses?

*Weakness - lack of incorporate population health in terms of a continuum of care.*

- 10 Do State Health Plan regulations focus attention on the most important aspects of home health agency projects? No.

*Home Health agencies are too focused on Medicare reimbursement to embrace the environment of case management.*

11. Are the typical ways in which MHCC obtains and uses industry and public input in State Health Plan development adequate and appropriate? If you believe that changes should be made in the development process for State Health Plan regulations, please provide specific recommendations.

*Input is adequate and appropriate, but partnerships within systems of care that provide health care should be examined for ways to influence population health. For instance, Social Services agencies should be required partners to address the social determinants of health.*

#### General Review Criteria for all Project Reviews

12. Are these general criteria adequate and appropriate? *Yes.*

#### CHANGE/SOLUTIONS

##### Alternatives to CON Regulation

13. If you believe that CON regulation of home health agencies should be eliminated, what, if any, regulatory framework should govern establishment and service area expansion of home health agencies?

*NA*

14. Are there important benefits served by CON regulation that could be fully or adequately met with alternative regulatory mechanisms?

*Expansion of license requirements to assure quality of care.*

*Both MDH licensing, and CON regulation are required in terms of the quality of care and sanctions.*

*Hospital systems, rehabilitation, home health and residential service agencies should all work together.*



The Impact of CON Regulation on Home Health Agency Competition and Innovation

15. Do you recommend changes in CON regulation to increase innovation in service delivery by existing home health agencies and new market entrants?

*Yes, partnerships within systems.*

16. Should Maryland shift its regulatory focus to regulation of the consolidation of home health agencies to preserve and strengthen competition for home health agency services?

*Yes, especially to include partnerships and share collaboration in the continuum of facilities.*

The Impact of CON Regulation on Home Health Agency Access to Care and Quality

1. At what stage should MHSS take into consideration an applicant's quality of care performance? How should new applicants be evaluated?

*Home Health Compare for quality of care; New applicants should provide history previous quality of care initiatives.*

Scope of CON Regulation

2. Should MHCC be given more flexibility in choosing which home health agency projects require approval and those that can go forward without approval, based on adopted regulations for making these decisions?

*Yes, as long as the process retains integrity. For example, what are the proposed clinical pathways or best practices to be followed.*

3. Should a whole new process of expedited review for certain projects be created? If so what are the attributes?

*If the State Health Plan is working to improve population health, and a system improvement linking different partners together as a system to achieve that, expedited review could be granted. If another model of practice could be replicated that has good outcomes, for example.*

The Project Review Process

4. Are there specific steps that can be eliminated? *No comment.*

5. Should post-CON approval processes be changed to accommodate easier project modification?

*Yes.*

Page Five  
January 12, 2018  
Mr. Paul Parker

6. Should the regulatory process be overhauled to permit more types of projects to undergo a more abbreviated form of review?

*Not sure.*

7. Would greater use of technology, including the submission of automated and form-based applications, improve the application submission process?

*Yes.*

Duplication of Responsibilities by MHCC and MDH

8. Are there areas of regulatory duplication in home health agency regulation that can be streamlined?

*Somehow the State Health Plan and population health has to be a joint responsibility that makes sense. Residential Service agencies have to have more quality regulation.*

Should you have additional questions, please contact Laura Culbertson; Chief, Quality Improvement at 410-887-3729

Sincerely,



Gregory Wm. Branch, M.D., MBA, CPE, FACP  
Director, Health and Human Services  
Health Officer