January 10, 2018

Mr. Paul Parker
Director, MHCC Center for Health Care Facilities Planning and Development
4160 Patterson Avenue
Baltimore, MD 21215

Response to Comment Guidance - General Hospice Services
MHCC CON Study, 2017-18

Dear Mr. Parker,

Thank you for the opportunity to comment on the state of hospice CON regulation in Maryland. As the sole provider of hospice services in Calvert County, Maryland, Calvert Hospice has a 34 year history of providing expert and compassionate end-of-life care to our community. Our independent, non-profit hospice serves approximately 300 terminally ill patients and families per year, at an overall hospice utilization rate of 45% in our county for the year ending 2016.

Calvert Hospice is proud to work closely with the sole hospital and all three skilled nursing facilities within our jurisdiction, and we have contracts for general inpatient and respite care with each facility. In addition, our agency is an active member of both the Calvert County Chamber of Commerce and the Chamber Non-Profit Alliance. We serve as a Center for Continuum of Care at End of Life, and provide frequent community education on topics such as advance care planning, caregiver support, medication management, and grief and bereavement. Our quality indicators and accreditation survey results show that we consistently provide excellent care to our patients and families, and the support that we receive from the Calvert County Board of Commissioners serves as additional testimony to the role that we play in our community.

Thank you for considering our responses to the items below.

Need for CON Regulation

Which of these options best fits your view of general hospice CON regulation?

- ☐ CON regulation of general hospices should be eliminated. [If you chose this option, many of the questions listed below will be moot, given that their context is one in which CON regulation would continue to exist. However, please respond to Questions 12 and 13.]

- ☐ CON regulation of general hospice services should be reformed.

- ✓ CON regulation of general hospice services should, in general, be maintained in its current form.

ISSUES/PROBLEMS

The Impact of CON Regulation on General Hospice Service Competition and Innovation

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

No. Current CON regulations provide necessary limits to entry into the market and limits on expansion into other jurisdictions, but does not prohibit competition outright. Each hospice's survival is determined by their ability to provide the needed services to the members of their jurisdiction. We are concerned that if the CON were eliminated, jurisdictions in Maryland may be overrun with new hospice providers. Such an influx would contribute to increased competition for already scarce resources such as qualified clinical staff and volunteers. In addition, hospice providers would be forced to dedicate more of their financial and human resources to marketing and sales, which in turn would limit the expenditures that they are able to put directly toward patient care, including charity care.

In addition, we believe that hospice is and should remain a tightly regulated benefit with close oversight by state and federal accreditation agencies. An influx of new hospice providers into the state, without a corresponding increase in surveyor staff, would result in a significant risk of hospices operating without sufficient oversight and providing potentially substandard care.

Further, demographic data on hospices nationwide shows that CON states maintain a higher proportion of non-profit, community-based hospices than state without CON regulation. It is to be expected that removing CON regulations in Maryland would lead to a substantial increase in the number of for-profit or multistate corporate hospices.

Finally, there is no reputable evidence to show that increasing the number of hospices in a jurisdiction can be credited with increasing hospice utilization in that area. In fact, in the Medicare Payment Advisory Commission (MedPAC) 2010 Report to Congress, it was determined that, nationally, there is no relationship between number of hospice agencies and hospice enrollment.

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

The CON provides the barriers necessary to ensure that market entry and jurisdiction expansion are limited. While densely populated jurisdictions have multiple providers, rural jurisdictions are able to meet utilization needs without competition. More rural jurisdictions, which have a single (typically community non-profit) provider, likely could not sustain operations in the face of competition from a large multi-state hospice organization. The limited populations of rural communities would be unable to support competing hospices.

3. How does CON regulation stifle innovation in the delivery of general hospice services under the current Maryland regulatory scheme?

There is no evidence to suggest that CON regulation stifles innovation in the delivery of hospice services. In fact, because hospices in Maryland are not diverting resources to sales and marketing in an effort to compete with multiple hospices in each jurisdiction, they are able to dedicate financial and human resources toward attention to quality and innovation.

In the past two years, Calvert Hospice has expanded innovative offerings including:

- Implementation of a contract with CareFirst as a partner in the Total Care and Cost improvement (TCCI) initiative, allowing our agency to provide open access hospice care to CareFirst members in our jurisdiction
- Membership in the Alliance Kids partnership as well as the Children's National Medical Center PANDA program, which are both pediatric hospice partnerships that engage providers to collaborate on topics related to providing end-of-life care to children and their families
- Updated bereavement programs targeted specifically to the needs of our community, including specialized services for substance abuse loss and teenagers who have experienced losses
- Selection in two consecutive years as a partner agency for the Leadership Southern Maryland Executive Leadership Academy, ensuring exceptional professional development for hospice staff as well as an expanded quality assurance program
- Achievement of National Hospice and Palliative Care Organization (NHPCO) We Honor Veterans Level 4 Partner, the highest designation possible, which is a testament to the comprehensive and innovative care that we provide to terminally ill veterans in our county
- Partnership with Calvert Health Medical Center to embed palliative care professionals within the hospital system and ensure that patients in our community are offered critical conversations about end-of-life care options earlier in their disease trajectory

In addition, Calvert Hospice staff are active members in the Hospice and Palliative Care Network of Maryland committees and Board of Directors, and collaborate often with agencies such as the National Hospice and Palliative Care Organization (NHPCO). These close working relationships ensure that Calvert Hospice is continually at the forefront of new clinical innovations, models of care delivery, and compliance with quality measures.

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

It is not accurate to state that hospice services are not high cost and do not usually involve advanced medical technologies. The structure of the hospice benefit has not substantially changed since its inception in the 1980's. In that time, hospices have been tasked with developing methods of caring for increasingly acute patients with ever greater medical needs, without significant increases in our reimbursement structure. Hospices are now expected to

provide all medications and treatments associated with the terminal prognosis for patients with a wide variety of medical ailments and comorbidities. Along with the increased expense of providing medications and equipment for our patients, we must also ensure that our clinicians are capable of caring for acutely ill individuals in a home care setting. As hospitals are increasingly incentivized to prevent readmissions of seriously ill patients, hospices are tasked with developing methods to care for those patients who just a few years ago would have been considered so ill as to require hospitalization.

Finding clinical staff such as physicians, nurse practitioners, nurses, and social workers with expertise in hospice and palliative care is a significant challenge. This would become an almost insurmountable obstacle in the face of an open CON resulting in competition for experienced clinical resources, especially in rural areas. Again, the risk of forcing competing hospices to turn to less qualified staff to provide critical care to terminally ill patients in their homes is that hospices may provide care of a poor quality.

Scope of CON Regulation

Generally, Maryland Health Care Commission approval is required to establish a general hospice, increase the bed capacity (general inpatient hospice care) of a general hospice, or expand the service area of an existing general hospice into new jurisdictions. For a more detailed understanding of the scope of CON and exemption from CON review requirements, you may wish to review COMAR 10.2f 01.02 - .04, which can be accessed at: http:// www.dsd.state.md.us/comar/Subtitle5earch.aspx?search=10.24.01. *

5. Should the scope of CON regulation be changed?

A. Are there general hospice projects that require approval by the Maryland Health Care Commission that should be deregulated?

No, we are not aware of any.

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

No, we are not aware of any.

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?

We have not submitted a CON application for review and are thus unable to address this question.

7. Should the ability of competing general hospice programs or other types of providers to formally oppose and appeal decisions on projects be more limited?

Are there existing categories of exemption review (see COMAR 10.24.01.04) that should be eliminated? Should further consolidation of health care facilities[2] be encouraged by maintaining exemption review for merged asset systems?

Competing providers should absolutely have a venue to appeal or formally oppose decisions on projects, especially as relates to their jurisdiction.

8. Are project completion timelines, i.e., performance requirements for implementing and completing projects, realistic and appropriate? (See COMAR 10.24.01.12.)

We have not submitted a CON application for review and are thus unable to address this question.

The State Health Plan for Facilities and Services

9. In general, do State Health Plan regulations for general hospice services provide adequate and appropriate guidance for the Commission's decision-making? What are the chief strengths of these regulations and what do you perceive to be the chief weaknesses?

In general, yes, the State Health Plan regulations provide adequate guidance.

10. Do State Health Plan regulations focus attention on the most important aspects of general hospice projects? Please provide specific recommendations if you believe that the regulations miss the mark.

The State Health Plan regulations are appropriate with regard to hospice, but may benefit by a further focus on quality measures. As Medicare increases quality scrutiny of hospices, the State Health Plan should continue to evolve to reflect a focus on the quality metrics that hospices are being asked to collect.

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.

There are no specific changes that we can recommend.

General Review Criteria for all Project Reviews

COMAR 10.24.01.08G(3)(b)-(f)) contains five general criteria for review of all CON projects, in addition to the specific standards established in the State Health Plan: (1) Need; (2) Availability of More Cost-Effective Alternatives; (3) Viability; (4) Impact; and (5) the Applicant's Compliance with Terms and Conditions of Previously Awarded Certificates of Need.

12. Are these general criteria adequate and appropriate? Should other criteria be used? Should any of these criteria be eliminated or modified in some way?

We believe that hospices seeking to enter or expand hospice services in Maryland should also be reviewed in terms of quality. Performance on mandatory quality measures such as the Hospice Item Set, CAHPS Hospice survey should be reviewed by the Commission when making a determination about the CON application. In addition, data from the hospice PEPPER report should be reviewed in order to determine compliance on a number of factors. For existing hospices seeking to expand, this data would be readily available to the commission.

CHANGES/SOLUTIONS

Alternatives to CON Regulation

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

Not applicable, we believe that CON regulation should continue.

14. Are there important benefits served by CON regulation that could be fully or adequately met with alternative regulatory mechanisms? For example, could expansion of the scope and specificity of general hospice licensure requirements administered by the Maryland

Department of Health serve as an alternative approach to assuring that these services are well-utilized and provide an acceptable level of care quality, with appropriate sanctions to address under-utilization or poor quality of care?

We do not believe that alternate regulatory mechanisms should be considered at this time.

The Impact of CON Regulation on General Hospice Program Competition and Innovation

15. Do you recommend changes in CON regulation to increase innovation in service delivery by existing general hospice programs and new market entrants? If so, please provide detailed recommendations.

No. As stated previously, there is no evidence to suggest that CON regulation stifles innovation. Hospice providers will continue to innovate within the existing Medicare Benefit while functioning optimally under the CON system.

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

No. Hospice and Home Health serve different populations under a different model, and should not be consolidated in any way.

The Impact of CON Regulation on General Hospice Access to Care and Quality

17. At what stage (prior to docketing or during project review) should MHCC take into consideration an applicant's quality of care performance? How should applicants be evaluated if they are new applicants to Maryland or to the industry?
Note: docketing is the determination by the MHCC when an application is judged complete and ready for review.

The Commission should consider quality of care performance at the very beginning of the process. MHCC should use actual complaint and survey data of the existing providers, in addition to quality metrics stated above such as the Hospice Item Set, CAHPS Hospice survey, and hospice PEPPER report. Hospices will poor performance on quality metrics, multiple or serious complaints, significantly deficient surveys, or any sort of active investigation by the Department of Justice should be denied approval to enter or expand in Maryland markets.

Scope of CON Regulation

18. Should MHCC be given more flexibility in choosing which general hospice projects require approval and those that can go forward without approval, based on adopted regulations for making these decisions? For example, all projects of a certain type could require notice to the Commission that includes information related to each project's impact on spending, on the pattern of service delivery, and that is based on the proposals received in a given time period. The Commission could consider staff's recommendation not to require CON approval or, based on significant project impact, to require the general hospice project to undergo CON review.

No. The public, and other providers, should retain the ability to comment and formally oppose any CON applications, and giving the Commission the ability to expedite applications would seem to remove the ability for the public to comment or oppose.

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

Existing hospice provider expansion within their licensed jurisdictions could be considered for expedited review. As an example, inpatient beds is an area for expedited review. In the interest of meeting patient needs in a timely manner, if an existing hospice provider has the capital, location and agreements to build and construct an inpatient center there should be an expedited process to move the project forward.

The Project Review Process

20. Are there specific steps that can be eliminated?
We have not submitted a CON application for review and are thus unable to address this question.

21. Should post-CON approval processes be changed to accommodate easier project modifications?
We have not submitted a CON application for review and are thus unable to address this question.

22. Should the regulatory process be overhauled to permit more types of projects to undergo a more abbreviated form of review? If so, please identify the exemptions and describe alternative approaches that could be considered.
Perhaps applications for inpatient beds within a jurisdiction, as discussed above.

23. Would greater use of technology, including the submission of automated and form-based applications, improve the application submission process?
We have not submitted a CON application for review, but greater use of technology would seem to be beneficial.

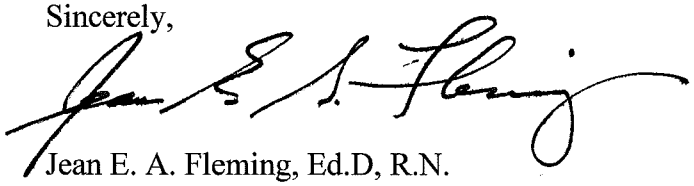
Duplication of Responsibilities by MHCC and MOH

24. Are there areas of regulatory duplication in general hospice regulation that can be streamlined between MHCC and MDH?

No. The departments serve different functions and at this time should maintain their existing areas of responsibility.

Thank you for your consideration of our responses.

Sincerely,



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