

January 12, 2018

Paul Parker  
Director of the Center for Health Care Facilities  
Planning and Development  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, MD 21215

Dear Mr. Parker:

On behalf of Erickson Living, I am writing to provide input on potential reforms of Maryland's Certificate of Need (CON) law for nursing homes as requested by Chairman Moffit in his November 21, 2017 letter. We very much appreciate the opportunity to share our views.

***About Erickson Living***

As you know, most Erickson communities, including Charlestown, Oak Crest and Riderwood in Maryland, average over 1,000 residents and 80+ acres, compared to a typical CCRC with 200-300 residents. Erickson also operates a Centers for Medicare and Medicaid Services (CMS)-approved Medicare Advantage plan, Erickson Advantage; assuming risk through the plan for the cost and quality of outcomes for the care of their seniors. This year CMS awarded Erickson Advantage a 5-star CMS rating. And, U.S. News & World Report named Erickson Advantage a "Best Medicare Advantage Plan."

The scale of our communities enables us to not only drive down healthcare and living costs for seniors, but also allows us to access the latest technologies and practices to deliver on a promise of providing unprecedented healthcare results. Our model of care has decreased hospital readmissions and hospital length of stay by over 50% among a population considered to be the costliest in health care: those over 85 years old and managing at least one or more chronic conditions. Our communities enable middle-income seniors to privately finance attractive, high quality, long-term care—dramatically reducing Medicaid utilization and cost.

***General Comments on CON***

We believe Maryland CON regulation of nursing home capital projects should be reformed and we support the comments provided under separate cover by LifeSpan to examine a number of areas, including: 1) increasing the capital threshold; 2) exempting certain projects from being included under the capital threshold if bed capacity is not being increased; 3) reviewing the performance requirements for after a CON is granted; 4) assessing whether an MOU for Medicaid residents continues to be necessary and/or whether standards should be adjusted;

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5) reviewing which quality measures should be part of the CON process; and 6) considering the use of occupancy standards for an increase in bed capacity.

### ***Direct Admission Limitations***

The most problematic provisions of the CON law for Erickson Living are related to the restrictions on CCRCs' ability to directly admit non-community residents into our nursing homes. Current Maryland law only allows a direct admission to a CCRC from within the CCRC's resident community; if the subscriber has the potential for an eventual transfer to an independent living unit or an assisted living unit, and in the case of a spouse of a resident or long term relationships. The provisions also require (Section 19-114 (d)(2)(ii)3.A. and B.) that the number of comprehensive care nursing beds in the community does not exceed 24 percent of the number of independent living units in a community having less than 300 independent living units, or 20 percent of the number of independent living units in a community having 300 or more independent living units.

Further, in Section 19-124 (b) and (c), notwithstanding the provisions noted above in Section 19-114, the total number of comprehensive care nursing beds occupied by subscribers who have been directly admitted to a comprehensive care nursing bed may not exceed 20 percent of the total number of comprehensive care nursing beds that are available in the continuing care nursing facility, and a CCRC that qualifies for an exemption from CON under Section 19-114 may not admit a subscriber directly into a comprehensive care nursing bed if the direct admission would cause the occupancy of the comprehensive care nursing beds in the continuing care community to exceed 95 percent of full capacity.

### ***Impact of Direct Admission Limitations***

Because Maryland significantly limits a CCRC's ability to directly admit non-residents into nursing homes, Maryland CCRC consumers wind up paying more and/or have less access to skilled nursing and assisted living services, particularly at the end of the continuum of care, than many other consumers of CCRCs. The result of this policy, created many years ago, means CCRCs have two unappealing choices: 1. Contract out nursing home and assisted living care, meaning people leave campus to receive those services, sometimes splitting couples at the end of life because building and staffing those facilities without the ability to market externally are too expensive until the community has aged in place for more than a decade, or 2. Offer the full continuum of services onsite in the early stages of the development without the ability to directly admit non-residents, and pass the cost of building, staffing and operating a less occupied building onto consumers. Neither choice is good for consumers: they either agree to leave for certain services, or, pay higher fees to have access to them today.



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In an effort to address this issue and the already expensive fees related to privately affording one's long-term care, and given the clear policy benefit of people financing their own long-term care to the state, rather than divesting assets and enrolling in the state's Medicaid plan, Erickson Living proposes updating Maryland's policy to reflect a more modern approach to address the need for seniors' housing and healthcare that isn't financed by the state.

***Proposed New Policy***

We believe a more realistic policy would be to eliminate the current direct admission restrictions if a CCRC's comprehensive care nursing bed capacity is 10% or less of its independent living units.

***Rationale***

The purpose of the current restrictions is to ensure that providers are not creating CCRCs to circumvent the needs requirement of the CON process. However, in the market place, CCRCs are shrinking their SNF components due to market conditions and substitute products. As a result, the limitation on direct admissions is overly complex and burdensome for the provider and the consumer.

Maryland's current CCRC regulatory system makes more challenging the development of large, "all in one" campuses, and makes the development of skilled nursing facility beds and assisted living beds much more expensive. Such a modification would enable CCRCs that encourage seniors to privately finance their long-term care to develop more quickly, serving interests of Maryland residents who enter into continuing care contracts, and reducing Medicaid participation.

Because they encourage private financing of long term care, CCRCs have a significant and positive impact on state Medicaid budgets. Erickson Living's participation in a CMS approved Medicare Advantage plan enables meaningful care coordination, which results in better health outcomes for seniors and significant reductions in cost to state and federal budgets. In fact, as a result of federal legislation passed in 2005, every Erickson Living resident is obligated to fully spend down all available assets, including CCRC entrance deposits, prior to accessing Medicaid.

Again, we appreciate the opportunity to comment and would be happy to answer any questions.

Sincerely,  


Lynn Gordon  
Director, Regulatory Affairs