



Robert Stephens, MS, Health Officer
1025 Memorial Drive
Oakland, Maryland 21550

Garrett County Health Department

Office of Administration



Public Health
Prevent. Promote. Protect.

301-334-7700 or 301-895-3111
FAX 301-334-7701
Equal Opportunity Employer

January 12, 2018

Paul Parker, Director
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Re: Certificate of Need Regulation for Health Health Agencies

Dear Workgroup Members,

As the Health Officer for Garrett County I believe that our citizens would be best served if the Certificate of Need regulation be maintained in its current form. While relaxing the regulation may result in competition which could lead to improved services and innovation in some jurisdictions, it could have a deleterious effect on small, rural communities. In Garrett County, the Health Department has served as a provider of last resort for services that are critical to the overall health of the community and where the private sector has not been able or willing to provide service. Currently, the Garret County Health Department not only is the only provider of Home Health services in the County, it is also the only substance abuse treatment provider and operates the only outpatient mental health clinic. I include this information to demonstrate that the private sector has not stepped up to provide these critical services due to their inability to have a sound business model and also provide the level of service needed to meet the critical needs of the community. While it could be argued that other home health providers could operate in the community, our experience has been that if providers do choose to locate and develop services in the community, it will be for a carve out of those patients who allow them to maximize profits. They will not have the ability to serve all patients due to the high overhead of providing the services to a low density rural county. Our experience in other health services, such as mental health, is that there have been numerous providers over the years that open a practice only to close after it is determined that the number of patients needed to maintain a vibrant practice cannot be achieved, but also after carving out a sub group of clients who will maximize profit and mitigate risk, thus weakening the overall array of services. For substance abuse treatment, there have been no outside organizations that have located in the community despite the opportunity that exists.

While it is impossible to fully predict what will occur if home health agencies are allowed to operate in the community without first obtaining a CON, we believe the risk of jeopardizing the existing safety net great. For home health services, the Garrett County Health Department has been able to maintain a high quality service that guarantees all citizens of the county a full range of services, including skilled nursing, in-home aids, nutritional services, in-home social services, telehealth, OT, PT, etc. With the elimination of the Certificate of Need regulation, competing home health providers could operate in the community and “cherry pick” patients who are geographically concentrated in areas where a competitive business model would maximize profits. This would most likely have disastrous results for those patients who are located in outlying and hard to reach areas where providers would deny service. Garrett County has only 46

Garrett County, a healthier place to live, work, and play!

garrethhealth.org

Toll Free Maryland Department of Health 1-877-463-3464
TDD for Disabled Maryland Relay Service 1-800-735-2258

persons per square mile and a total land mass of 647 square miles. Patients' homes are often located 50 miles or more from the next patient. While it is a challenge for one home health agency in the community to serve the in-home needs of the entire county, the problem would be exacerbated if several home health agencies to operate in the County.

Another concern is that the Garrett County Commissioners contribute funds to the Garrett County Health Department in order to assure that home health services are available. While there are years when the program operates in the black, there have been years that the opposite has been true. If competing organizations were to operate in the County, it is less likely that the Board of Garrett County Commissioners will provide the stop-gap funding that assures services in all areas of the County.

In summary, I urge the workgroup to proceed cautiously in its review of the CON process. I am certain that there will be some advantages to relaxing or eliminating the CON requirement for home health services, however, I believe that the risk of increasing the health service disparity across the State is outweighed by the need to relax and/or eliminate the regulations.

In the letter we received we were asked to address questions related to the impact of the CON. Those answers as they relate to Garrett County are contained on the attachment.

Sincerely,



Robert Stephens, MS
Health Officer

Enclosures

Garrett County, a healthier place to live, work, and play!

garretthealth.org

Toll Free Maryland Department of Health 1-877-463-3464
TDD for Disabled Maryland Relay Service 1-800-735-2258

**COMMENT GUIDANCE-HOME HEALTH AGENCIES
MHCC CON STUDY, 2017-18**

Please consider your answers in the context of Maryland's commitment to achieve the goals of the Triple Aim¹ and its aspiration to bring health care spending under a total cost of care model beginning in 2019. Please provide a brief explanation of the basis for your position(s) in each area

of inquiry beginning with the overarching question regarding continuation of home health agency CON regulation. All responses will be part of the Maryland Health Care Commission's public record for the CON Workgroup.

Need for CON Regulation

Which of these options best fits your view of nursing home CON regulation?

D CON regulation of home health agencies 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.]

D CON regulation of home health agencies should be reformed.

D **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?

In theory there is a benefit to more competition, but specifically for Garrett County, competition may have an adverse effect on home health services.

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?

Yes, there is a barrier but in the case of our community, I must argue for the continuation of the Certificate of Need process.

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

Without competition there is not an external motivation to innovate. However, for public health, there is always a motivation to improve community outcomes and population health.

¹ The Institute for Healthcare Improvement's "Triple Aim" is a framework that describes an approach to optimizing health system performance. It is IHI's belief that new designs must be developed to simultaneously pursue three dimension: (1) Improving the patient experience of care (including quality and satisfaction); (2) Improving the health of populations, and; (3) Reducing the per capita cost of health care.

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.

The specific benefit of the CON process in Garrett County is that it assures all residents of the community have access to high quality home health services. With "de-regulation" there is the possibility that services for "high cost/low profit" will not be adequately served.

Scope of CON Regulation

Generally, 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. For a more detailed understanding of the scope of CON and exemption from CON review requirements, you may wish to review COMAR 10.24.01.02 - .04, which can be accessed at: [http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search:::10.24.01.](http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search:::10.24.01.*)*

5. Should the scope of CON regulation be changed? *No*
 - A. Are there home health agency projects that require approval by the Maryland Health Care Commission that should be deregulated?
 - 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?

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? *No comment*
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 {see COMAR 10.24 .01. 04} that should be eliminated? Should further consolidation of health care facilities² be encouraged by maintaining exemption review for merged asset systems?

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

Yes. The timelines and performance requirements are appropriate.

² Under Maryland CON law, home health agencies are classified as "healthcare facilities."

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

Yes, but I would defer to the Commission members' opinion on this point.

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

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. *No comment*

General Review Criteria for all Project Reviews

COMAR 10.24.01.0BG(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?

Yes. The criteria are adequate and appropriate

CHANGES/SOLUTION

S

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? *Not applicable*

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 home health agency licensure requirements administered by the Maryland Department of Health serve as an alternative approach to assuring that home health agencies are well-utilized and provide an acceptable level of care quality, with appropriate sanctions to address under- utilization or poor quality of care?

There are possible benefits that could be addressed through licensure or an accreditation process

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? If so, please provide detailed recommendations.

The relaxing of CON regulation will increase innovation by driving down cost and improving patient experiences in communities where several vibrant home health agencies are competing for patients. However, in small communities like Garrett County, the relaxing of the regulation may lead to confusion in the "market" and undermine the quality of care.

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?

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

1. 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.

There is a need to assure that quality care measures are in place prior to the docketing.

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? 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 home health agency to undergo CON review. *Yes*
3. Should a whole new process of expedited review for certain projects be created? If so, what should be the attributes of the process?

Not certain. The Commission has better insight regarding this question.

The Project Review Process

4. Are there specific steps that can be eliminated? *No*
5. Should post-CON approval processes be changed to accommodate easier project modifications? *Yes*
6. 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.

No experience with the process. No opinion.

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 MOH

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

Thank you for your responses. Remember that it will be helpful if you provide a brief explanation of the basis for your position(s) and/or recommendation(s) in each area of inquiry.