HomeCentris
HEALTHCARE
HOME-CENTRIC HEALTHCARE STRATEGIES

January 2, 2018

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

Dear Mr. Parker,

This letter is in response to your request for comment guidance on the MHCC CON Study. As context for my responses, HomeCentris Healthcare operates two home-based healthcare companies in Maryland licensed by the Office of Health Care Quality ("OHCQ"). The first, Personal Home Care, is a Residential Service Agency ("RSA") with over 1,100 clients. Nearly 95% of these clients are Medicaid Waiver clients. The second, HomeCentris Home Health, is a Medicare-certified home health agency, licensed in Baltimore County only.

Need for CON Regulation.

We believe the home health CON regulations should be eliminated or significantly reformed. In general, our view is that home health CONs are an outdated method of regulating home health entities that no longer contribute towards their initial intent. Further, although we do understand an argument to review the need for additional hospital or skilled nursing beds in a geography, because home health care is not limited by licensed beds or building size, it should not be viewed as a "needs based" health care business. In home health care, the concept of a geography being "full" with a "need" for more providers does not apply as there is no limit to the number of patients an agency can service. In theory, one agency could service the entire state given its ability to open branch locations and hire additional staff. In this example, there would never be a "need" for another agency as a single agency is infinitely expandable. Therefore, we believe the existing home health regulations should be revised away from a needs-based review and towards ensuring quality of care, financial viability, and a lower cost of care. A home health CON achieves neither of these goals.

In our view, the existing home health CON requirements protect and perpetuate low quality home health agencies with poor clinical and/or patient satisfaction outcomes by blocking high quality operators from entering the market. A good example occurs between Baltimore City and Baltimore County. Our company's circumstances further assert this example. There are approximately 21 licensed home health agencies in Baltimore City and additional agencies have not been licensed since at least 2010. However, nearly all the metropolitan area's hospitals are inside the city limits. Even though Baltimore City has several low-quality operators as evidenced by CMS Five Star ratings, current home health CON regulations prevent new high-quality agencies from serving Baltimore City patients. As we review competitive outcomes data, there are several agencies in Baltimore City with high rehospitalization rates and two stars for Clinical and Patient Satisfaction outcomes.

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In our case, HomeCentris is currently a Five-Star agency both for clinical outcomes and for patient satisfaction. Further, our rehospitalization rate is approximately half the Maryland average. However, due to CON restrictions, we are unable to provide our services to City patients. We believe this example shows why CON restrictions do not achieve the Triple Aim's goals. First, using HomeCentris as an example, a new high-quality agency cannot enter new markets and implement its rehospitalization prevention protocols. This would lower the total cost of care in Maryland. Second, the CON regulations restrict competition and access to good quality providers while protecting poor quality providers. This protection does not fulfill the CON's initial intent nor does it fulfill the triple aim goal of improving patient experience and improving health.

In addition, licensing additional home health providers may create downward pressure on the total cost of care by limiting a patient's time in a high cost setting like a hospital or skilled nursing facility and transferring the patient's care to the lowest-cost setting, home health care. In our view, the MHCC should consider the impact on total cost of care that would result from prioritizing low-cost settings and minimizing high cost settings.

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

1. In our view, the public and the health care delivery system would benefit from more competition among home health providers. When competition is introduced to a market, the outcome is generally better outcomes and lower costs. High quality providers will thrive while low quality providers will struggle and be replaced. However, we strongly believe that there should still be some pre-requisites to issuing new home health licenses. For example, to prevent inexperienced and non-serious providers from entering the market, Maryland could consider requiring operators to post a significant surety bond to be licensed (see our response to Question 13). This will prevent small RSAs who hope to service a few of their patients from becoming licensed. It should also prevent low quality or non-compliant providers from entering the market.
2. The CON regulation does not impose "substantial" barriers, it imposes "absolute" barriers to new home health agencies, when considering the 2010 moratorium on new licenses. At a minimum, we hope the MHCC would consider amendments to the home health CON regulations that would consider high quality providers, based on quality outcomes and financial qualifications rather than the concept of "need." For example, our Personal Home Care division services approximately 325 Medicaid Waiver clients in Baltimore City. Likewise, we have another 260 clients in Montgomery County. As those clients are hospitalized, HomeCentris Home Health has no ability to provide its Five-star home health services to them. Further, this interruption in care can cause transition issues between levels of care, confusion with the clients, poor care coordination between home health and home care agencies and potentially higher rehospitalizations and total cost of care.
3. If there was more market competition among home health providers vying for the same number of patients, Maryland would see a migration of patients towards the high quality and/or low-cost providers. These high quality, low cost providers are exactly the providers who are experimenting with innovative ways to increase quality and/or lower costs. With the current CON protections in place, the low-quality providers have little incentive to improve or innovate as their franchise is completely protected.
4. One of the benefits of the current CON regulations is that they prohibit new low-quality operators from entering the market. With limited barriers to entry as your question suggests, many, many

providers would apply for home health licensure. However, these same regulations also prevent high quality providers from entering the market which would drive up quality and drive down total cost of care. We believe there exists a way to provide for objective, appropriate barriers to entry without shutting out 100% of new operators. For example, as discussed previously and in Question 13, Maryland could create a significant financial barrier to entry by requiring a large bond to obtain licensure. This would not be a burden for reputable agencies, but a significant burden for un-serious providers. This would prohibit small, low quality RSAs and other operators from entering the market. We also believe there could be quality standards imposed upon agencies operating in Maryland.

Scope of CON Regulation

5. In general, we believe the home health CON regulations should be amended to reflect allowing high quality providers with the appropriate financial support to enter the market. We do not believe home health licensure should be approached on a project by project basis. Rather, we believe there should be strict licensing requirements to discourage low quality operators from entering the market.

The Project Review Process.

6. No opinion
7. In our view, competing home health agencies should have little say in opposing new agencies. As stated earlier, the CON provides absolute protection against other providers entering the market. It is difficult to imagine any circumstances when a protected, low quality agency would support bringing more competition to the market.
8. No opinion.

The State Health Plan for Facilities and Services.

9. No opinion.
10. If State Health Plan regulations focus on the "need" for additional home health agencies, then we believe they are not focusing on what is best for Maryland's patients nor its taxpayers. By focusing on need, which cannot exist in home health as there are no bed limitations, current regulations do not support competition nor do they lead to higher quality or lower cost of care.
11. No opinion.

General Review Criterial for all Project Reviews.

12. We believe that (1) Need and (2) Availability of More Cost-Effective Alternatives are not appropriate for home health licensure. As discussed, "need" is not a relevant consideration in home health given the lack of real estate or licensed bed restrictions. Likewise, as home health is generally the low-cost setting for health care, it seems inappropriate to evaluate this factor. Those restrictions are much more appropriate when evaluating the need for additional hospital or nursing facility beds. These two items should be replaced with quality measures.

Alternatives to CON Regulation

13. We believe the existing "need based" approval process should be eliminated or reformed in favor of quality and financial viability-based requirements for home health licensure. The existing framework at OHCQ could govern the licensing of new applicants and the oversight of existing providers if it were presented with clear licensing guidelines. Currently, Maryland uses a county by county basis for licensing new home health companies. We believe that framework would be eliminated if the CON requirement were meaningfully changed. In addition to the existing licensure requirements, below are some proposed recommendations to ensure the quality and financial viability of home health applicants.

    a. Require new applicants and existing providers to post a $250,000 surety bond to OHCQ upon application or re-application for licensure. In response to your question about low barriers to entry, this surety bond requirement would help ensure the financial viability of the applicant or continuing agency and would discourage unserious or underfunded agencies from applying. The bond would be held by OHCQ during the licensure period and would be returned when the licensee sells or closes the agency, assuming the agency is operating in good standing. Agencies that are forced to close due to poor quality, poor state surveys, etc. would forfeit all or a portion of the bond and the state would retain the funds. The bonding requirement for home health agencies is present in many other states and Maryland requires a surety bond for many other entities. The mechanism for enforcing this already exists.

    b. Home Health applicants must demonstrate experience in home health operations. This requirement would go beyond providing policy manuals which are easily purchased and customized by applicants. Rather, an applicant must demonstrate the agency will be run by an experienced and qualified home health Administrator and Director of Nursing. Without a requirement like this and appropriate verification, Maryland risks opening the market to inexperienced operators who could put patient safety at risk.

    c. Home Health Administrator must be credentialed and/or certification. Currently, there are no certifications required to be a home health administrator. Skilled nursing facilities require certain training, onsite apprenticeships, and education. However, home health administrators require no such training. We believe the requirements for home health administrators could be strengthened.

    d. Home Health providers must demonstrate a commitment to quality outcomes. Poor operators should be at risk of losing their licensure due to poor survey outcomes, poor five star ratings, etc. Maryland has many low-quality home health agencies that are protected by the current CON requirements and not truly at risk of losing their licensure. We would support meaningful quality standards to retain licensure.

14. Included in response above.

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

15. HomeCentris vision is to "Empower people to remain in the community through innovative health solutions." However, requiring innovation by regulation may be difficult to achieve. Healthcare is already a very regulated business and necessarily so. It would be difficult to

mandate innovation as many innovations would run into conflicts with other regulations. Our view is that increased competition will force both better outcomes and lower costs as quality operators find ways to innovate without overarching regulations forcing innovation.

16. We see no opportunities within the existing regulations governing mergers and acquisitions of home health agencies that would increase quality. Currently, consolidation is the only possible way for home health providers to enter new markets and regulatory burdens are not overly oppressive in this regard. However, additional survey activity on home health agencies would ensure compliance with regulations and would lead to higher quality by focusing more scrutiny on lower quality providers. If consolidation means forcing out low quality providers, we would support this in conjunction with allowing high quality providers access to the market.

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

1. Based on our recommendations in Question 13 above, we strongly believe that quality, financial viability, and specific home health experience should factor into new home health licensure. The size of a company or its institutional prestige should not be considered if outcomes and quality are low. Out of state applicants can be evaluated on quality outcomes for both clinical and satisfaction outcomes through the CMS Five Star program. As this program is nationally managed, it would be an objective measure. New applicants should be able to demonstrate past success in delivering home health services. We believe this requirement would preclude hundreds of RSA from becoming home health agencies. Although both business deliver home based care, home health is significantly more regulated and difficult to deliver than home care and MHCC should be careful in creating standards that do not allow any provider into the home health program.

   In combining this response with the question regarding redundancies and inefficiencies, we see no reason that OHCQ could not administer the licensing and oversight of new home health applicants based on Maryland regulations and licensure requirements. The OHCQ office already oversees licensure requirements and state surveys of both RSA and home health providers. Their staff is experienced in assessing the qualifications and outcomes of home health providers and we believe they would be appropriate to implement any revised licensure requirements. We view the MHCC as more of a strategic and long-range planning body and not a day-to-day licensing oversight entity.

Scope of CON Regulation

2. In our view, there should not be a project by project review process by the MHCC. We believe the MHCC, in conjunction with the Maryland legislature and other regulatory bodies, should establish a set of standard criteria and requirements such as those proposed in Question 13 and as already required by existing Maryland licensure regulations. All applicants meeting those standards, however strict the MHCC decides they should be, should be approved without a review panel by the MHCC to evaluate "need" or "alternative low cost of care." This will not only streamline the approval of high quality, low cost providers, but it will also ensure the approval process is consistently administered and not subject to political influence, institutional prestige, or other factors apart from the interests of the community.

3. Same answer as Question 2 above.

4. We believe all "need based" processes and steps should be eliminated and replaced with quality and financial viability based standards. As discussed, need based reviews serve to protect some low-quality operators which is not good for the triple aim goals. To truly get a competitive market in which high quality operators compete on quality, innovation, and low price, needs based reviews should be replaced with standards such as our proposals in Question 13. This would dramatically streamline the approval process and eliminate the tedious and expensive studies required to prove "need."

5. Same answer as Question 2 above. Project modifications should ensure compliance with the requirements of all home health agencies and can be administered by OHCQ.

6. We believe the regulatory process should be overhauled to create a set of quality and financial standards required to license a home health agency. We do not believe there should be exemptions, special favors, or panel review of specific projects. We believe in a standard set of licensure requirements that would favor high quality, low cost providers and gradually eliminate low quality providers and applicants.

7. Yes, always.

8. No opinion.

To summarize our position, we feel that Maryland's current home health Certificate of Need regulations do not work toward the "triple aim" objectives of improving care, improving health, and reducing the cost of health care. To the contrary, we believe they protect low quality and/or high cost providers, while excluding potential higher quality and/or lower cost providers and discouraging innovation. Further, they impose an unnecessary coordination of care hurdle when clients transition from home care to home health, and back again. We feel that Maryland can modernize its regulations to license reputable high-quality providers but still ensure high quality by requiring strict adherence to new quality and financial based barriers as we propose in Question 13. Thank you for taking a proactive view and soliciting the opinions of existing providers. Please contact me if you have any questions.

Sincerely,

Matthew F. Auman
CEO