January 12, 2018

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

RE: Comments – Home Health Agencies MHCC CON Study 2017018

Dear Mr. Parker:

Please accept these comments on behalf of LHC Group, Inc. LHC is the preferred post-acute care partner for hospitals, physicians, and families nationwide. From home health and hospice care to long-term acute care and community-based services, LHC delivers high-quality, cost-effective care that empowers patients to manage their health at home. LHC provides services in over 450 locations in the 28 states in which it operates, including Maryland. In Maryland, LHC operates four licensed home health providers with 10 locations offering Medicare-certified home health services to residents spanning from Washington County to Worcester County. Throughout Maryland LHC offers state-of-the art home health services for a wide range of diseases and conditions with a *CMS star rating average of 4.5*.

Home health care helps patients recover from injury and illness in the comfort of home, reducing avoidable hospital readmissions and keeping healthcare costs down. As a result, the home health care industry in Maryland must maintain its economic viability and stability. LHC supports the Commission's Certificate of Need (CON) Program, which is necessary to ensure the continued provision of high quality care to patients in a cost-effective and efficient manner. Maintaining and improving the existing CON program is essential in a health care system that relies upon a strong and enduring post acute care system to succeed in the All-Payer Model today, and the Total Cost of Care Demonstration in the future. However, as long as the CMS Star Rating system is being used to determine eligibility for CON application, we believe the Commission has the obligation to update the eligibility of agencies with each update of the CMS Home Health Compare.

Our perspective on the CON issue comes from our experience across the country. In other states in which LHC operates where CON laws have been repealed or relaxed, the number of home health agencies has dramatically increased as a result. For a prime example one has to look no further than Texas and Florida. Florida in particular is the poster child for the untoward effects of deregulation of CON in the home health context. Florida eliminated CON for home health in 2003. In the first five years following deregulation, home health care charges submitted to Medicare *rose to twenty times the national average* prompting a Federal investigation of suspected fraudulent billing. Miami-Dade County experienced a 1,300% percent increase in <u>just the first five years</u> and recently has been identified as having the <u>highest Medicare expenditures for home health care services of any county in the country</u>.

These massive increases in cost and volume of home health services in Florida occurred at a time when the population increased only 10.2 percent.

South Florida also illustrates the consequences of eliminating CON oversight in home health. Historically, when CON regulation is relaxed or lifted, states quickly experience dramatic growth in the number of home health agencies; such growth inevitably leads to CMS and OIG fraud investigations. Because of the high rate of fraud cases in South Florida, Texas, and other states, CMS implemented a moratorium on new providers in those areas and has extended the moratorium several times. The experience in Florida, Texas and other states also shows that elimination of CON results in over capacity, which causes staffing shortages of healthcare professionals. This staffing shortage, in and of itself, lowers quality and fragments healthcare delivery networks. These are undesirable results for Maryland's health care system, but could be particularly devastating under global budgets and the Total Cost of Care Demonstration.

For the reasons expressed in this letter, LHC supports the Commission's continued oversight on home health CON regulation. Responses to the Commission's specific questions are provided in an attachment.

Thank you for your consideration of these comments. As always, please feel free to contact me for additional information regarding this matter.

Sincerely,

Margret S. Green RN BSN

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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 Aim[1] 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 **health** CON regulation?

- ☐ 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.]

- ☐ CON regulation of home health agencies should be reformed.

- **X 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? **Answer:** *Removing the CON requirement for home health is associated with increased fraud and abuse. We believe the MHCC has done a good job managing the CON process therefore keeping fraud and abuse low in Maryland. Furthermore, the patient population receiving home health services is a particularly vulnerable group – they deserve the protection and oversight of the Commission to ensure their safety and well being.*

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? **Answer:** *We believe the public would benefit by considering expansion requests from long-standing, high-quality providers into contiguous counties.*

3. How does CON regulation stifle innovation in the delivery of home health agency services under the current Maryland regulatory scheme? **Answer:** *We do not believe CON regulation stifles innovation. It encourages innovation by preventing an overpopulation of providers. An overpopulation of providers is not in the best interest of the senior/Medicare or Medicaid*

[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.

population – groups that can be extremely vulnerable and deserve the protection and oversight of the state.

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. **Answer:** *Please see our accompanying letter outlining specific examples of fraud and abuse in non-CON states. We encourage the Commission to coordinate with other states such as Florida, Texas, and Pennsylvania to analyze the potential implications of removing the CON requirement in Maryland.*

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.**

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

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? **Answer:** *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? **Answer:** *No*

   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? **Answer:** *No comment.*

8. Are project completion timelines, i.e., performance requirements for implementing and completing projects, realistic and appropriate? (See COMAR 10.24.01.12.) **Answer:** *No comment.*

The State Health Plan for Facilities and Services

[2] Under Maryland CON law, home health agencies are classified as "health care facilities."

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? **Answer:** *No comment.*

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. **Answer:** *No comment.*

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. **Answer:** *No comment.*

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? **Yes** Should other criteria be used? **No comment.** Should any of these criteria be eliminated or modified in some way? **No**

CHANGES/SOLUTIONS

Alternatives to CON Regulation

1. 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? **Answer:** *No comment.*

2. 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? **Answer:** *We do not believe that MDOH has the capacity at this time to serve in a similar function as MHCC in this regard.*

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

3. 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. **Answer:** *No*

4. 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? **Answer:** *We believe this would be an over-reach of the Commission's authority. If the Commission believes there is inadequate competition, it can open up the county of concern to new CONs.*

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

5. 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? **Answer:** *The current practice of using CMS Star Ratings to determine eligibility to apply for a CON could be improved to include an updated review of the Star Ratings prior to docketing since they are published regularly and reflect performance greater than 1 year ago.*

   Note: docketing is the determination by the MHCC when an application is judged complete and ready for review.

Scope of CON Regulation

1. 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. **Answer:** *No comment.*

2. Should a whole new process of expedited review for certain projects be created? If so, what should be the attributes of the process? **Answer:** *No comment.*

The Project Review Process

3. Are there specific steps that can be eliminated? **Answer:** *No comment.*

4. Should post-CON approval processes be changed to accommodate easier project modifications? **Answer:** *No comment.*

5. 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. **Answer:** *No comment.*

6. Would greater use of technology, including the submission of automated and form-based applications, improve the application submission process? **Answer:** *Yes, automation to improve the submission process would be an improvement.*

Duplication of Responsibilities by MHCC and MDH

1. Are there areas of regulatory duplication in home health agency regulation that can be streamlined between MHCC and MDH? **Answer:** *We do not believe MDH has the capacity at this time to take on similar responsibilities as MHCC.*

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. **Please see accompanying letter.**