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

Dear Mr. Parker:

Attached are MedStar Health's comments in response to the November 21, 2017 survey questions in preparation for the Commission's new Certificate of Need (CON) Workgroup.

Our comments represent our initial thoughts on the issues with the current health planning and CON programs. In response to the questions, we've also included a few general comments on possible solutions, with the understanding that the workgroup won't focus on solutions until in its second phase, where more detailed suggestions will be developed.

We appreciate the opportunity to contribute to the workgroup's efforts. If you have any questions regarding these comments, please do not hesitate to contact me.

Sincerely,

Pegeen A. Townsend

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Vice President, Government Affairs

Attachment

MHCC QUESTIONS ON CON

General

Need for CON Regulation

- *MHA CON Task Force concluded CON is needed to determine the most efficient use of limited resources primarily because All-Payer model and hospital payments are set by the HSCRC.*
- *Under the new Total Cost of Care Model hospitals will be held accountable for achieving financial and quality targets required under the agreement with CMS.*
- *While it should be retained, the CON program needs to be modernized.*
- *Modernization needs to address more than just capital expenditures, e.g. scope and process as well.*

Impact on CON Regulation on Hospital Competition and Innovation

1. Would the public and health care delivery system benefit from more competition among hospitals?

    - *Adding more hospitals does not necessarily lower costs or improve quality especially where there are areas in the state that have excess hospital capacity.*
    - *Hospitals compete every day for market share under the new payment system.*
    - *Hospitals already face competition from other non-rate regulated providers that do not have the same fixed costs, not-for-profit missions, or responsibilities under the new Total Cost of Care model.*
    - *The hospital payment model encourages collaboration among hospitals and providers to drive care to the lowest cost, appropriate setting.*
    - *In parts of the state there are too many hospital beds and regulatory efforts should incentivize and encourage the rightsizing and/or conversion to other needed uses.*

2. Does CON impose substantial barriers to market entry for new hospitals or new hospital services?

    - *By definition CON is a barrier if need cannot be demonstrated – it is intended to keep out unneeded services and facilities.*
    - *Arguably, the larger barrier to hospital entry in Maryland is the historically slim hospital margins.*
    - *CON regulation should be based on what services are actually needed based on an objective methodology.*

- *There should be incentives created to encourage providers to meet unmet need, e.g. behavioral health, hospice.*

3. How does CON stifle innovation in the delivery of hospital services under the current Maryland regulatory scheme in which hospital rate-setting plays such a pivotal role?

   - *Maryland hospitals are among the most innovative in the nation.*
   - *Regulators need to think differently and be more responsive to a changing environment (FMF).*
   - *Failure to make timely updates to parts of the State Health Plan to keep pace with a changing environment.*

Scope of CON Regulation

4. Should the scope of CON regulation be changed?

   A. Are there capital projects that require approval by the MHCC that should be deregulated?

   - *Eliminate the capital threshold limit for hospital renovation projects that do not include new beds or services.*

   B. Are there projects that do not require approval by the MHCC that should be added to the scope of CON regulation?

   - *No but the process governing determinations of non-coverage and CON exemptions should be simpler and faster.*

The Project Review Process

5. What aspects of the project review process are most in need of reform? What are the primary choke points?

   - *Completeness questions should be limited to one-round and only include requests for information essential to making a decision on the application.*
   - *Complying with the time frames in statute should make the process more efficient.*
   - *Much of the pro forma information required to be included as part of the CON application could be eliminated, e.g. copy of the hospital license, charity care policy, shell space, square footage costs, etc.*

- *For straight hospital renovation projects, the quantitative analysis of alternative scenarios should be eliminated and replaced with a simplified narrative requirement (if CON for renovations is retained).*

6. Should the ability of competing hospitals or other types of providers to formally oppose and appeal decisions on projects be more limited?

   - *No because one hospital's project may have a financial impact on other hospitals under the new all payer model.*

   Are there existing categories of exemption review that should be eliminated? Should further consolidation of health care facilities be encouraged by maintaining exemption review for merged asset systems?

   - *The merged asset exemption allows for health systems to better allocate/align services and avoid unnecessary duplication – this should be encouraged.*
   - *The exemption was intended to (and has) facilitated the reduction of excess capacity.*
   - *Hospital systems decrease costs as a result of the benefits of scale and reduced costs of capital.*
   - *There are substantial quality benefits from hospital mergers due to standardizing clinical protocols, investments made to upgrade services, deployment and recruitment of additional medical staff, and concentrating provision of complex services at a limited number of system hospitals to benefit from increased volume.*
   - *Other benefits include coordination of patient care, sharing information through electronic medical records, population health management, and risk-based contracting.*
   - *New value based payment models necessitate alignment of the financial and clinical incentives of an integrated team of providers – both vertical and horizontal.*

7. Are project completion timeframes, i.e., performance requirements for implementing and completing projects, realistic and appropriate?

State Health Plan for Facilities and Services

8. In general, do state health plan regulations for hospital facilities and 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?

- *Lack of specific up to date need projections and need projections across all chapters*
- *Need projections should not be based entirely on historical data and other factors should be considered, e.g., new technologies, shift from inpatient to outpatient, new competitors, etc.*

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

   - *Eliminate CON for hospital renovation projects that do not increase beds or services*

10. Are the typical ways in which the 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.

    - *The process is adequate but several chapters have not been undated in a timely manner, e.g. behavioral health.*

General Review

Criteria for all Project Reviews

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

    - *The criteria are appropriate but need to be applied consistently to all applications– particularly the "need" criteria.*
    - *There should be an in-depth review of what is currently required in a CON application to assess whether the information is critical to making a decision or whether it is already publically available.*

Alternatives to CON Regulation for Capital Project

12. If you believe that CON regulation of hospital capital projects should be eliminated, what, if any, regulatory framework should govern hospital capital projects?

- *CON for hospital renovation projects that do not add new beds or services should be eliminated.*
- *No additional regulatory framework is needed- the HSCRC control over hospital payment is more than adequate check.*

13. What modifications would be needed in HSCRC's authority, if any, if the General Assembly eliminated CON regulation of hospital capital projects?

- *CON for hospital renovation projects that do not add beds or services should be eliminated.*
- *No additional regulatory framework is needed- the HSCRC control over hospital payment is more than an adequate check.*

14. Are there important benefits served by CON regulation that could be fully or adequately met with alternative regulatory mechanisms?

- *Given the unique hospital payment system in Maryland CON is needed to determine the most efficient use of limited resources.*

The Impact of CON Regulation on Hospital Competition and Innovation

15. Do you recommend changes in CON regulation to increase innovation in service delivery by existing hospitals and new market entrants?

- *More timely updates of the state health plan chapters and need projections.*
- *CON is not an impediment to innovation and changes in the payment system creates sufficient incentives to innovate.*

16. Should Maryland shift its regulatory focus to regulation of hospital and health system merger and consolidation activity to preserve and strengthen competition for hospital services?

- *Other regulatory bodies already provide adequate oversight of hospital mergers – FTC and DOJ and the antitrust division of the Attorney General's office.*
- *The merged asset exemption allows for health systems to better allocate/align services and avoid unnecessary duplication – this should continue to be encouraged.*
- *Hospital systems decrease costs resulting from the benefits of scale and reduced costs of capital.*

- *There are substantial quality benefits from hospital mergers due to standardizing clinical protocols, investments made to upgrade services, deployment and recruitment of additional medical staff, and concentrating provision of complex services at a limited number of system hospitals to benefit from increased volume.*
- *Other benefits include coordination of patient care, sharing information through electronic medical records, population health management, and risk-based contracting.*
- *New value based payment models necessitate alignment of the financial and clinical incentives of an integrated team of providers both vertically and horizontally.*

Scope of CON Regulation

17. Should the scope of hospital CON regulation be more closely aligned with the impact of hospital projects on charges?

    - *No there are sufficient incentives under the new all payer model to control hospital charges.*

    A. Should the use of a capital expenditure threshold in hospital CON regulation be eliminated?

    - *CON for hospital renovation projects that do not add beds or services should be eliminated.*

    B. Should Maryland's system of hospital rate regulation include capital spending growth targets or capacity growth targets that shape the scope of CON regulation?

    - No the hospital payment system is an adequate check.

18. Should MHCC be given more flexibility in choosing which hospital projects require approval and those that can move forward without approval, based on adopted regulations for making these decisions?

    - *No this would result in uncertainty and has the potential for an arbitrary process and decisions.*

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

- *Perhaps for projects where there is a documented need in the State Health Plan and no interested parties.*
- *Limit the completeness question scope and process to one round of questions that are essential to making a decision.*
- *Expediting decisions relating to non coverage and exemptions from CON.*

The Project Review Process

20. Are there steps that can be eliminated?

    - *Keeping completeness review to one round limited to only those issues/questions that are essential to making a decision.*

21. Should post-CON approval processes be changed to accommodate easier project modifications?

    - *Yes particularly if the project does not include new beds or services.*

22. Should regulatory processes 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 for projects where there is a documented need in the State Health Plan and no interested parties.*

23. Would greater use of technology including the submission of automated and form-based applications improve the application submission process?

    - *There should be an in-depth review of what is currently required in a CON application to assess whether the information is critical to making a decision or whether it is already publically available.*

Duplication of Responsibilities by MHCC, HSCRC, and the MDH

24. Are there areas of regulatory duplication in the hospital capital funding process that can be streamlined

25. Are there other areas of duplication among the three agencies that could benefit from streamlining?