CON Task Force: Phase 2

October 1, 2018

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AGENDA

1. Call to Order, Welcome and Introductions

2. Approval of the September 7, 2018 Task Force Meeting Summary

3. Ambulatory Surgical Facility Services – Suggested Time: 35 minutes

A. Current State Health Plan: Key policy objectives guiding CON regulation

B. Discussion of reforms to CON regulation of ambulatory surgical facility services

- Scope of regulation -- CON, non-Coverage, and Exemptions
- Compatibility of CON regulation with Total Cost of Care (TCOC) payment model
- Scope of review criteria and standards
- Information requirements
- Duplication of regulatory effort with OHCQ

4. General Hospital Facilities and Services – Suggested Time: 65 minutes

A. Current State Health Plan: Key policy objectives guiding CON regulation

B. Presentation by the Maryland Hospital Association of Reform Recommendations

C. Discussion of reforms to CON regulation of general hospital facility services

- Scope of regulation – CON and Exemptions
- Compatibility of CON regulation with Total Cost of Care (TCOC) payment model
- Scope of review criteria and standards
- Information requirements
- Duplication of regulatory effort with HSCRC and MDH

5. Special Hospital Facilities and Services – Chronic, Pediatric, Psychiatric, Acute Rehabilitation – Suggested Time: 35 minutes

A. Current State Health Plan: Key policy objectives guiding CON regulation

B. Discussion of reforms to CON regulation of special hospital facilities and services

- Scope of CON regulation
- Compatibility of CON regulation with Total Cost of Care (TCOC) payment model
- Scope of review criteria and standards
- Information requirements
- Duplication of regulatory effort with HSCRC and MDH

6. Plans for the October 12 Meeting -- Review of CON Project and Exemption from CON Processes

7. Adjournment

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PRINCIPLES TO GUIDE CON REFORM

1. Promote the availability of general hospital and long term care services in all regions of Maryland. Assure appropriate availability of specialized services that require a large regional service area to assure viability and quality.
2. Complement the goals and objectives of the Maryland Total Cost of Care Model.
3. Provide opportunities to enter the Maryland market for innovators committed to the delivery of affordable, safe, and high-quality health care.
4. Minimize the regulatory requirements for existing providers to expand existing capacity or offer new services when those providers are committed to the delivery of affordable, safe, and high-quality health care.
5. Reduce the burden of complying with CON regulatory requirements to those necessary for assuring that delivery of health care will be affordable, safe, and of high-quality.
6. Maintain meaningful review criteria and standards that are consistent with the law and understandable to applicants, interested parties, and the public.

Note: MHCC staff recommends focusing on the goals for CON reform. We have proposed principles for access, TCOC alignment, affordable high quality safe care, regulatory reform, and internal coherence.

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GENERAL DISCUSSION

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AMBULATORY SURGICAL FACILITIES (ASFs)

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PROBLEMS IDENTIFIED IN CON REGULATION OF ASFs

- The scope of ASF CON regulation may be outdated. In particular, the use of a capital expenditure threshold should be reconsidered.
- The overall CON application and review process is too complex, requiring outside resources and additional costs for applicants.
- Post-CON approval performance requirements are outdated.

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ASF CON REFORM IDEAS FOR DISCUSSION

Minimal Reform

- Eliminate capital expenditure threshold defining need for CON approval

Moderate Reform

- **Create an expedited review process** for ASF and hospital operating room inventory changes – approve if existing OR capacity is well utilized. Do not include interested party participation in this process. Allow all categories of applicant to use this process

- **Give MHCC the ability to waive CON requirements** for capital projects endorsed by HSCRC as contributing to safe and effective control of total costs of care

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ASF CON REFORM IDEAS FOR DISCUSSION

Major Reform

- **Eliminate all CON regulation of ASF development** (but retain streamlined regulation of OR capacity of hospitals with reforms proposed in earlier slide)

- **Provide authority and funding for broader and more rigorous ASF regulation by MDH.** Require detailed background review of ASF licensure applicants. Deny licensing to persons who have problematic track records. Fund additional MDH staff for more frequent surveys and more monitoring of ASF safety and quality. Enable delicensing for poor quality. Require and enforce design standards. Additional funding could arise from high licensing fees which may also discourage lower capability applicants.

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HOSPITALS

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PROBLEMS IDENTIFIED IN CON REGULATION OF HOSPITALS

- The scope of hospital CON regulation is outdated and should be reconsidered. In particular, the need for a capital expenditure threshold should be reconsidered.

- Portions of some State Health Plan Chapters are outdated and unclear.

- The State Health Plan does not align with the current hospital payment model.

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PROBLEMS IDENTIFIED IN CON REGULATION OF HOSPITALS

- The State Health Plan does not facilitate care delivery transformation.
- The State Health Plan has too many standards that are unnecessary or do not address key priorities in hospital or hospital service development. This increases the need for MHCC resources and the complexity of the CON project review process and may be a cause for extended timelines associated with completeness review, application review following docketing, and any appeal processes.

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PROBLEMS IDENTIFIED IN CON REGULATION OF HOSPITALS

- The average period of time needed to docket a hospital application and complete the review of an application is excessive.
- The information requirements associated with hospital CON regulation are excessive and, in some cases, duplicative with respect to the regulatory activities of other entities (e.g. financial feasibility analysis and compliance with charity care policies).

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PROBLEMS IDENTIFIED IN CON REGULATION OF HOSPITALS

- Alternatives to conventional CON project review are lacking.
- Exemption from CON review is still, in many cases, insufficiently streamlined.
- The capability to obtain broader community perspectives on regulated projects is underdeveloped.

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HOSPITAL CON REFORM IDEAS FOR DISCUSSION

Minimal Reform

- **Eliminate fixed dollar amount for capital expenditure threshold.** Establish thresholds based on size of hospital revenue base.

- **Require hospitals seeking CON approval of projects only reviewable because of the CAPEX to request a partial rate review in conjunction with the CON application**. No review of applications "reserving the right" for extraordinary GBR adjustment at a later date will be allowed.

HOSPITAL CON REFORM IDEAS FOR DISCUSSION

Moderate Reform

- **Eliminate capital expenditure threshold defining need for CON approval**
  - Eliminates "pledge projects" and CON review of projects with no categorically regulated elements. No hospital capital project is automatically eligible for extraordinary adjustment of revenue base.
  - Hospitals can request extraordinary adjustment of revenue base related to increased capital costs for any project defined by HSCRC as eligible for such a request. HSCRC can choose to approve, partially approve, or deny at its discretion

- **Eliminate requirement for review of bed capacity changes**

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POTENTIAL CON REFORMS FOR HOSPITALS

Moderate Reform (continued)

- **Create an expedited review process** for operating room inventory changes – approve if existing OR capacity is well utilized. Do not include interested party participation in this process

- **Update the State Health Plan** (SHP) to reduce standards. Focus CON review on need for project and project feasibility.

- **Give MHCC the ability to waive CON requirements** for capital projects endorsed by HSCRC as contributing to safe and effective control of total costs of care

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POTENTIAL CON REFORMS FOR HOSPITALS

Major Reform

- **Eliminate hospital CON regulation with the exception of:**
  - Establishing new hospitals
  - Establishing freestanding medical facilities
  - Relocating hospitals or FMFs
  - Introducing cardiac surgery, PCI, and organ transplantation
- **Redirect work of MHCC on developing a new and different type of State Health Plan** that will inform HSCRC decisions on providing additional revenue for capital projects – a plan that assesses the need for systems capacity rather than a set of project review standards

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General
  - Eliminate the capital thresholds across all provider categories
  - Where a facility is modernizing but will not be seeking additional volume:
    - Eliminate CON review
    - Replace CON with a requirement that the facility must make a filing and the MHCC must affirmatively intervene within a set timeframe if it concludes that the project is not in accord with the MHCC standards for such an exemption

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - Modify the standard of review for financial viability of projects – a project need only be feasible in order to be approved
  - Eliminate "impact on competing providers" as a consideration or as a basis for interested party status. If there is a need, and the provider and project meet other qualifications, competitive harm to existing providers or difficulty in competing for staff should not be the basis for a challenge to a CON

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - Modernize COMAR 10.24.01 – CON procedural regulations to account for statutory changes
  - Streamline and clarify exemption requirements: currently, exemption requirements differ by the types of service eligible for exemption
  - Review the limits for changes in health care services that qualify for a CON exemption in 19-120(j)(2) and expand those limits

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - For all projects for which a CON exemption is available, institute "file and use" – if MHCC does not act within a set time, the exemption is deemed approved
  - Require MHCC to update each chapter of the State Health Plan *annually* in accordance with the requirement of an annual review set out in 19-118(b)

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POTENTIAL CROSS-CUTTING RECOMMENDATIONS

- General (continued)
  - Modernize CON post-approval reporting processes to eliminate unneeded post-approval requirements
  - Align completion deadlines for replacement and expansion projects (currently, not aligned)

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