

## **SUMMARY – COMPREHENSIVE CARE FACILITIES (NURSING HOMES)**

**Erickson Senior Living  
Health Facilities Association of Maryland (HFAM)  
Hebrew Home of Greater Washington (HHGW)  
LifeSpan Network  
Lorien Health Services**

### **Need for CON Regulation**

The commenters all state that CON regulation of nursing homes should be maintained but reformed.

### **Impact of CON on Competition & Innovation**

#### HFAM/HHGW<sup>1</sup>:

- Capital thresholds stifle innovation and there is already competition among nursing homes with the current CON program.
- Costs of capital improvements and operations in delivering care that meets quality standards, health care innovation, consumer expectations and strictly enforced government oversight are very high.
- Medicare and Medicaid reimbursement are both underfunded and prospectively established.
- There is unchecked competition from assisted living facilities since they are not subject to the CON process.
- There are Medicaid waiver programs designed to provide alternatives to CCFs and discharge to the community.
- Occupancies are not increasing.
- There are already state and federal ranking systems that engender competition for quality scores.
- There is already competition among CCFs. A change to the CON bed need process is not needed.
- The MOU requirement under the Nursing Home Services Chapter of the SHP should be eliminated or substantially reduced. The MOU threatens to penalize CCFs unless they maintain a required proportion of Medicaid patient days in their facilities. There is no current data to support the view that Medicaid beneficiaries have any barrier receiving CCF services.
- Waiver beds process should be returned to prior interpretations. Waiver beds are an important “safety valve” in the effective use of existing inventory. The longstanding prior interpretation of waiver beds to “round up” fractional numbers up to ten beds should be reinstated. Onsite use of waiver beds in new space should be permitted if the overall project does not require a CON.

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<sup>1</sup> The comment letter provided by Hebrew Home of Greater Washington indicated that they support the positions outlined in the HFAM comment letter.

### **Scope of CON and Review Criteria and Standards**

#### Lorien Health Services:

- The analysis of building designs and specifications is not necessary in the CON process since staff do not have expertise in building design issues.
- The 5<sup>th</sup> criterion should no longer be interpreted or applied so as to require applicants to provide 20 years' worth of records concerning compliance with prior CONs.
- Staff has determined that any approved request for an extension of performance requirements, as authorized by regulations and granted per the Executive Director's discretion, is a "black mark" against the Applicant.

#### HFAM/HHGW:

- Strict requirements with only one extension for up to 6 months permitted should be updated to allow more flexibility.
- Each of the performance requirements should be reviewed.
- Some of the performance requirements have implementation periods that are tied to capital amounts that have not changed over time and no longer make sense such as COMAR 10.24.01.12C(3)(b), (c), and (d).
- The ability to develop a project in phases should not be so constrained.
- There can be legitimate reasons why there should be additional or different minority owners in an applicant entity during a CON review as long as it is disclosed.
- The regulations should state clearly for the judicial appeal of a CON decision, such as through the zoning process, that an applicant may, but is not required to, delay a project while the appeal is pending.

#### HFAM/HHGW, LifeSpan and Erikson Living:

- The MOU requirement under the Nursing Home Services Chapter of the SHP should be eliminated or substantially reduced.

#### LifeSpan Network and Erikson Living:

- Increase the capital threshold.
- Exempt projects from being included under the capital threshold if bed capacity is not being increased.
- Review performance requirements for after a CON is granted to ensure that they are consistent with current practices and standards.
- Examine whether there is a continued need for a MOU for Medical residents and/or whether standards should be adjusted.
- Review occupancy standards of other nursing facilities in the jurisdiction where a CON is being requested where it will result in an increase in bed capacity.
- There needs to be a more thorough discussion on appropriate quality measures.

### **Alternatives to CON Regulation for Capital Project**

#### Lorien Health Services:

- CON regulation is best administered by the same agency which undertakes the State's health planning function. MDH agencies such as OHCQ are already managing a substantial regulatory burden concerning operational issues of facilities already in place.

### **Project Review Process**

#### Lorien Health Services:

- It may be beneficial to eliminate requiring submission of additional information requests over and above information necessary for docketing applications.
- Form based applicants should be able to complete online and submit electronically.

#### HFAM/HHGW:

- There should be a deadline by which an application should be considered complete unless there is a problem with what was submitted.
- The Commission should not require a vote of the Commission for capital cost increases during the development process as long as notice to the staff is given and the applicant is going to absorb that cost/will not result in increase in rates.
- Commission should change the policy that after the CON is granted, there can be no change in the implementation phase, however minor. This can stymie positive and routine changes that facilitate the development of an approved project.

### **The State Health Plan**

Lorien Health Services: The SHP bed need methodology should be revised to reflect the declining need for additional nursing beds in view of the growth of assisted living and community-based alternatives, including in-home services.

#### Erickson Senior Living:

- The direct admission limitations creates barriers for facilities to admit non-community residents.
- Propose to eliminate the current direct admissions restrictions if a CCRC's comprehensive care nursing bed capacity is 10 percent or less of its independent living units.

### **Completeness Review**

#### Lorien Health Services:

- The docketing and completeness review process should be streamlined and simplified.

## **Review Process Length of Time**

### Lorien Health Services:

- Current timeline isn't realistic or appropriate. New nursing facility projects should have a 48-month performance requirement with the continued availability of 6-month extensions of each performance requirement.
- Regulations should be amended to explicitly state that the filing of administrative or judicial appeals of all zoning, permitting and other local approvals required in a projects' development process should trigger an automatic stay of applicable performance requirement.

## **Participation by Interested Parties**

### HFAM/HHGW:

- It is unfair that interested parties and participating entities have access to CON application through the months as soon as it is filed and through the completeness process, including at least 30 days from docketing. However, applicants only have 15 days to develop a reply and only 25 pages of response for all the comments filed collectively.

## **Different Review Processes for Different Types of Projects**

### Lorien Health Services:

- Nursing homes should be exempted from CON to provide home health services to their post discharge patients. By allowing post discharge services to their patients, nursing facilities will be able to improve quality of care and continuity of care.
- Merged asset systems should continue to be exempt.

### HFAM/HHGW:

- There should be an exemption from CON review where a capital cost is being incurred that doesn't result in increase in health care delivery system rates.
- CCF should not be subject to lower capital threshold. The capital threshold should be the same as hospitals and should be entitled to the same exemption as is available to hospitals for capital expenditures that exceed the threshold.
- There should be a deadline by which an application should be considered complete unless there is a problem with what was submitted.
- The process for an acquisition should be simpler. Propose that the acquisition notice be informational and that an affirmative determination of noncoverage not be required. As long as a timely notice is given, upon the expiration of the applicable time period the determination of noncoverage should be presumed. It's not good use of Staff resources to gather this information and require formal determinants of exemption.

### **Impact of CON on Access to Care and Quality**

#### HFAM/HHGW:

- Does not wish for the Commission to change the policy akin to Home Health Chapter, where existing facilities are barred from filing a letter of intent unless preapproved by the Commission.
- When evaluating if an applicant renders quality care, there should be reliance on the Office of Health Care Quality's survey reports and plans of correction since the agency enforces the state and federal rules that apply in day-to-day care delivery.
- There are both benefits and flaws to the 5-star system. Rankings can be fixed for periods of time such as is being done as part of the new federal requirements of participation so they do not reflect current services. Facilities will receive drop in rankings until they adapt to a change.

#### Lorien Health Services:

- Quality of Care should be considered during the course of the CON review so that all applicable information is considered including the unique aspects of the proposed project.
- Quality of care performance should be considered during the course of the CON review. However, past incidences of quality of care deficiencies should not be used as a bar against even considering a proposed CON. This is particularly important since proposing a new CON may be the only reasonable way for an existing facility to correct physical plant deficiencies.

#### LifeSpan:

- Quality measures should be included in a CON review. However, given recent issues with the federal 5-star rating system, there is strong consensus among the membership that a quality standard should not include this measurement.

### **Duplication of Regulatory Effort Among State Agencies**

#### HFAM/HHGW:

- There is duplication between the MHCC and the MDH, particularly in areas such as quality. There should not be a different but overlapping set of standards that apply if CON review might be sought in the future.

#### Lorien Health Services:

- The CON process should eliminate the requirement of detailed drawings and specifications and consideration of technical building/design requirements regulated by OHCQ.