COMMENT SUMMARY – HOME HEALTH AGENCY AND HOSPICE

HOME HEALTH COMMENTERS:

Baltimore County Health Department
Bayada
HomeCentris
Johns Hopkins Home Care Group
LHC Group
Maryland-National HomeCare Association

HOSPICE COMMENTERS:

Calvert Hospice
Compass Regional Hospice
Gilchrist Hospice
Hospice and Palliative Care Network of Maryland
Hospice of Garrett County
Hospice of the Chesapeake
Jewish Social Services Agency (JSSA)
Montgomery Hospice
Seasons Hospice
Talbot Hospice

Need for CON Regulation

Only HomeCentris explicitly recommends consideration of eliminating CON regulation. Baltimore Co. HD wants more competition. Other commenters state that the home health and hospice CON process should be maintained. Commenter opinions varied relative to the amount of potential reform needed.

Home Health Comments

HomeCentris:

- CON regulations should be eliminated or significantly reformed. Home health should not be viewed as a "needs based" health care business. 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. One agency may be able to service the entire state given its ability to open branch locations and hire additional staff.
- MHCC should consider the impact on total cost of care that would result from prioritizing low-cost settings and minimizing high cost settings.

Bayada:

- The CON process has been proven to reduce the incidence of fraud. In other states that do not have a CON or home health care licensure process, major scandals have been seen in recent years. Without CON, a rapidly increasing number of providers would result, undifferentiated

in their compliance with state regulatory processes or quality scores. This may become a race to the bottom-differentiating primarily in price instead.

- There would be no ability to pursue value-based purchasing if there were no CON.
- Competition for limited staff resources.

LHC Group:

- The experience of Florida and Texas shows that the elimination of CON results in over capacity, which causes staffing shortages of healthcare professionals and creates fraudulent environment. CON regulation should be maintained in in its current form.

Johns Hopkins HomeCare:

- Strongly believes CON should be maintained. Without regulation, the current clinical workforce shortages will increase, which may also lead to potential degradation in the quality of services available in Maryland.

Baltimore Co. Health Dept.

- Should have more competition among HHAs
- Add regulation of RSAs that are acting as HHAs.
- Home health services affect readmission rates so represent a cost savings measure to improve population health.

Hospice Comments

Calvert Hospice:

- Hospice should remain a tightly regulated benefit with close oversight by state and federal accreditation agencies. Influx of new hospice providers into the state without corresponding increase in surveyor staff would result in a significant risk of hospices operating without sufficient oversight and providing potentially substandard care. There's no jurisdiction showing that increasing the number of hospices in a jurisdiction can be credited with increasing hospice utilization in that area.
- Sole provider in a rural jurisdiction; cannot support more providers.

Compass:

Without CON more populous areas attract providers; less populated areas are ignored.

Gilchrist Hospice:

- Key benefit of the CON process is that it supports avoidance of unnecessary services and encourages more services where they are needed. Non-profit hospice providers rely on donations to fund high cost acute inpatient hospice care, care for the poor and homeless, and care for children. Non-profit hospices would suffer the most without CON.
- Maryland ranks 42nd for its use and 37th for its length of stay out of all 50 states (with 1st being the highest). Need educate the medical community about the benefits of hospice.

Hospice & Palliative Care Network: HPCNM strongly supports the idea that CON regulation of general hospice services should, in general, be maintained in its current form.

Hospice of Garett County:

- Supports CON. As the only hospice provider in the county, over 25% of budget came from public support such as fundraising, memorials and donations. Any additional hospice agencies would dilute the resources available to existing programs and adversely impact ability to provide high quality service.

JSSA:

- There are more than 5 CONs in Montgomery County as well as others that are less active. Medicare requirements 5% of total patient care hours provided by volunteers; more hospice would compete for limited pool of volunteers.
- In comparing states with and without CON, more growth of hospices in non-CON regulated states.
  Hospice supports the avoidance of unnecessary services such as ER use and hospital admissions and encourages care at home.

Montgomery Hospice:

- CON ensures that Maryland does not have dozens of small, ineffectual hospices that are incapable of keeping dying patients out of hospitals.
- CON should be concerned with good consumer access to quality hospice care.
- Maryland should want larger hospices since they are more financially viable and sustainable.

Impact of CON on Competition & Innovation

Home Health Comments

HomeCentris:

- Existing home health CON requirements protect and perpetuate low quality home health agencies with poor clinical and/or patient satisfaction outcomes by blocking quality operators from entering the market:
  - HomeCentris cannot serve Baltimore City patients because of CON restrictions.
  - Could lower cost of care in Maryland by having high quality agency enter the market, implement rehospitalization prevention protocols to drive down cost of care.
- There should be pre-requisites to issuing CONs. The Commission could consider requiring operators to post a significant surety bond to be licensed. The Commission should base its decisions on quality of providers rather than "need." The current process may cause interruptions in care, transition issues between levels of care, confusion with clients, poor care coordination between home health agencies and potentially higher cost of care. Competition will root out low-quality care providers.

Johns Hopkins HomeCare:

- Largest barrier is ability to be financially viable and recruit a qualified workforce. CON regulation does not stifle innovation. CON has allowed Johns Hopkins to be innovative in

approach to care for its population. The facility has become equipped to care for the communities they serve and better understand their needs through the process.
- The biggest benefit of CON requirement is that it creates a more stable, predictable market by preventing an influx of unprepared and perhaps unqualified agencies.

LHC:
- Consider expansion requests from long-standing high-quality providers into contiguous jurisdictions.

Baltimore Co. Health Dept:
- For profit agencies are too large

Hospice Comments: [Note Hospices did not think that CON stifles innovation and many provided examples of their innovative programs.]

Gilchrist Hospice**:**
- Not in favor of more competition. CON doesn't eliminate competition, removal of CON may result in influx of new hospice providers all over the state.
- A truly free market anticipates that many providers will not survive, which is the case in many parts of the country.

Hospice Network:
- The current CON regulation does not eliminate competition. It provides limits to entry or expansion in the market, but the free market determines the provider's survival.
- More hospice providers would cause increased competition for limited clinical resources and diminishing return on realized economies of scale.
- Research indicated with Maryland might experience the following should CON be relaxed or removed:
  - Growth in number of hospices
  - Growth in for-profit and multistate or national providers
  - Growth from outside hospice
- Adding more hospices would not assure more hospice access according to MedPAC report.

Hospice of the Chesapeake:
- CON regulation does not eliminate competition. Competition for already limited clinical staffing resources would have direct negative impact on existing programs ability to have the critical professional resources to support quality care in the future.
- Required components of the Medicare hospice benefit like volunteer hours, would be compromised with more providers competing for these limited resources.

Scope of CON and Review Criteria and Standards

Home Health Comments

HomeCentris:

- Current CON regulations prevent low-quality providers from entering the market but also keep out high-quality providers.
- There could be quality standards imposed upon agencies operating in Maryland, or as suggested earlier, create significant financial barrier to entry by requiring a large bond to obtain licensure.
- Need, and the availability of more cost-effective alternatives are not appropriate for home health regulation.
- CON regulation should be amended to reflect allowing high quality providers with appropriate financial support to enter the market.
- Proposed several criteria for establishing home health services In lieu of CON:
  - Require existing providers to post $250,000 bond to OHCQ upon application or re-application of licensure.
  - Applicants must demonstrate experience in home health operations.
  - Home health administrators must be credentialed and or have certification.
  - Home health providers must demonstrate a commitment to quality outcomes.

LHC Group and Johns Hopkins HomeCare:

- 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 and reflect performance greater than one year ago. As long as the CMS star rating system is being used to determine eligibility for CON application, the Commission has the obligation to update the eligibility of agencies with each update of the CMS Home Health Compare.

Bayada:

- Need, availability of more cost-effective alternatives, viability, impact, and applicant compliance with previously awarded CONs are good criteria to be used in the evaluation of CON applications.
- Also suggested to add additional criterion related to the prevention of fraud or noncompliance with CMS regulations.
- Suggested a metric of maintaining an above average home health compare score of 3.5 that is required to be able to begin an CON application. 3.0 and below should be required to work with MHCC on a plan of correction, at the risk of their CON being revoked.

Baltimore Co. Health Dept:

- SHP: lack of population health in terms of continuum of care.
- Somehow the State Health Plan and population health has to be a joint responsibility that makes sense. RSAs have to have more quality regulation.

Hospice Comments

Calvert Hospice:
- The CON process may further benefit by further focusing on quality measures. As Medicare increases quality scrutiny of hospices, the SHP should continue to evolve to reflect a focus on the quality metrics that hospices are being asked to collect.
- New entrants should also be reviewed in terms of quality. Performance on mandatory quality measures should be reviewed by the Commission when making a determination about the CON application.

Compass Regional Hospice and Montgomery Hospice:
- The standard for the minimum age at death should be lowered from 35 to 25 years old.
- Hospice utilization should be examined by race and ethnicity.
- Need methodology for inpatient hospice beds.

Gilchrist Hospice
- Additional criteria:
  - In what manner does the proposed project support the State's commitment to total cost of care restraint?
  - In what manner does the proposed project consider affordability to the patients?

Compass Regional Hospice, Hospice and Palliative Care Network, and JSSA
- Additional criteria:
  - As a new provider, demonstrate and explain your ability to establish timely and effective partnerships needed to achieve the state's goals for global budget revenue and value-based purchasing.
  - Should reflect commitment to providing care to underserved populations.
  - MHCC should use actual complaint and survey data of the existing providers. New applicants should be evaluated on like data from states or states in which they operate.

Compass Regional Hospice, Gilchrist Hospice, Hospice and Palliative Care Network, and JSSA:
- The provision of charity care should be deemed an important element in the CON evaluation process.

Talbot Hospice:
- Supports efforts to open up eligibility requirements for currently licensed hospices. This allows hospices to serve patients further upstream and reduce cost.
- MHCC must take into account the small hospices in rural areas and at a minimum consider the continuation of a rural distinction.

The State Health Plan

Home Health Comments

Johns Hopkins HomeCare:

- Suggests that more attention be paid to workforce related components of the CON application process. Applicants must demonstrate that they understand the challenges and have plans in place that are likely to result in adequate workforce without undue cannibalization.

Baltimore Co. Health Dept:
- SHP: lack of population health in terms of continuum of care.
- Somehow the State Health Plan and population health has to be a joint responsibility that makes sense. RSAs have to have more quality regulation.

Hospice Comments

Compass Regional Hospice, Gilchrist Hospice and Hospice and Palliative Care Network:
- Suggests revisiting the current need methodology for general hospice licensure and to establish a need basis for inpatient hospice beds.
- The SHP also lacks projections and frequent reviews.
- SHP would benefit by adding quality markers related to impacting the total payor model, and specifically, the establishment of KPIs related to hospice and the SHP.
- Current methodology does not make adequate adjustments for the well-known and well documented under-utilization of hospice by minorities. Minorities utilization standard should not be held as the same as Caucasians.

Hospice Network:
- The need methodology and timeliness of data upon which need is determined should be re-examined. The addition of need methodology for inpatient beds also needs to be developed.
- Need methodology needs demographic weighting.
- Need Key Performance Indicators.

Seasons Hospice:
- Suggest changes to inpatient need methodology as well.
- An already licensed general hospice provider with a CON should be able to develop inpatient beds within its existing CON geography using the structure which Medicare regulation considers "direct/shared" – where the hospice already licensed hospital or skilled nursing facility may enter into an agreement. Where the hospice provides some services and some services are purchased, including the use of the facilities licensed beds.
- General criteria could be established regarding the size of the hospital/community, LOS, mortality, and financial impact.

Alternatives to CON Regulation for Capital Projects

Facilities consistently commented that there isn't an alternative mechanism that could fully serve the same benefits as CON regulations.

Home Health Comments

Johns Hopkins HomeCare Group and LHC:
- There is no other alternative mechanism.

Baltimore Co. Health Dept:
- Expansion of licensure requirements to assure quality of care.

Hospice Comments

Calvert Hospice and Seasons Hospice:
- There is no other alternative mechanism.

Hospice and Palliative Care Network and Montgomery Hospice:
- The Maryland Department of Health will not be a viable alternative.

Gilchrist Hospice, Compass Hospice, and Hospice of the Chesapeake:
- The DHHS will not be a viable alternative.

Project Review Process

Home Health Comments

Bayada:
- The MHCC should retain exemption review for merged systems. Larger systems will have the benefit of economies of scale and should be able to offer better care to more people. Encouraging fewer, larger providers will also decrease the administrative burden to the state in the number of providers needing annual state surveys.
- Supports continued use of Home Health Care Compare scores as a quantitative measure of quality, as well as reference to preventable hospital readmission percentages. Supports the continued requirement that applicants consider their impact on a market during the application process.
- Supports the MHCC to investigate reclaiming CONs from providers who are not using them to their fullest ability or who are wavering in their commitment to quality.
- For existing CONs that are being used, suggest that the MHCC take a more involved stance in ensuring ongoing quality provided to Marylanders.

HomeCentris:
- Existing home health review 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. Regulatory processes should be overhauled to create a set of quality and financial standards required to license a home health agency. The process should not be project by project, rather, all applicants who is able to meet those standards should be approved without a review panel by the MHCC to evaluate "need" or "alternative low cost of care."

Johns Hopkins HomeCare:

- Recommends that processes be simplified, reducing the burden on the applicant.
- Social considerations could be given to applicants proposing to serve geographic areas or populations that do not have adequate home health services.

Baltimore Co. Health Dept:
- Choke points: volume of paperwork

Hospice Comments

Montgomery Hospice:
- Mergers of hospices should be without CON review. If each facility has a CON, the merged asset system should only retain one.

Review Process Length of Time

Home Health Comments

Bayada
- Agree that provider-side deadlines are reasonable to collect all relevant requested data. There is room for improvement in the timeline for review once the application is completed.
- Communication to providers throughout the review process also should be improved.

Hospice Comments

Gilchrist Hospice and Compass Regional Hospice:
- The timeliness of the CON process is in the most need for reform.
    - Current regulations on timeline for review are neither followed nor upheld.
    - The need methodology and timeliness of data upon which the need methodology is determined should be reexamined.

Gilchrist Hospice:
- When there is bona fide need for additional hospice providers, there is no agreement on the number of providers that will be added at any given time. There should be an additional provision that defines this, make adjustment for the number of providers to be granted CONs.

Talbot Hospice:
- Supports revisions to the CON process if it aids reducing workload and paperwork for both the MHCC and the hospices applying for licensure.

Hospice of the Chesapeake:
- Thinks the timeliness of the CON process is the aspect most in need of reform. Suggested looking into other states' models that could help establish a better formula given the current needs and goals in Maryland.

JSSA:

- Believes that applicants or corporate affiliated entities with active DOJ investigations related to potential fraudulent practice be disqualified from applying.

Montgomery Hospice:
- A chokepoint forms when applicant is given extra time even though it did not meet the timeliness or CON content requirements. This creates unnecessary delay in CON process for those who did meet the rules and regulations. The Commission should be concerned with the ability of applicants to provide quality hospice care. There should be no regard for the quantity of applicants.
- Project completion depends on the current economic and medical environment, and adequate time should be given for the applicant to maximize its business model before finalizing the project.

Participation by Interested Parties

Home Health Comments

HomeCentris:
- Competing home health agencies should have little say in opposing new agencies. CON provides absolute protection against other providers entering the market.

Hospice Comments

Calvert Hospice, Compass Regional Hospice, Gilchrist Hospice, Seasons Hospice, JSSA, and Hospice of the Chesapeake:
- Competing general hospice programs or other providers should continue to have an opportunity to contribute to and participate in the CON process.

Montgomery Hospice:
- This is contingent on the type of project. Hospices should be able to merge without a CON. Each merged asset system should only retain one CON.
- An applicant should be eliminated if it cannot demonstrate its commitment to quality.

Different Review Processes for Different Types of Projects

Home Health Comments

Bayada:
- Supports an expedited review for providers who have proven to provide high quality care to Marylanders over the previous several years.

Hospice Comments

Calvert Hospice, Compass Regional Hospice, Gilchrist Hospice, Hospice and Palliative Care Network, Seasons Hospice, and Hospice of the Chesapeake:
- Hospices and home health should not be reviewed together.

Hospice and Palliative Care Network and Calvert Hospice:

- Existing hospice provider expansion within their licensed jurisdiction could be considered for expedited review.

JSSA:

- Existing hospice provider expansion within their licensed jurisdictions or expansion of GIP beds to meet patient demand should be considered for expedited review. In the interest of meeting patient needs in a timely manner, if an existing hospice provider has the capital, location and agreements to build and construct an inpatient center there should be an expedited process to move the project forward.

Seasons Hospice:

- If "direct/shared" would continue to require the same CON process as a freestanding ("direct") inpatient unit, then hospital or skilled nursing facility-based hospice inpatient beds/units should be an area for expedited review.

Impact of CON on Access to Care and Quality

Hospice Comments

None

Hospice Comments

Calvert Hospice, Montgomery Hospice:

- The Commission should consider quality of care performance at the very beginning of the project review. MHCC should use actual complaint and survey data of the existing providers. New applicants should be evaluated on like data from states or states in which they operate.

Calvert, Compass Regional Hospice, Gilchrist Hospice, Hospice of the Chesapeake, Seasons Hospice:

- The CMS PEPPER report, HIS, and CAHPS data and accreditation survey information should be considered.

Duplication of Regulatory Effort Among State Agencies

Home Health Comments

Johns Hopkins HomeCare Group and LHC:

- No duplication between MHCC and MDH that they are aware of.

LHC:

We do not believe MDH has the capacity at this time to take on similar responsibilities as MHCC.

Hospice Comments

Hospices facilities consistently commented:

- There is no regulatory duplication in general hospice regulation that can be streamlined between MHCC and MDH.

Other

Baltimore Co. Health Dept::

- Hospital referral patterns use only a few HHAs
- HHAs are too focused on Medicare reimbursement to embrace the environment of case management.
- Partnerships within systems of care should be examined for ways to influence population health.