Hospice & Palliative Care Network
OF MARYLAND

December 12, 2018

Mr. Ben Steffen
Executive Director
Maryland Health Care Commission
4160 Patterson Ave.
Baltimore, Maryland 21215-2299

Dear Mr. Steffen:

On behalf of the Hospice & Palliative Care Network of Maryland (HPCNM) thank you for the opportunity to comment on the *Modernization of the Maryland Certificate of Need Program Final Report* dated December 11, 2018. As previously stated our members are certain that the Hospice Certificate of Need (CON) *ensures patient access, quality end-of-life care, and supports community.* With CON, providers cannot "cherry pick" patients, but are mandated to serve an entire jurisdiction to ensure all needs are met. In addition, the number of providers is manageable so that valuable state resources are not stretched beyond their capacity.

Maryland hospice providers care for a vulnerable population and their families, regardless of their ability to pay. Services are not provided from a central location, but from any location that the patient calls home. This includes single-family homes, apartments, nursing homes, hospitals, or even, sadly in some cases, under a bridge.

We are fortunate to report that in Maryland, quality care is not watered down by aggressive marketing tactics as in many non CON states where hospices are forced to allocate valuable resources for marketing to stay in business. Currently, providers in Maryland are not forced to compromise on quality care.

In viewing the Final Report there was concern about the *General Hospice Services Issue and Potential Solution Matrix* (page 24) that was included and yet is not part of the final recommendations. While the potential solutions included in this matrix are very specific, the language used in the final recommendations were vague in comparison which affords less opportunity for comment.

In addition, offers the following comments on the recommendations by the MHCC:

Reform Recommendations Related to General Hospice CON Regulation

- ***Identify the State Health Plan chapters that are most in need of updating and which offer the greatest potential to meet reform objectives and prioritize their revision. Simultaneously review and revise the procedural regulations governing CON***

application review. The following SHP and procedural regulation reforms are included under this recommendation

a. ***Limit SHP standards to those addressing project need, project viability, project impact, and applicant qualifications.***
b. ***Create an abbreviated review process for all uncontested projects that do not involve: a) establishment of a health care facility; b) relocation of a health care facility; c) the introduction by a hospital of cardiac surgery or organ transplantation.***
   Establish performance requirements for approved projects that include a deadline for obligating the capital expenditure and initiating construction but without project completion deadlines.
c. ***Establish a process for considering changes in approved projects as a staff review function with approval by the Executive Director. (See last section of this report for more detail on this recommendation.)***

Comments: HPCNM has no objections to recommendations "a" and "b." We would like to recommend that any State Health Plan chapter reviews be publicized well ahead of time with notification to their respective associations to allow transparency and time for comment prior to making changes.

HPCNM cannot support bullet "c" based on the fact that it is vague and lacks transparency. An example of this is under the heading change to the SHP where it states, "allow general hospices to expand into a contiguous jurisdiction with an expedited review process." This is a broad brush statement to a complex issue and is not reflected in the recommendations. While we concur that expedited review could be a good thing on both sides of this issue this particular statement raises concern as potentially detrimental for single providers of a jurisdiction. Any efforts to expedite the request of an established provider to expand into a contiguous jurisdiction must take into consideration hospice utilization in the jurisdiction and the presence of any documentation of unmet need.

- ***Create the ability for the waiver of CON requirements for a capital project that is endorsed by the HSCRC as a viable approach for reducing the total cost of care consistent with HSCRC's TCOC model and alternative models for post-acute care.***

Comments: HPCNM is concerned that this recommendation is too vague and opens the door for misinterpretation and unintended consequences. HPCNM would like to have a better understanding of what an alternative post-acute model is. In addition, as the new TCOC Program does not go into effect until January 1, 2019, it would be very difficult to assess a reduction in costs for the first six months to one year.

- ***Eliminate the capital expenditure required for a non-hospital health care facility project as an element requiring CON approval, limiting all definitions of projects requiring CON approval to "categorical" projects involving establishment of facilities or specific types of change to an existing health care facility, no matter what capital expenditure is required.***

  Comment: HPCNM has no objections with this recommendation.

- ***Limit the required considerations in CON project review to: (1) Alignment with applicable State Health Plan standards; b) Need c) Viability of the project and the facility; d) Impact of the project on cost and charges; and e) Impact of the project on access to care. This would eliminate the current required consideration of the costs and effectiveness of alternatives to the project compliance with the terms and conditions of previous CONs the applicant has received.***

  Comment: HPCNM has no objection to this recommendation.

- ***Establish deemed approval for uncontested project reviews eligible for an abbreviated project review process if final action by the Commission does not occur within 90 days.***

  Comment: HPCNM has no objection to this recommendation.

- ***Consider structural changes in how the Commission handles CON project reviews in light of creating an abbreviated process for most reviews and providing meaningful participation by the public in the regulatory process. Possible changes could include use of a project review committee. The objective would be further streamlining the review process and facilitating more public engagement.***

  Comment: HPCNM has no objection to this recommendation.

- ***Engage with the home health, hospice, alcohol and drug treatment, and residential treatment center sectors and the Maryland Department of Health on alternatives to conventional CON regulation for accomplishing the "gatekeeper" function of keeping persons or organizations with poor track records in quality of care and/or integrity from entering Maryland and accomplishing the objective of expanding the number of such facilities gradually. The objectives would be either to: (1) eliminate CON regulation for these health care facility categories with MDH incorporating the***

gatekeeper function into the facility licensure process; or (2) establish MHCC's role in regulating these facility categories solely as a gatekeeper (e.g., any facility of this type that gets a clean bill of health following a rigorous background check and character and competence review and is compatible with limitations for gradual expansion of new providers would be issued a CON, without further review). Establish specific deadlines for recommendations.

Comments: As noted in our earlier comments, the CON has been effective in its "gatekeeper" role as it pertains to the prevention of fraud and abuse. This view is supported by the July 2018 Office of the Inspector Report (OIG), *"Vulnerabilities in the Medicare Hospice Program affect Quality Care and Program Integrity"*, that highlights 15 concerns regarding hospice care across the United States. Due to safeguards currently in place, Maryland is very fortunate that we have not experienced the concerns reported elsewhere in the country when it comes to Medicare fraud and abuse. Maryland hospice providers have high quality ratings and extremely low substantiated complaints.

HPCNM believes that CON should be preserved as a strategy for controlling the volume and quality of hospice providers based on the following:

- 21 of 24 jurisdictions in the state have increased hospice penetration between 2015 and 2016
- The utilization of hospice services increased from 40.2% in 2015 to 43.1% in 2016
- Literature does not support any evidence that more hospices in a jurisdiction increase utilization. MedPAC also supported this this statement in its *2010 Report to Congress MedPAC* when they concluded that "hospice enrollment rates are unrelated to the number of hospices in a state."
- A July 2018 Office of the Inspector Report (OIG) noted that, "Vulnerabilities in the Medicare Hospice Program affect Quality Care and Program Integrity" highlighted 15 concerns regarding hospice care across the United States. Due to safeguards resulting from the CON, Maryland has not experienced the concerns reported elsewhere in the country as it pertains to Medicare fraud and abuse. Marylanders have high quality ratings and extremely low substantiated complaints.

Lastly, HPCNM would like to reiterate our position that eliminating CON **does not**:

- Provide saving for taxpayers or patients
- Create a free market environment for hospice to operate
- Increase needed services back to the community

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- Increase quality care for dying patients and their family
- Protect patient and families from being harmed
- Reduce the size of government

HPCNM agrees that it is critical to incentivize hospitals and health systems to partner with hospice and palliative care providers. This is the optimal and most cost effective way to care for patients in their home.

Sincerely,

Regina M. Bodnar

Peggy Funk

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Hospice & Palliative Care Network of MD

cc: MHCC Commissioners