

MHCC REGULATORY GUIDANCE (April 29, 2022)

Extension of Hospital Emergency Certificates of Need

On April 21, 2022, the Maryland Health Care Commission (MHCC or Commission) extended the validity of 21 Emergency Certificates of Need (E-CONs), granted between March 2020 and January 2021, for an additional year. These E-CONs were issued under COMAR 10.24.01.20 to expand Maryland's overall hospital bed capacity in response to the COVID-19 pandemic emergency by allowing additions to a hospital's bed inventory and the establishment of alternative care site hospitals. The E-CONs were slated to expire at the end of April 2022. However, on March 15, 2022, Maryland's Secretary of Health, Dennis R. Schrader, requested that the Commission extend the hospital E-CONs for an additional year due to the possibility that new COVID-19 variants may emerge this fall or during the 2022-23 flu season.¹ MHCC reviewed the Secretary's request and on March 17, 2022, authorized the Executive Director to extend the hospital E-CONs that involved projects that had been activated or partially activated during the time in which the E-CONs were in effect. The E-CONs that have been extended until April 30, 2023 are listed at:

https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/hcfs_con_emergency.aspx

If a hospital does not intend to close the inpatient beds approved in its E-CON by the April 30, 2023 termination of this extension, it must file a formal CON application (or request other required regulatory approval from MHCC) on or before May 30, 2023. This filing deadline can be extended by the Executive Director for good cause shown.² If a hospital that has an E-CON desires to file a CON application for the project before the E-CON's extended expiration, the hospital should consult with Wynne Hawk, Chief, Certificate of Need, to agree upon a filing date. Ms. Hawk's e-mail address is wynne.hawk1@maryland.gov.

Extension Does Not Apply to All E-CONs

E-CONs issued to hospitals or alternative care site hospitals that had not been activated at any time between March 2020 and March 2022 were not extended and will terminate on April 29, 2022. These hospitals may request reconsideration, by May 30, 2022, of the termination of their E-CON. These requests must state the good cause basis for extending an E-CON authorizing an unimplemented project. Extensions granted by the Executive Director will be subject to confirmation by the Commission.

E-CONs issued to non-hospital health care facilities were terminated in 2021.

Performance Requirements and Quarterly Status Reports

Deadlines for performance requirements were stayed during the duration of the state of emergency, which terminated as of August 15, 2021. As noted in earlier MHCC guidance, if an initial performance deadline had been May 5, 2020 (two months after the declaration of the state

¹ The Secretary of Health has the authority to prevent and control the spread of infectious diseases. Md. Code Ann., Health-Gen. §§ 18-102(b) & 103(a).

² Waiver of COMAR 10.24.01.20C.

of emergency), the extended performance requirement date was October 5, 2020 (i.e., the two-month period remaining from March 5, 2020 to meet the performance requirement plus time until the termination of the state of emergency). The remaining performance requirements were extended accordingly. One six-month extension of each performance requirement (for good cause shown) remains available, as provided in COMAR 10.24.01.12E.

Stays on the necessity for filing project status reports also ended in 2021.

Ben Steffen
Executive Director
ben.steffen@maryland.gov
410-764-3566 (w)
301-717-7825 (c)

Wynee E. Hawk
Chief, Certificate of Need
wynnee.hawk1@maryland.gov
410-764-5982 (w)