

October 5, 2022

Commissioner Mark T. Jensen, Reviewer
c/o Ruby Potter, Health Facilities Coordinator
ruby.potter@maryland.gov
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Re: Exceptions to Recommended Decision
Pyramid Healthcare, Inc., Docket No. 22-16-2452

Dear Mr. Jensen:

This firm represents Pyramid Healthcare, Inc. (“**Pyramid**”) in connection with the review of Pyramid’s application for a Certificate of Need (“**CON**”) to establish a 50-bed Intermediate Care Facility (“**ICF**”) in Prince George’s County, Maryland. Pyramid appreciates the careful review of its application and the time of the Commission Staff and Reviewer in preparing the Recommended Decision. Pyramid, however, respectfully states its exception to the recommended Condition No. 3 on the approval of a CON.

Recommended Condition No. 3 would require Pyramid to cease operating its ICF in the event that Pyramid receives notice that its accreditation has been revoked or suspended until the Behavioral Health Administration (“**BHA**”) notifies the Commission that the deficiencies have been corrected. Respectfully, Pyramid asserts that there is no reasonable basis for imposing Recommended Condition No. 3 on Pyramid’s CON when no previous applicants have faced any similar requirement, and no evidence in the record of this review supports a different treatment of Pyramid from its peers. Moreover, this condition appears to conflict with the regulations governing this review and may interfere with the BHA’s ability to exercise appropriate oversight over matters under BHA’s authority.

The applicable State Health Plan Chapter does not suggest or otherwise recommend that the Commission impose the language of Condition No. 3 as a condition on ICF CON holders. COMAR § 10.24.15. The Commission has not imposed a condition similar to Recommended Condition No. 3 on any recent recipient of a CON for ICF services. *See, e.g., In re: Hygea Detox, Inc.*, Docket No. 21-03-2450, Commission Decision, March 17, 2022; *In re: Avenues Recovery Center of Chesapeake Bay, LLC*,

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Docket No. 21-09-2449, Commission Decision, October 21, 2021; *In re: Pyramid Walden LLC*, Docket No. 20-12-2440, Commission Decision, June 11, 2020; *In re: Baltimore Detox Center*, Docket No. 16-02-2374, Commission Decision, March 19, 2020; *In re: Gaurdenzia-Crownsville*, Docket No. 18-02-2421, Commission Decision, October 17, 2019; *In re: Addiction Recovery Inc. d/b/a Hope House*, Docket No. 18-16-2416, Commission Decision, February 21, 2019; *In re: Recovery Centers of America-Waldorf*, Docket No. 15-08-2362, Commission Decision, January 26, 2017; *In re: Recovery Centers of America- Upper Marlboro*, Docket No. 15-16-2364, Commission Decision, January 26, 2017. Nothing in the record of this review supports the imposition of a more restrictive condition on Pyramid than has been required of other ICF service providers. Pyramid is a well-established provider of residential treatment and detoxification services for individuals with substance use disorders. It operates more than eighty facilities over five states and has several programs, including two existing ICFs, in Maryland. The Commission's CON approval of Pyramid's application to develop a 50-bed facility in Harford County, 2020 did not contain a similar condition. *See In re: Pyramid Walden LLC*, Docket No. 20-12-2440, Commission Decision, June 11, 2020. Given Pyramid's proven track-record as a provider of high quality services in Maryland, a novel condition imposing more stringent requirements on Pyramid than the Commission requires of other similarly situated ICF providers is unwarranted.

Pyramid further takes exception to Recommended Condition No. 3 because the language of the condition conflicts with the language in COMAR § 10.24.15.05H. The language of Recommended Condition No. 3 would require Pyramid to not only notify the Commission and the BHA if it "receives notice that its accreditation has been revoked or suspended or should it lose its State certification," but also to "cease operation until the Behavioral Health Administration notifies the Commission that deficiencies have been corrected." Regulation .05H(1) requires an applicant to seek accreditation by an appropriate entity and provides applicants a choice between the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), CARF, or another accrediting body approved by the State. While ICFs are required to notify the Commission and the BHA within 15 days after receiving notice that accreditation has been revoked or suspended, the loss of accreditation does not require the ICF to cease providing services. Rather, the BHA may permit the ICF to continue operating on a provisional basis while the ICF remedies the deficiency that caused the loss of accreditation, if doing so is in the public

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interest.¹ Given that the applicable regulations do not require automatic cessation of operations due to a loss of accreditation by Pyramid, Condition No. 3 would impose stricter requirements on Pyramid than exist for other ICF providers. There is no justification in the record of the CON to support such a requirement, and the Commission should not adopt Condition No. 3 into its final decision.

Finally, Pyramid objects to Condition No. 3 because it interferes with BHA's authority to oversee licensed programs and determine appropriate actions in the event of a loss of accreditation. Regulation .05H(1) provides BHA with the authority to determine whether to permit an ICF to continue operations following revocation or suspension of accreditation when such continued operations would serve the public interest. Thus, the decision as to whether the ICF may continue to operate rests within the sound discretion of the BHA. Requiring Pyramid to automatically cease operations if it loses accreditation prohibits BHA from exercising its authority and discretion to determine whether the ICF could continue to operate on a provisional basis in these circumstances. As evidenced by the findings of the Reviewer in the Recommended Decision, there is a well-established need for additional Track Two ICF bed capacity in Pyramid's service area. BHA, as the agency charged with oversight of licensing and quality care issues, is best suited to determine what remedial steps are necessary for programs that experience a loss of

¹ Regulation .05H(2) does, however, require cessation of operations if an ICF loses its State certification until the ICF corrects the deficiencies. As written, Regulation .05H(2) states "(b) An ICF that loses its State certification must notify the Commission in writing within fifteen days after it receives notice that its *accreditation* has been revoked or suspended and must cease operation until the [Behavioral Health Administration] notifies the Commission that deficiencies have been corrected." (emphasis added). Pyramid notes that the interchangeable use of the terms "State certification" and "accreditation" appears to be erroneous, given that loss of accreditation is addressed in Regulation .05H(1) and the remainder of Regulation .05H(2) refers specifically to "State certification." Moreover, applicants voluntarily select the accrediting body to which they will apply for accreditation. If the Commission were to interpret Regulation .05H(2) as referring to both State certification and accreditation by a recognized accrediting body, ICFs could arguably be required to cease operations in the event of a voluntary change in accreditation, for example from CARF to JCAHO. Pyramid suggests that the Commission revise this language for clarity during the Commission's next review of the State Health Plan chapter for ICF services.

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accreditation and whether a program's continued operations in the interim would best serve the public.

As noted in its application, Pyramid routinely obtains CARF accreditation for its facilities, and is recognized as a high-quality provider of ICF services. Pyramid is not concerned that the proposed ICF would involuntarily lose its accreditation and thus does not anticipate that Condition No. 3 would ever be triggered. Pyramid is concerned, however, that as written, Condition No. 3 encroaches into issues better regulated by BHA and could have unintentionally harsh consequences. Pyramid is also concerned that Condition No. 3 may suggest to the public, incorrectly, that the Commission has a particular concern regarding Pyramid's operations, as no similar condition has been imposed on recent ICF CONs. Pyramid thus respectfully requests that the Commission move to adopt the Reviewer's Recommended Decision in full, *except* as to Condition No. 3, which Pyramid respectfully requests that the Commission reject and not incorporate into its final decision in this matter.

Sincerely,



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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2022, a copy of the Applicant's Exceptions to Recommended Decision of the Reviewer was sent via email and first-class mail to:

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