



MARYLAND HEALTH CARE COMMISSION

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Guidance Regarding Emergency CONs for Comprehensive Care Facilities (Nursing Homes)
(COMAR 10.24.01.20)

1. A comprehensive care facility (CCF or nursing home) that wants an Emergency Certificate of Need (CON) to help address the COVID-19 pandemic should send a request (generally, a pdf'd letter by email) to the Maryland Health Care Commission (MHCC), copying the Office of Health Care Quality (OHCQ) of the Maryland Department of Health that contains:
 - (a) a description of the project (example: temporarily add 12 beds by licensing 12 rooms that were previously licensed but are not currently licensed);
 - (b) where (example: on a specific wing of the CCF);
 - (c) when the project is expected to be brought on-line (example: 14 days following issuance of Emergency CON);
 - (d) approximate cost, if known;
 - (e) whether (and how) newly admitted or readmitted patients will be separated from the residents already at the CCF at the time of admission;
 - (f) source of new admissions (example: hospital discharges only)
 - (g) how the additional beds requested in the Emergency CON request will be configured;
 - (h) how the expected configuration of the beds will protect both current residents and newly admitted or readmitted patients; and
 - (i) why the project is an appropriate and needed response to the COVID-19 emergency.

2. The MHCC Executive Director can issue an Emergency CON after consultation with the MHCC Chairman and receipt of suitably detailed information from OHCQ regarding the need for prompt action. Depending on work volume and completeness of information provided, MHCC's goal is to have a turnaround time of 24 hours on an application for Emergency CON.

In determining whether a project proposed for an emergency CON needs prompt action and in issuing guidance to MHCC on an emergency CON request, OHCQ will consider the consistency of the project and the ability of the applicant to operate the comprehensive care facilities involved in accordance with the current recommendations and guidance it has issued. As of this date, that includes *Recommendations for Infection Control & Prevention of COVID-19 in Facilities Serving Older Adults*, issued on March 10, 2020, and *Preparing for and Responding to COVID-19 in Long-term Care and Assisted Living Facilities*, last revised on March 23, 2020. Those documents can be found at:

<https://phpa.health.maryland.gov/Documents/Recommendations%20for%20COVID-19%20Infection%20Control%20and%20Prevention%20-%20March%2010%202020.pdf>

and

https://phpa.health.maryland.gov/IDEHASsharedDocuments/Preparing-for-and-Responding-to-COVID-19-in-LTC_final.pdf

Please note that Maryland's response to the COVID-19 emergency is, of necessity, fluid and that new or revised recommendations and guidance for health care facilities will be issued as conditions warrant. All CCFs are strongly encouraged to regularly monitor MDH's web site for updates. The web site can be accessed at:

<https://coronavirus.maryland.gov/>

3. An Emergency CON will be initially valid for a maximum of 165 days or until 30 days after the termination of the state of emergency declared by Governor Hogan on March 5, 2020. This date may be extended for good cause shown. (waiver of COMAR 10.24.01.20C).
4. If the CCF does not intend to close the beds, etc. approved through an Emergency CON at the end of the emergency, it must file a formal CON application (or receive other required regulatory approval from MHCC) within 30 days of the termination of the state of emergency by Governor Hogan. This filing deadline can be extended by the Executive Director. (waiver of COMAR 10.24.01.20C)

NOTE re "Waiver" or "Creep" Beds.

MHCC staff will act expeditiously on a request by a CCF for an increase in bed capacity (often referred to as "waiver" or "creep" beds) that is the lesser of ten beds or ten percent of the facility's licensed bed capacity, provided that it has been two years after the facility's initial licensure or after its last change in licensed bed capacity. (COMAR 10.24.01.03E(2)). These requests will not require an emergency CON. A summary of legal requirements follows.

- A request may not exceed the lesser of ten beds or ten percent of the facility's total licensed beds.
- The facility must document the existence of licensable, physical space to accommodate the additional beds consistent with the requirements of COMAR 10.24.20.05A and with OHCQ regulations.
- The facility cannot have a valid, unimplemented authorization to increase beds under an old waiver request.
- All of the facility's beds have been licensed and operational at the same site for at least two years and at least two years have passed since any temporarily delicensed beds were relicensed or permanently delicensed; and at least two years have passed after any additional beds previously authorized have been licensed.
- The facility must not have loaned, leased, transferred, or sold beds during the preceding two years.
- The facility must not have patient rooms with more than two beds unless the facility agrees to eliminate or reduce to the maximum extent possible the number of multiple bed rooms as a result of the bed addition.

NOTE re Requested Change in Status of Persons Admitted to a CCF Bed at CCRCs.

A continuing care retirement community (CCRC) that has CCF beds that were authorized through the CCRC exclusion from CON requirements¹ and requests a waiver of the limitation² on direct admissions applicable to these beds must seek an Emergency CON. Note that a CCRC is required to preserve at least 5% of its CCF beds for residents.³

Pending CON Reviews, Current Review Schedule, Performance Requirements, and Quarterly Status Reports

An applicant who has filed a letter of intent but has not yet filed its CON application in a scheduled review may request and receive an extension of time to file the application.

Reviews for scheduled projects for which a LOI has not yet been filed will be included in a new review schedule that will be published within 30 days after Governor Hogan terminates the state of emergency that was declared on March 5, 2020.

For a project that has received CON approval but has not been completed, performance requirements are stayed until after the termination of the state of emergency. For example, if an existing performance deadline is May 5, 2020 (two months after the declaration of state of emergency) and the state of emergency ends on June 5, 2020, the extended performance requirement date will be September 5, 2020 (i.e., time remaining from March 5, 2020 to meet the performance requirement *plus* time until the termination of the state of emergency). The remaining performance requirements will be extended accordingly. Each performance requirement may still receive one six-month extension as provided in COMAR 10.24.01.12E.

Quarterly status reports on an approved-but-not-completed project will be due 30 days after the termination of the state of emergency (but may be filed earlier), and the remaining reports due every three months thereafter until the project is completed.

¹ Md. Code Ann., Health General §19-114(d)(2)(ii); COMAR 10.24.01.03K(1).

² Md. Code Ann., Health General §19-123 and 124(c); COMAR 10.24.01.03K.

³ Md. Code Ann., Health General §19-124(c); COMAR 10.24.01.03K(5).