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Via Electronic Mail

Ruby Potter
Health Facilities Coordinator
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

Re: Hope Health Systems, Inc.
Application for Certificate of Need
Docket No. 20-03-2444

Dear Ms. Potter:

Enclosed for filing in this review is the Applicant's Response to Sheppard Pratt Health Systems Exceptions to Recommended Decision of the Reviewer.

Please let me know if you have any questions. Thank you for your attention to this matter.

Sincerely,

Marta Harting

Marta D. Harting

MDH/dll
Enclosure

cc: James C. Buck, Esquire
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IN THE MATTER OF	*	
	*	BEFORE THE
HOPE HEALTH SYSTEMS APPLICATION	*	
	*	MARYLAND HEALTH
	*	
Docket No. 20-03-2444	*	CARE COMMISSION
	*	

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APPLICANT'S RESPONSE TO SHEPPARD PRATT HEALTH SYSTEM'S EXCEPTIONS TO RECOMMENDED DECISION OF THE REVIEWER

In accordance with COMAR 10.24.01.09B, Hope Health Systems, Inc. ("HHS") responds to the Exceptions to the Reviewer's Recommended Decision filed by Sheppard Pratt Health System ("Sheppard Pratt") regarding HHS's certificate of need ("CON") application. For the reasons set forth below, Sheppard Pratt's exceptions should be rejected.

1. NEED

As described in detail in the Recommended Decision (at 16-20), HHS used a historical discharge analysis to develop a bed need forecast, based upon which it calculated a net bed need of 4-12 beds for children and between 48 and 103 beds for adolescents. Recommended Decision at 18; DI#4, p. 46). HHS's need analysis also incorporated data on the high occupancy rates in existing hospitals (ranging from 85 to well over 100 percent), correlating to admission delays and denials with nearly 10% of psychiatric-related ED visits by children and adolescents in 2018 needing to be boarded for one day or longer. Recommended Decision, at 19; DI#4, at 51. HHS demonstrated the negative consequence of delays and ED boarding, which disproportionately impacts the Medicaid population that HHS seeks to primarily serve. DI#4, at 49-53. HHS also demonstrated the trend of increasing re-admission rates for these patients, indicating a need for better linkages between inpatient and outpatient care that HHS's full continuum of services will

meet, among a variety of other factors demonstrating need for additional bed capacity. DI#4, at 53-54, 55-59.

As described in the Recommended Decision (at 21), a critical aspect of the need for this project is addressing the disproportionate number of children and adolescent patients that experience extended wait times for an inpatient psychiatric bed. The modest increase in children and adolescent beds is designed to help alleviate these wait times, particularly for the underserved Medicaid patient population. (DI #4, 49-53, 58; DI #18, 1-3). Hope Health built in modest unmet need assumption to provide a conservative assessment of its patient origination with regard to existing providers (DI #4, 71-72). Finally, the record includes numerous details supporting the ability of Hope Health's ability to create a meaningfully positive impact on referral patterns and inpatient services for children and adolescents in need of psychiatric services, as well as referral relationships and community support to generate referrals to HHS's hospital (DI #4, 28, Exhibit 5, DI #50, 15-17).

The Reviewer correctly determined that need for this project was demonstrated, explaining (at 23):

> My review of the relevant information bearing on population need for additional child and adolescent psychiatric hospital bed capacity convinces me that a project of this scope, a 16-bed special hospital, warrants a finding of need. It aligns with the information on use rate trends for young patients over the last ten years. Evidence in the record allows for a creditable interpretation that these trends are positive, especially for adolescents. A finding of need for the proposed project also aligns with the evidence that children and adolescents comprise a disproportionate number of patients that experience extended wait times for an available and appropriate bed.

Sheppard Pratt objects to this determination, suggesting there is "no evidence" in the record to demonstrate need, ignoring the evidence in the record described in the Recommended Decision rather than responding to it.

Sheppard Pratt argues that need was not established because HHS projected that 85% of its admissions will come from existing providers. This argument fails because the Commission has approved new psychiatric hospitals and units where the applicants have projected higher percentages (up to 100%) of their volume to be drawn from other hospitals. The Commission approved the University of Maryland Medical Center's application to establish eight adolescent beds that was projected to take 88 percent of its discharges from existing hospitals. See Docket No. 18-24-2429 (Application at p. 47, Table 6, and p. 55, Table 8, showing 248 of 280 total discharges in Year 5 coming from existing hospitals). See also Luminis Health Doctors Community Medical Center Adult Inpatient Psych Unit (Docket No. 21-16-2448)(100%)(Application at 59); Anne Arundel Mental Health Hospital (Docket No. 16-02-2375)(100%)(Application at 95).

Sheppard Pratt incorrectly suggests that the Reviewer determined that HHS did not take into account the new 8 adolescent beds coming online at UMMC or Sheppard Pratt's replacement hospital. The Reviewer made no such finding. She simply referred to this argument by Sheppard Pratt in the section of the Recommended Decision describing Sheppard Pratt's Interested Party Comments, specifically mentioning that Sheppard Pratt took issue with HHS's "market share calculation" and that Sheppard Pratt stated that HHS has not considered these projects in its market share calculations. Recommended Decision, at 21. This is not a finding that HHS did not do so. Further, Sheppard Pratt's claim is contradicted by the record. HHS explicitly took the new UMMC beds into account in its market share projections in the Application (DI#4, at 71-72). Further, HHS demonstrated need for between 48 and 103 beds for adolescents, as described in the Recommended Decision (at 18), so the 8 new adolescent beds coming online at UMMC would not impact net need to any material extent.

Sheppard Pratt's at Elkridge is a replacement hospital that does not involve an increase the total number of child or adolescent beds.[1] Accordingly, its volumes were accounted for in the historical volumes on which HHS based its need projections. DI#4, at 46-47.

2. IMPACT

This review criteria requires the applicant to "provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system." COMAR §10.24.01.08G(3)(f).

HHS calculated the impact on existing providers in its Application (DI#4, at 71-72) providing the same type and level of information and analysis as provided in other approved CON applications for inpatient psych projects. For example, the UMMC Application (Docket No. 18-24-2429, Table 8) approved by the Commission included the same type of impact table as HHS provided based on which UMMC concluded that the project "will not significantly impact existing providers' volumes enough to compromise the financial viability of the existing programs." UMMC's table showed a similar percentage impact (11%) as HHS projects to Sheppard Pratt on an acute care hospital adolescent unit much smaller than Sheppard Pratt's unit. The Commission found that UMMC satisfied the impact standard based on UMMC's characterization of the impact as minimal that would not compromise those hospitals' financial viability. Docket No. 18-24-2429 Recommended Decision at 17.

Sheppard Pratt made largely the same arguments to the Reviewer about impact as it makes in its Exceptions. The Reviewer considered HHS's impact analysis and Sheppard Pratt's

[1]Sheppard Pratt at Elkridge, Docket No. 15-24-2367, at 23 (adolescent beds to be reduced from 22 to 17 but to be operated in all private rooms.

comments and, consistent with the way the impact criteria was applied in the UMMC application and other applications, concluded (at 39):

> My review of the record leads me to conclude that the proposed hospital is likely to have an impact on the limited number of existing hospitals that provide psychiatric hospital services to the young patient population in the Baltimore area. However, the size of the hospital, the actual expansion of bed capacity proposed…, and the delays that have been reported in moving younger patients from hospital emergency departments to beds, lead me to find that the impact of this project on other hospitals is not existential.

Contrary to Sheppard Pratt's suggestion, the Reviewer did not "shift the burden" to Sheppard Pratt in determining that HHS satisfied the impact criteria. HHS met its burden under this criteria in precisely the same way as other applicants for psych projects have met the criteria. Sheppard Pratt simply failed to demonstrate that HHS did not meet its burden. Sheppard Pratt provided no evidence that the project will increase its costs or alter its approved charges for services, so the Reviewer correctly found that the project is not likely to have a significant impact on the costs and charges of other hospital providers. Sheppard Pratt claims there will be a negative impact to its "profit margin" (Exceptions at 4-5) but this review criteria does not protect existing providers' profit margins. Nor does the impact criteria, by its terms or in how it has been applied by the Commission, protect existing providers from revenue losses from new providers as Sheppard Pratt would have it do.

Sheppard Pratt also argues that it demonstrated that HHS will have a negative impact on health care costs because HHS's per diem rate will be higher, but it uses information in the table in its Exceptions that is inaccurate and inconsistent with its Interested Party Comments. HHS's per diem rate will be $1,585 (inclusive of ancillaries) for FY22, not $1,658 as stated by Sheppard Pratt. DI#28. Further, Sheppard Pratt stated in its March 31, 2021 comments that its "inclusive"

per day rate in FY 2020 was $1,522.[2] Adjusting for HSCRC rate increases of 2.77% in FY 2021 and 2.57% for FY 2022, Sheppard Pratt has a higher per diem rate of $1,604.35 for FY22. DI#50, at 13. Accordingly, HHS will result in a savings to the health care system:

	Patient Per Day Rate
Hope Health	$1,585.73
Sheppard Pratt	$1,604.35
Per Patient Day ***Savings*** to Health System	$18.62

3. "PATIENT SAFETY AND QUALITY ISSUES"

Sheppard Pratt excepts to the Recommended Decision because it claims the Reviewer did not "consider whether Hope Health has planned or budgeted for a safe, durable environment" based on a list of "considerations" regarding HHS's floor plans. HHS included a similar list of considerations in its March 1, 2021 Interested Party Comments (DI#22, at 23-24) without citation to any State Health Plan standard or CON review criteria to which those considerations were germane, and asked the Reviewer to nevertheless consider them. See also HHS's March 31, 2021 Interested Party Comments (DI#30) making the same request. Sheppard Pratt suggested that it was appropriate for the Reviewer to do so because the State Health Plan chapter governing HHS's application was "out of date and does not directly address consideration of or compliance with modern standards for inpatient psychiatric units."[3] DI#22, at 22-23.

[2]In its March 1, 2021 Interested Party Comments (DI#22), Sheppard Pratt claimed (as it does in its exceptions) that its per day rate was only $1,288, but after HHS questioned in its response whether this included ancillaries (as HHS's rate does), in its March 31, 2021 comments (DI#30) Sheppard Pratt stated that its "inclusive" rate in FY20 was $1,522.

[3]In fact, the new State Health Plan chapter does not contain any standards either but reaffirms the importance of cost-effectiveness by requiring construction costs to be reasonable and consistent with Marshall Valuation Service guide, and providing that nursing units that exceed reasonable space standards per bed may not be recognized in a rate adjustment.

Under COMAR 10.24.01.08F(1)(c), an interested party's comments on the application must "state with particularity the State Health Plan standards or the review criteria in §G of this regulation that the person seeking interested party status believes have not been met by the applicant and the reasons why the applicant does not meet those standards or criteria." Sheppard Pratt never identified any standards or criteria that it believed HHS's floor plans did not satisfy. Accordingly, it would be an error of law to consider or recommend the denial of the application based on HHS's arguments about the floor plans.

In its Exceptions, Sheppard Pratt – for the first time in this review – suggests that its previously untethered arguments regarding HHS's floor plans are relevant to the Need, Viability, and Impact review criteria. Under COMAR 10.24.01.08F(1)(c), Sheppard Pratt's interested party comments were required to (1) state with particularity the standards or review criteria that it claimed HHS did not satisfy, and (2) state the reasons why HHS did not satisfy those standards or criteria. Accordingly, Sheppard Pratt may not for the first time in the Exceptions process offer new reasons why it believes HHS did not satisfy these three review criteria.

Moreover, HHS has committed that this project will meet FGI (Facility Guidelines Institute) Design Standards and Guidelines and that the hospital program will be accredited by The Joint Commission. DI# 27, at 14-17. The FGI Guidelines and Joint Commission accreditation are standards that this Commission recognizes and relies on to ensure patient safety and quality of services. See State Health Plan for Facilities and Services – Acute Hospital Services, COMAR 10.24.10.04A(3)(a)(2) (Joint Commission accreditation required); General Surgical Services, COMAR 10.24.11.04B (FGI Guidelines), .05A(4)(Joint Commission accreditation required); .05B(4) (FGI Guidelines). The Facility Guidelines Institute (FGI) is "the authoritative source for guidance on health and residential care facility planning, design and construction in the United

States … used by regulators, designers, builders and facility owners around the country and abroad to protect public health, safety, and welfare." https://fgiguidelines.org/ Likewise, the Joint Commission is the nation's oldest and largest standards-setting and accrediting body in health care. It is a "global driver of quality improvement and patient safety in health care." Its accreditation programs "help organizations across the continuum of care lead the way to zero harm" through "leading practices, unmatched knowledge and expertise and rigorous standards". https://www.jointcommission.org/about-us/

Sheppard Pratt sweeps aside the FGI Guidelines and Joint Commission accreditation and asks the Commission to delve into details such as the size of the seating area at the entrance area, the location where crash carts will be stored, the number of seclusion rooms, the location of a space to search patients and visitors, and adequacy of anti-ligature features, as just a few examples. All matters bearing on patient safety and quality are the top priority of HHS, but the issues raised by Sheppard Pratt are not germane to any applicable standard under the State Health Plan chapter that governs this review or the CON review criteria (as Sheppard Pratt effectively conceded below by not citing any). These matters are appropriately addressed through the FGI Guidelines and Joint Commission accreditation.

Contrary to Sheppard Pratt's suggestion, the Commission's regulations do not prohibit any change to the floor plans if required in order to comply with FGI Guidelines or to achieve Joint Commission accreditation. The Commission's regulations only prohibit changes in the fundamental nature of a facility or services, or bed capacity/medical service categories from those approved by the Commission (or any other changes that extends the time for performance beyond the applicable performance requirements), none of which would apply here. COMAR 10.24.01.17C. If changes to the floor plans necessitated by the FGI Guidelines or to achieve

Joint Commission accreditation entail "significant changes" in physical plant design or cause the capital cost to increase beyond the approved inflation limits, such changes are permissible with Commission approval.[4] COMAR 10.24.01.17B.

Further, Sheppard Pratt's arguments about HHS's floor plans are contrary to the standards and criteria that actually apply to this review, as well as Commission precedent. For example, Sheppard Pratt points out that HHS's floor plans include only one seclusion room and questions whether that is an adequate number, yet State Health Plan standard AP2c (which explicitly governs seclusion rooms) does not apply to special psychiatric hospitals at all, and requires acute care general hospital-based psychiatric units to have one seclusion room.

Similarly, Sheppard Pratt claims that HHS's floor plans raise safety concerns because they do not have separate hallways, dining rooms, admissions and multipurpose space for children and adolescent populations.[5] However, the applicable State Health Plan standard that governs physical separation between populations (AP4b) does not prohibit shared hallways or and other common spaces. Further, the Commission has approved other inpatient psychiatric hospital projects that did not show separate designated hallways and other shared spaced (other than nursing units) on the floor plans. See University of Maryland Medical Center, Docket #18-24-2429, Application, Exhibit 2. Notably, Sheppard Pratt has never claimed that HHS did not meet AP4b, the Reviewer found that HHS satisfied this standard, and Sheppard Pratt has not excepted to the Reviewer's finding that HHS satisfied AP4b.

HHS is already accredited by the Joint Commission as well as the Commission on Accreditation of Rehabilitation Facilities (CARF) for all of its existing behavioral health programs

[4] Sheppard Pratt has sought and obtained Commission approval for two modifications of its own CON for the replacement hospital in Elkridge. Docket No. 15-24-2367.
[5] It is undisputed that HHS's floor plans show physically separate nursing units for children and adolescents.

so it is very familiar with the accreditation process and complying with the rigorous standards of these organizations.[6] Further, while HHS does not currently provide inpatient hospital services, its work for the State Department of Juvenile Services (DJS) in a custodial setting dispels the notion advanced by Sheppard Pratt that HHS's project will not protect patient safety and quality. HHS developed and implemented reforms in the provision of mental health services to youth in DJS custody that resulted in the removal of all of the Civil Rights of Institutionalized Persons Act (CRIPA) deficiencies in DJS facilities that were in place when HHS took over the contract. DI#50, at 4; DI#4, at 63. HHS's reforms included (among others) (DI#4, at 63);

> Developing suicide protocols and suicide prevention training, including establishing two-levels of suicide watch for supervision, intervention and prevention of youth at risk of suicide and development/implementation of a training protocol for suicide prevention;
>
> Creation of an Intensive Services Unit to monitor youths in danger of harming themselves or others; and
>
> Developing improved record keeping protocols including implementing documents for all face-to-face crisis behavioral health assessments.

HHS's services to DJS are described in detail in the Application (DI#4) at 62-63. HHS's successes for DJS particularly in the area of suicide prevention measures and protocols belies Sheppard Pratt's suggestion that HHS has not or will not make patient safety and quality its top priority in this project.

[6] Like the Joint Commission, the Commission relies on accreditation by CARF to ensure high quality care in inpatient rehabilitation programs. See State Health Plan for Facilities and Services – Specialized Health Care Services – Acute Inpatient Rehabilitation Services, COMAR 10.24.09.04A(2)(a)(ii).

CONCLUSION

For the reasons stated above, the Commission should reject Sheppard Pratt's exceptions to the Recommended Decision of the Reviewer.

April 11, 2021

Respectfully submitted,

/s/ Marta D. Harting

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