

June 20, 2023

VIA EMAIL & FEDERAL EXPRESS MAIL

Ms. Wynne Hawk, RN, JD
Director, Center for Health Care Planning & Development
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: Shore Health System, Inc.
Request for MHCC to Docket CON Application for Replacement and
Relocation of University of Maryland Shore Medical Center at Easton
Matter No. 23-20-2463

Dear Ms. Hawk:

On behalf of the applicant Shore Health System, Inc. (“SHS”), we write to request that the Commission docket the CON application for Replacement and Relocation of University of Maryland Shore Medical Center at Easton, and prepare to render a decision on the project.

SHS’ CON application is complete and ready to be docketed under MHCC’s governing procedural regulations. MHCC’s procedural regulations require that “[w]ithin 10 business days of the filing of an application, the staff shall review the application for completeness to determine whether an application may be docketed for review.” COMAR 10.24.01.08C(1). In determining completeness, “[t]he staff shall determine whether the application contains all the information required[,]” and “[i]f the staff’s review of the application determines that the application is complete and conforms with the applicable docketing rules in the State Health Plan, staff shall docket the application for review as of the next available publication date of the Maryland Register.” COMAR 10.24.01.08C(3)-(4). In this review, SHS submitted a complete CON application, addressing every applicable State Health Plan standard, docketing rule, and the general review criteria set forth at COMAR 10.24.01.08G(3). It also provided all necessary and appropriate information in response to the MHCC’s Additional Information Questions over the past six months. Since the CON application is complete and the ten-day period for completeness review has passed, MHCC should docket this application for review and provide public notice in the next publication of the Maryland Register.

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The Commission has all the information available and needed, concerning its latest completeness question regarding SHS' planned sources of funds for the project, the status of State funding commitments, and SHS and UMMS' plans for obtaining additional State funding, to assess the project's viability. The total projected cost of this project is \$539.6M and the sources of funds for the project include \$100M in State support. In its Additional Information Question dated April 14, 2023, MHCC Staff noted the project budget reflected \$100M of State support, but that following issuance of HB 200, the Budget Bill for FY 2024, only \$10M in State funds had been committed. Staff requested that SHS update its sources of funds, presumably to reflect the amounts committed to date. On April 28, 2023, SHS responded that although the prior Administration had recommended \$100M in capital funds for this project be included in the State Capital Improvement Plan ("CIP"), Governor Moore's incoming Administration did not include this full funding amount in the budget, indicating it lacked adequate time to independently vet the project. Accordingly, UMMS and UM SRH executives continue to meet regularly with the Moore Administration to facilitate their analysis of the project and consideration of the funding request. SHS also clarified that through HB 200 it received a total of \$30M in State assurances – \$10M in PAYGO funds in FY 2024 and another \$20M in pre-authorized funds for FY 2025. This \$30M assurance demonstrates progress and willingness of the Administration to meet the needs of the Mid-Shore community. Over the next fiscal year, UMMS and UM SRH will continue to meet with the Moore Administration and leaders in Annapolis regarding commitment of public funds for the new Regional Medical Center in Easton. Accordingly, SHS declined to update its sources of funds because it is confident it will obtain the full \$100M in State and local support reflected in the current budget. Thus, SHS has fully addressed the Commission's remaining question about the intended sources of funds for the project and SHS' plan for obtaining those funds.

MHCC Staff should move forward with docketing, as docketing does not preclude the Commission from gathering any additional information needed to reach a decision. Under COMAR 10.24.01.08C(6), the reviewer, Staff, or the Commission may "[r]equest information from the applicant supplementing an otherwise complete application at any time during the review of an application." Thus, prompt docketing of this application not only keeps the project moving forward as is required by MHCC's procedural regulations, but also allows MHCC to gather any supplemental information needed to render a decision.

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The Commission's precedent in docketing the CON Application for review in *In re Prince George's Regional Medical Center As a Replacement and Relocation of Prince George's Hospital Center*, Docket No. 13-16-2351 ("*In re PGRMC*"), further supports docketing SHS' CON Application in this review. In the *In re PGRMC* CON application review, the MHCC Staff docketed the CON application before all State and County funding appropriations had been made, and where other financial uncertainties regarding the project remained. After six rounds of completeness questions, the PGRMC CON application was docketed on April 3, 2015. *See In re PGRMC*, Notice of Docketing, April 24, 2015. The PGRMC project budget upon docketing was \$651.2M, and the sources of funds included \$208M of State support and \$208M of support from Prince George's County. At the time of docketing, although the State and Prince George's County had made high-level commitments through their respective CIPs regarding their funding plan for the PGRMC Project, the majority of the funding had not been appropriated and there were ongoing discussions with the State over the amounts and timing of the operational grants and capital funding to be provided in each year for the project. *See In re PGRMC*, Modified CON Application, Jan. 16, 2015, pp. 38, 212, Exs. 14 and 15.

Not only was the PGRMC CON application docketed with some funding uncertainties, it was also approved with a significant contingency around the project's funding. The Maryland General Assembly passed legislation in 2016 (the "PGRMC Funding Act") formalizing the State's appropriation amounts for the PGRMC Project and specifying operational grant and capital contributions for several years, but the PGRMC Funding Act was conditioned to take effect only upon UMMS becoming the sole corporate member of Dimensions Health Care Corporation ("Dimensions") and assuming responsibility for its governance. *See Prince George's County Regional Medical Center Act of 2016*, 2016 Md. Laws, Chap. 13 (codified as Md. Code, Health-General § 19-2401). The conditional nature of the State's funding was recognized in Commissioner Moffit's Recommended Decision, yet he still recommended approval, finding that overall, the applicants had documented the availability of financial and non-financial resources necessary to launch and sustain the proposed project. *In re PGRMC*, Reviewer's Recommended Decision, Sept. 30, 2016, pp. .5, 108. The MHCC approved the PGRMC Project on October 20, 2016, knowing of this significant contingency, and UMMS' transaction with Dimensions formally closed nearly a year later on September 1, 2017.

Similar to the PGRMC project, it is common for large capital projects like the proposed Regional Medical Center in Easton to obtain State and local funding in incremental

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appropriations over a period of years, and for there to be ongoing discourse with the State and local elected officials over the amount and timing of funding needed for the project. The process involves some inevitable uncertainties and permutations. For example, the State's operational subsidies and capital funding for the PGRMC project continued to change year over year as the Governor's CIP and Budget in a given year did not always align with the funds provided in the PGRMC Funding Act, which resulted in an amendment to the PRGRMC Funding Act and ongoing changes to the project funding plan in the State's CIP and annual budgets until the funds were fully dispersed. *See* Prince George's County Regional Medical Center Act of 2017, 2017 Md. Laws, Chap. 19. It would be impractical and detrimental for MHCC to set a precedent of requiring CON applicants to obtain all State funding commitments or to obtain its other funding sources as a condition precedent to CON approval.

The Commission's precedent in *In re PGRMC* supports approving SHS' CON application with some remaining funding uncertainties, especially given that State funding and capital campaigns do not generally launch or gain momentum until key regulatory approvals are obtained. SHS' current budget includes \$100M in State funding, of which \$30M in State assurances have already been received, and as previously noted, UMMS and SHS are continuing their discussions with the Moore Administration regarding funding needs for the project. Further, multiple elected officials have communicated to SHS an intention to provide funding for the project, some in the million dollar range, but will only commit the funding once the CON application is approved. Accordingly, SHS anticipates State and local funding and its capital campaign will gain significant momentum once CON approval is received. Given the broad community, local, and State support for this project, SHS is confident the project is viable and all funding needed for the project will timely be obtained. SHS requests the MHCC move forward with docketing and rendering a decision on the project.

SHS' plans to build a new Regional Medical Center in Easton are timely and critical to the comprehensive healthcare delivery plan for the Mid-Shore region. The new location will promote better access to care, the new design will enhance provision of high-quality care and improve patient satisfaction, and the new facility will enhance UM SMC at Easton's ability to recruit and retain health care providers and staff. For the reasons stated herein, we request MHCC Staff docket SHS' CON application for review in the next available Maryland Register. The MHCC Staff is well within the bounds of its regulations and prior precedent to docket and recommend approval of this application. Moving the CON process forward is a critical step to

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ultimately delivering the Mid-Shore community necessary improvements to its healthcare delivery system. MHCC's docketing and approval of this CON application will be a catalyst to increasing State and local funding and building momentum for the project's capital campaign.

We hereby certify that a copy of this submission has also been forwarded to the appropriate local health planning agency as noted below.

If you have questions about the information provided above, please contact us at your convenience.

Very truly yours,



Mallory Regenbogen



Alison Lutich

cc: Ben Steffen, Executive Director, MHCC
Alexa Bertinelli, Esq., Assistant Attorney General, MHCC
Caitlin E. Tepe, Esq., Assistant Attorney General, MHCC
Moira Lawson, Program Manager, CON Division, MHCC
Ruby Potter, Health Facilities Coordinator, MHCC
Bob Gallion, Associate Director, Revenue and Regulation Compliance, HSCRC
Robin Cahall, Caroline County Health Officer
Roger L. Harrell, MHA, Dorchester County Health Officer
Bill Webb, MPH, Kent County Health Officer
Joseph A. Ciotola, Jr., M.D., Queen Anne's County Health Officer
Maria A. Maguire, MD, Health Officer, Talbot County
Kenneth Kozel, MBA, FACHE, President and CEO, UM SRH
JoAnne Hahey, CPA, Senior VP and CFO, UM SRH
Arvin Singh, EdD, MBA, MPH, MS, FACHE, VP Strategic Planning &
Communications, UM SRH
LuAnn Brady, Senior VP and COO, UM SRH
Kristin Jones Bryce, Chief External Affairs Officer, UMMS
Brian Sturm, Vice President, Corporate Decision Support and Capital
Planning, UMMS

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Aaron Rabinowitz, Esq., Senior VP and General Counsel, UMMS
Andrew L. Solberg, A.L.S. Healthcare Consultant Services
Garo Ghazarian Jr., KPMG LLP
Brendan Long, KPMG LLP
Thomas C. Dame, Esq., Gallagher Evelius & Jones LLP