

10.24.20.05 NURSING HOME STANDARDS

Overview of the CON Program: https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/hcfs_con_overview.aspx

CON Regulations: http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.24.01.*

Rules for Docketing: 10.24.01.07 Application Required for CON Review and 10.24.01.08 Procedure for Review of Application

Standard	How to satisfy it
General Standards. The Commission will use the following standards for CON review of all nursing home projects.	
(1) Bed Need and Average Annual Occupancy. (a) For a relocation of existing comprehensive care facility beds currently in the inventory, an applicant shall demonstrate need for the beds at the new site in the same jurisdiction. This demonstration may include, but is not limited to, a demonstration of unmet needs by a particular demographic, high utilization of nursing home beds in the jurisdiction during the past five years, and the ways in which the relocation will improve access to needed services or improve the quality of nursing home services.	(a) An applicant should demonstrate the unmet needs of a particular population, show the utilization in the jurisdiction, and describe the improved access/quality that will result from the project. Nursing homes should utilize the MHCC most recent bed need projections for this standard.
(b) An applicant proposing a project that will not add nursing home beds to a jurisdiction, but will add beds to an existing facility by relocation of existing licensed or temporarily delicensed nursing home beds within a jurisdiction, shall demonstrate that the facility being expanded operated all of its licensed beds at an occupancy rate of 80 percent or higher during the last two fiscal years for which the annual Maryland Long Term Care Survey data is available.	(b) Demonstrate an occupancy rate 80% or higher the last 2 years via the Maryland Long Term Care Survey data.
(c) An applicant shall only propose a project in a jurisdiction that has an identified need for additional nursing home beds and the proposed increase in beds does not exceed the identified need for additional beds unless: (i) More than fifty percent of the nursing homes in the jurisdiction had an average overall CMS star rating of less than three stars in CMS's most recent five quarterly refreshes for which CMS data is reported; and (ii) The applicant meets the quality requirement at §A(1)(d) of this regulation.	(c) Only apply if need is identified unless it can be shown that 50% or more of nursing homes in the jurisdiction had an average overall CMS star rating of less than three stars in CMS's most recent five quarterly refreshes for which CMS data is reported; and the quality requirement at §A(1)(d) of this regulation are met in the application.

<p>(d) An applicant shall only propose a project under §A(1)(c) of this regulation if:</p> <p>(i) The applicant is an existing nursing home in the jurisdiction that is proposing expansion of its bed capacity and had an average overall CMS star rating of at least three stars in the most recent five quarterly refreshes for which CMS data is reported; or</p> <p>(ii) The applicant proposing a new nursing home in the jurisdiction can document that all of the nursing homes it or any related entity operates had an average overall CMS star rating of at least three stars in the most recent five quarterly refreshes for which CMS data is reported.</p>	<p>(d) This definition is used for part (c) above.</p>
<p>(e) The Commission may consider an application by an existing freestanding nursing home with fewer than 100 beds that proposes a replacement facility with an appropriate expansion of bed capacity in a jurisdiction without identified need for additional beds if the applicant demonstrates that:</p> <p>(i) Replacement of its physical plant is warranted, given the facility’s age and condition; and</p> <p>(ii) The additional bed capacity proposed is needed to make the replacement facility financially feasible and viable.</p>	<p>(e) Provide the reasons for this case in the application by demonstrating the age of the facility and its condition, and provide the required financial information.</p>
<p>(2) Medical Assistance Participation.</p> <p>(a) The Commission may approve a Certificate of Need for a nursing home only for an applicant that participates, or proposes to participate, in the Medicaid program.</p>	<p>(a) Agree to participate in Medicaid.</p>
<p>(b) Each applicant shall agree to serve and maintain a proportion of Medicaid patient days that is at least equal to the proportion of Medicaid patient days in all other nursing homes in the jurisdiction or region, whichever is lower, calculated as the weighted mean minus the 25th percentile value across all jurisdictions for each year¹ based on the most recent Maryland Long Term Care Survey data and Medicaid Cost Reports available to the Commission, as published in the <i>Maryland Register</i>. <i>This requirement shall be a condition on any CON issued by the Commission.</i></p>	<p>(b) Required participation rates can be found here (provide them in your application):</p> <p>https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_ltc/documents/chcf_ltc_nh_required_md_medical_assistance_participation_fy17_20190927.pdf</p>

¹ The required level of Medicaid participation is calculated as follows. For the most recent three years: (1) calculate the weighted mean of the proportion of Medicaid participation (defined as Medicaid patient days divided by total patient days) for each jurisdiction and region; (2) calculate the 25th percentile value for Medicaid participation in each jurisdiction; (3) subtract the 25th percentile value from the weighted mean value of Medicaid participation for each jurisdiction; (4) calculate the average difference for step 3 across all jurisdictions for each year; (5) calculate the average across all three years. The resulting proportion is subtracted from the weighted mean for each jurisdiction.

<p>(c) An applicant for new nursing home beds has three years during which to achieve the applicable proportion of Medicaid participation from the time the facility is licensed and shall show a good faith effort and reasonable progress toward achieving this goal in years one and two of its operation.</p>	<p>(c) self-explanatory</p>
<p>(d) An applicant shall agree to continue to admit Medicaid residents to maintain its required level of participation when attained and have a written policy to this effect.</p>	<p>(d) self-explanatory</p>
<p>(e) Prior to licensure, an applicant shall provide an attestation of its intent to participate in the Medicaid program of the Maryland Department of Health to:</p> <ul style="list-style-type: none"> (i) Achieve and maintain the level of Medicaid participation required by (ii) Regulation .05A(2)(b) of this Chapter; and (iii) Admit residents whose primary source of payment on admission is Medicaid. 	<p>(e) Provide Medicaid participation policy with CON application.</p>
<p>(f) An applicant may show evidence of why this rule should not apply.</p>	<p>(f) Provide evidence if applicable.</p>
<p>(3) Community-Based Services. An applicant shall demonstrate in writing its commitment to alternative community-based services and to minimizing the nursing home length of stay as appropriate for each resident and agree to:</p> <p>(a) Provide information to every prospective resident about the existence of alternative community-based services, including Medicaid home and community-based waiver programs, Money Follows the Person Program, and other initiatives to promote care in the most appropriate settings;</p>	<p>For this standard, existing facilities should provide letters of a working arrangement or contract. New entrants should provide letters documenting work on establishing working relationships and contracts.</p> <p>(a) Provide the information given on admission about the existence of alternative community-based services within the admission contract or other document.</p>
<p>(b) Use Section Q of Minimum Data Set (MDS) 3.0 to assess the individual's interest in and willingness to pursue community-based alternatives; https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/Archive-Draft-of-the-MDS-30-Nursing-Home-Comprehensive-NC-Version-1140.pdf</p>	<p>(b) Evidence could include a copy of the facility MDS policy, an MDS transmission record (PHI blacked out), or a sample of section Q (PHI blacked out).</p>

<p>(c) Develop a discharge plan on admission with resident reassessment and plan validation at six-month intervals for the first 24 months. This plan is to be provided to the resident and/or designated representative; and</p>	<p>(c) Provide a copy of the facility discharge planning policy and procedure including any forms used for discharge planning.</p>
<p>(d) Provide access to the facility for all long-term care home and community-based services education and outreach efforts approved by the Maryland Department of Health and the Maryland Department of Disabilities to provide education and outreach for residents and their families regarding home and community-based alternatives.</p>	<p>(d) Evidence could include documented access of Ombudsman for the purposes of community education/outreach, a copy of Resident Council/Family Council minutes demonstrating community-based services education/outreach efforts, letters from community-based partners stating they have been given access to provide education and outreach, or sign in sheets showing community-based provider access to the facility for the purposes of education/outreach.</p>
<p>(4) Appropriate Living Environment. (a) An applicant shall provide to each resident an appropriate living environment that demonstrates compliance with the most recent Facility Guidelines Institute's Guidelines for Design and Construction of Residential Health, Care, and Support Facilities (FGI Guidelines). In addition, an applicant shall meet the following standards:</p>	<p>Self-explanatory</p>
<p>(b) If an applicant is proposing a project that involves new construction, the applicant shall:</p> <ul style="list-style-type: none"> (i) Develop rooms with no more than two beds for each resident room; (ii) Provide individual temperature controls for each room; (iii) Assure that no more than two residents share a toilet; and (iv) Identify in detail, by means of architectural plans or line drawings, plans to develop a nursing home that provides a cluster/neighborhood design or a connected household design, rather than an institutional design, consistent with the most recent FGI Guidelines. 	<p>Self-explanatory</p>

<p>(c) If an applicant is proposing a project that involves renovation or expansion, the applicant shall:</p> <ul style="list-style-type: none"> (i) Reduce the number of resident rooms with more than two residents per room; with single resident rooms preferred; (ii) Provide individual temperature controls in each newly renovated or constructed room; (iii) Reduce the number of resident rooms where more than two residents share a toilet; and (iv) Document that the applicant considered development of a cluster/neighborhood design or a connected household design, and, if the project includes an institutional model, document why the alternative models were not feasible. 	<p>Self-explanatory</p>
<p>(d) The applicant shall demonstrate compliance with Subsection .05A(4) of this Chapter by submitting an affirmation from a design architect for the project that:</p> <ul style="list-style-type: none"> (i) The project complies with applicable FGI Guidelines; and (ii) Each design element of the project that deviates from the FGI Guidelines is justified by specific stated reasons. 	<p>Self-explanatory</p>
<p>(5) Specialized Unit Design. An applicant shall administer a defined model of resident-centered care for all residents and, if serving a specialized target population (such as, Alzheimer’s, respiratory, post-acute rehabilitation) demonstrate that its proposed facility and unit design features will best meet the needs of that population. The applicant shall:</p> <p>(a) Identify the types of residents it proposes to serve, their diagnostic groups, and their care needs;</p>	<p>Specialty unit design is applicable to all projects involving a specialized unit for dementia, or respiratory therapy. COMAR regulation for each type of specialty unit can be found at: Specialty Units 10.07.02.23-10.07.02.25</p> <p>(a) If the applicant is not proposing a specialty unit in the project, please submit a description of the unit design with the application. The description should include types of residents to be served, their diagnostic groups and their care needs.</p>
<p>(b) If developing a unit to serve respiratory patients, demonstrate the ability to meet Office of Health Care Quality standards in COMAR 10.07.02.24;</p>	<p>(b) Respiratory Units 10.07.02.24</p>

<p>(c) If developing a unit to serve dementia patients, demonstrate the ability to meet Office of Health Care Quality standards and the most current FGI Guidelines.</p>	<p>(c) Dementia Care Units 10.07.02.25</p>
<p>(d) Demonstrate that the design of the nursing home is consistent with current FGI Guidelines and serves to maximize opportunities for ambulation and self-care, socialization, and independence. An applicant shall also demonstrate that the design of the nursing home promotes a safe and functional environment and minimizes the negative aspects of an institutional environment.</p>	<p>(d) Demonstrate the project is FGI compliant, safe, functional and minimizes the institutional environment. The project should maximize opportunities for ambulation, self-care, socialization, and independence. Evidence could be found in the mandatory project drawings or letter from the architect. Other evidence of resident-centered care could include a 24 hour-resident dining program, or a meaningful activity program.</p>
<p>(6) Renovation or Replacement of Physical Plant. An applicant shall demonstrate how the renovation or replacement of its nursing home will:</p> <p>(a) Improve the quality of care for residents in the renovated or replaced facility;</p>	<p>(a) if applicable provide a review of how quality of care will be improved by the renovation/replacement of the physical plant</p>
<p>(b) Provide a physical plant design consistent with the FGI Guidelines; and</p>	<p>(b) Provide an architect's letter stating how the physical plant design is consistent with the FGI Guidelines</p>
<p>(c) If applicable, eliminate or reduce life safety code waivers from the Office of Health Care Quality and the Office of the Maryland State Fire Marshal.</p>	<p>(c) if applicable applicant can attest to elimination or reduction of facility waivers with OHCQ or the Fire Marshall</p>
<p>(7) Public Water. Unless otherwise approved by the Commission and the Office of Health Care Quality in accordance with COMAR 10.07.02.43, an applicant shall demonstrate that its facility is, or will be, served by a public water system that meets the Safe Drinking Water Act standards of the Maryland Department of the Environment.</p>	<p>Applicant shall provide documentation of public water service</p>
<p>(8) Quality . The applicant shall demonstrate that it will provide high quality of care, as determined by an assessment of the following information requested in subsection (8)(a)-(g).</p> <p>(a) An applicant shall report on its overall CMS Five Star Rating for all the nursing homes owned or operated by the applicant or a related or affiliated entity for three years or more for the five quarterly refreshes for which CMS data is reported preceding the date of the applicant's letter of intent submission, or submission date for other Commission approval.</p>	<p>(a) Applicant needs to supply: a list of all the comprehensive care facilities owned or operated by the applicant or a related or affiliated entity within the last 3 years and the star ratings for each of these facilities in CMS's most recent five quarterly refreshes for which CMS data is reported</p>

<p>(i) If the applicant or a related or affiliated entity owns or operates one or more nursing home in Maryland, the CMS star ratings for Maryland facilities shall be used.</p> <p>(ii) If the applicant or a related or affiliated entity does not own or operate nursing homes in Maryland, the applicant shall select the state or states in which it owns the most facilities and the CMS star ratings for such facilities shall be used.</p>	<p>(i) use star ratings for Maryland if one or more facilities are operating in Maryland</p> <p>(ii) If not operating in Maryland use star ratings in the states in which the applicant operates</p>
<p>(b) If any facilities identified under paragraph (a) has an average star rating below 3 stars, the applicant shall provide a detailed quality rating analysis demonstrating good cause for not meeting the CMS star rating threshold and that the applicant is likely to provide adequate quality of care in the nursing home subject to the request.</p>	<p>(b) Applicant shall provide documentation of CMS star rating by using the provider data in the Nursing Home Compare archives for the most recent five quarterly refreshes from the date of the letter of intent submission. An explanation regarding the good cause for not meeting the CMS star rating threshold and a statement explaining how the applicant is likely to provide adequate quality of care in the nursing home subject to the request.</p>
<p>(c) An applicant shall demonstrate that it has an effective program of quality assurance functioning in each comprehensive care facility owned or operated by the applicant or a related or affiliated entity.</p>	<p>(c) A current provider shall provide copies of quality assurance policy/procedures. Effectiveness can be demonstrated by a quality score of 3 or more stars.</p>
<p>(d) An applicant that has never owned or operated a comprehensive care facility shall demonstrate its ability:</p> <p>(i) To develop and implement a quality assessment and performance improvement plan, consistent with requirements of the Maryland Office of Health Care Quality; and</p> <p>(ii) To produce high-level performance on CMS quality measures.</p>	<p>(d)The response may include:</p> <p>(i) A new CCF owner/operator may provide samples of policy/procedures that will be developed for quality assurance.</p> <p>(ii) A new CCF owner/operator will attest to its ability to produce high-level performance on CMS quality measures. Evidence could include past quality performance in a related field.</p>

<p>(e.) An applicant shall demonstrate appropriate infection prevention and control by providing the percent of residents receiving COVID, flu and pneumonia vaccinations, and the percent of staff receiving COVID, flu and pneumonia vaccinations:</p> <ul style="list-style-type: none"> (i) At the nursing home that is the subject of the request, for a CON or exemption request; or (ii) At the nursing homes identified under §A(8)(a) of this regulation, for a request for acquisition approval. 	<p>Self-explanatory.</p>
<p>(f) If the applicant or a related affiliated entity owns or operates or previously owned Maryland nursing homes, it shall report its rating of overall care and percent satisfied for the most recent three years on the MHCC Family Experience of Care Survey, reporting on any trends in the results. If the facility’s average rating of overall care is below 7.0, the applicant shall document efforts to improve the facility’s rating. If the facility’s average percent satisfied overall rating is below 70 percent, the applicant shall document efforts to improve the facility’s rating.</p>	<p>Self-explanatory.</p>
<p>(g.) Quality Assurance.</p> <ul style="list-style-type: none"> (i) An applicant shall demonstrate that it has an effective quality assurance program in each nursing home facility that is owned or operated by the applicant or a related or affiliated entity for the period of 3 years immediately preceding the submission of the letter of intent or request for other Commission approval by providing the Commission with a schedule of its quarterly Quality Assurance meetings. (ii) An applicant that has never owned or operated a nursing home shall provide documentation that demonstrates a thorough understanding of assessing quality assurance in a long-term care facility or related facility/program. Include any documentation of a prior assessment that reviewed quality metrics, a review of operations, and regulatory compliance and include any subsequent follow up in the form of actions taken, results, or improvement plans. 	<ul style="list-style-type: none"> (i) Provide the Commission with the schedule of the applicants quarterly Quality Assurance meetings for each nursing home owned or operated by the applicant. for the period of 3 years immediately preceding the submission of the letter of intent or request for other Commission approval. (ii) Provide documentation that demonstrates a thorough understanding of assessing quality assurance in the facility. This should include any documentation of a prior assessment that reviewed quality metrics, a review of operations, and regulatory compliance and include any subsequent follow up in the form of actions taken, results, or improvement plans.

<p>(9) Collaborative Relationships.</p> <p>(a) An applicant shall document its relationships with hospitals, hospice programs, home health agencies, assisted living providers, Adult Evaluation and Review Services, adult day care programs, and other community providers in the long-term care continuum. This may include contracts, letters or other relevant documentation.</p>	<p>(b) Applicant must document link to at least one of EACH of the type of provider mentioned in the Standard via letter (new entrants) or copy of a contract (existing) with the community provider Note: AERS is not a provider but a screening process used if a potential nursing home resident has a positive PASRR ID -this is a free service provided by the county to ensure individuals are not inappropriately placed in nursing homes - a letter can demonstrate a past or proposed working relationship with AERS, and/or a blank AERS evaluation (PHI removed)</p>
<p>(b) An applicant shall demonstrate its commitment to effective collaboration with hospitals by documenting its successful efforts in reducing inappropriate readmissions to hospitals, improving the overall quality of care, and providing care in the most appropriate and cost-effective setting. The demonstration shall include:</p> <p>(i) Data showing a reduction in inappropriate hospital readmissions; and</p> <p>(ii) Data showing improvements in the quality of care and provision of care in the most appropriate setting.</p>	<p>(c) Provide data on reduction of hospital readmissions as evidenced by data on medicare.gov or other sources. Provide data showing care is being provided in the most appropriate setting as evidenced by data on medicare.gov or other source showing discharges to other settings.</p>
<p>(c) An applicant shall demonstrate its commitment to providing an effective continuum of care by documenting its collaborative efforts with Medicare-certified home health agencies and hospices to facilitate home-based care following comprehensive care facility discharge and shall facilitate delivery of hospice services for terminally ill residents. The demonstration shall document that the applicant has:</p> <p>(i) Planned for the provision of home health agency services to residents who are being discharged; and</p> <p>(ii) Arranged for hospice and palliative care services, when appropriate, for residents who are being discharged.</p>	<p>(c) Provide at least one letter or copy of a contract with an HHA and Hospice documenting this practice.</p>