HFAM
Health Facilities Association of Maryland
*Partners in Quality Care*

May 13, 2019

Mr. Ben Steffen
Executive Director
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215-2299

Dear Ben:

Thank you for your work and for the work of the Commission and staff. Following are comments on the proposed comprehensive care facility services chapter (the "Proposed Chapter") to the State Health Plan, proposed to be adopted at COMAR 10.24.20, published in the April 12, 2019 Maryland Register. These comments are offered on behalf of the Health Facilities Association of Maryland ("HFAM"), the largest association of providers of long-term care services in the State of Maryland. Our members provide services in nearly every jurisdiction within the State and are dedicated to the provision of quality, effective and compliant services to individuals with substantial clinical needs, as well as aged and disabled Marylanders.

We appreciate that, as a result of our work together, the docketing exception was removed from the proposed regulation. The docketing exception would have opened the door to certificate of need applications for additional beds and facilities for which there was no need based on certain types of hospital agreements. We believe and agree that demonstrated need should be the driver of building new care capacity in the regulated health care environment, especially in light of the need to make effective use of existing facilities that are making strides in adapting to Maryland's unique Total Cost of Care contract with the Federal government.

We and the provider community are not opposed to change. We wish to continue to work with the MHCC and others to develop and implement public polices that first and foremost promote access to quality care to Marylanders in need, while also advancing the trifecta of quality care, bending the cost curve, and ensuring integrated care capacity.

Specifically, relative to the Proposed Chapter we seek two amendments that we believe achieve the goals of the Commission and are based on sound public policy.

Additionally, in our public comment here, we make policy observations aligned with our previous concerns and pledge to continue to work with the Commission and others on those issues in the future.

**Amendment Number One: Section .04B (1); .05A (8)**:

We seek removal of the docketing exception relative to the use of the CMS Five-Star Quality Rating Tool to allow a path to a certificate of need application for approval to add additional capacity or even a new comprehensive care facility even in the absence of bed need. As was amply demonstrated during the work group sessions leading to the Proposed Chapter, the CMS Five-Star Ranking system is only one tool among

many in evaluating quality. The docketing exception risks adversely impacting the existing facilities in the jurisdiction who are motivated to attain optimal Five-Star Rankings.

Moreover, CMS periodically changes the Five-Star methodology which can cause a sudden drop in ranking with no change or diminution in the quality of care. This amendment is especially important and timely in light of the changes that CMS made to the Five-Star Rating Tool in April. From March 1, 2019 to April 30, 2019, no appreciable changes were made in individual CCF's in Maryland or the across nation that under the previous rules would have principally changed a Five-Star rating in a short period of time, yet there has been a change in rankings simply because CMS **changed the rules of the rating tool system**. As a result of the CMS changes, with no diminution in quality:

- There are 28 fewer CMS Five Star rated CCF's in Maryland;
- There are 8 more CMS Four Star rated CCF's in Maryland;
- There are 4 more CMS Three Star rated CCF's in Maryland;
- There are the same number CMS Two Star rated CCF's in Maryland;
- There are 16 more CMS One Star rated CCF's in Maryland.

These facilities were providing the same care the day before the new ratings system changes went into effect as they were the day after. But in many cases their rankings significantly changed.

The point is not these particular changes but, rather, that rankings can change not based on a change in quality, but simply due to CMS changes in the tool. Therefore, it is unfair and inappropriate to use the somewhat fickle Five-Star rankings as identified in the Proposed Chapter. We are working to analyze the new CMS Five-Star Rating data regionally, but we continue to have the same serious concerns that we have shared throughout the MHCC Chapter updating process. The exception we seek is critical.

The same concerns exist in relation to Section .05A (8) regarding the use of Five-Star Rankings in determining whether a letter of intent can be filed. Five-Star Rankings are a single tool but are in no way designed to be used as a bright line test in the manner stated in the Proposed Chapter.

Thus, we oppose the use of Five-Star Rankings in the manner proposed. We request that the docketing exception and letter of intent provision be removed from the Proposed Chapter. We then ask to participate in further discussions about how various quality measures can be used. In the alternative and at a minimum, the Proposed Chapter should permit interested parties to demonstrate why the docketing exception should not apply and why a letter of intent should be accepted, without an absolute rule based merely on a set of Five-Star rankings in a particular time frame.

The simplest approach would be to have the Proposed Chapter state that Five-Star Rankings will be "taken into account" during a CON review as part of a discussion about quality without a docketing exception or barrier to a letter of intent.

**Amendment Number Two: Section .04B (2):**

It is important that current CCFs of all sizes are able to update, rebuild and replace existing capacity under the CON rules. The Proposed Chapter states that CCFs with less than 100 beds be allowed to have a CON application docketed for replacement or rebuilding that adds additional beds for which there is no need:

"The Commission may docket an application by and existing freestanding comprehensive care facility 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:

(a) Replacement of its physical plant is warranted given the facility's age and condition; and
(b) The additional bed capacity proposed is needed to make the replacement facility financially feasible and viable."

Under this proposed new docketing rule, an existing 100 bed facility has no limit to the number of beds that could be added without any relation to demonstrated need in the community. We propose that this provision be capped at a ten (10) percent increase in new and added bed capacity, i.e. waiver beds could be included in the CON application but not an unlimited number of new beds for which there is no need, which would entail a change to Section .04C(1)(c).

In terms of general observations, we continue to question why the Medicaid memorandum of understanding ("MOU") requirement, particularly with a mandated percentage, is maintained. No data have been presented that demonstrate Medicaid beneficiaries lack the ability to obtain placement in a Maryland CCF and efforts to maximize community-based services are undermined by a provision that imposes a requirement to attain and maintain a certain Medicaid percentage in facility setting. We continue to question the logic of how maintaining a percentage of Medicaid in simply requiring an MOU, but without a particular percentage, would be a valid approach to ensuring access. We pledge to work with the MHCC, the Maryland Department of Health and others going forward to effectively navigate this policy.

Thank you for the opportunity to provide these comments. We urge that the Proposed Chapter not be adopted without the two proposed common-sense amendments and urge reconsideration of maintaining a specific Medicaid percentage in a MOU.

Sincerely,

Joseph DeMattos
President and CEO

cc: Ms. Linda Cole, Chief of LTC, MHCC
The Honorable Lawrence J. Hogan, Jr., Governor of Maryland
The Honorable Robert R. Neall, Secretary, Maryland Department of Health
The Honorable Thomas V. Miller, President, Maryland Senate
The Honorable Adrienne A. Jones, Speaker, Maryland House of Delegates
Howard L. Sollins, Esq., Baker Donelson
HFAM Board