

LORIEN HEALTH SERVICES' COMMENTS ON PROPOSED PERMANENT COMAR 10.24.20 (COMPREHENSIVE CARE FACILITY SERVICES CHAPTER)

Lorien Health Services (“Lorien”), a multi-facility provider of comprehensive care (‘nursing facility’), assisted living, and residential care services in Central Maryland offers these Comments on the provisions of Proposed Permanent COMAR 10.24.20, (the "Proposed CCF Services Chapter"). as follows.

A. Comments on select provisions of the Proposed CCF Chapter

As a general matter Lorien supports many of the goals and policies of the Proposed CCF Services Chapter, including Policy 1.0, 1.1 (provided CON Applicants are allowed to show why FGI Guidelines should not be applied), 2.0, 2.1, 3.0, 3.1, 4.0, and 4.1.

However, Lorien strongly objects to a number of specific CON Review Rules and Standards which, we believe, threaten the continued financial viability of existing facilities and impair their ability to deliver needed, quality services as important providers within the continuum of care. These provisions include the following.

- **COMAR 10.24.20.04B(1) Docketing Rule Exception COMAR 10.24.20.05A(8) – (OPPOSE):** This proposed rule provides that “[T]he Commission may docket an application proposing the addition of comprehensive care facility bed capacity in a jurisdiction without an identified need for additional beds if more than fifty percent of the comprehensive care facilities 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”. Lorien has re-thought its views on this provision and now adopts the position of HFAM as set forth in its May 13, 2019 Comments submitted to Executive Director Steffen. Simply stated the CMS Star ranking system is too volatile for the proposed use underpinning the Docketing Rule Exception.

- **COMAR 10.24.20.05A(8) Quality Rating – (OPPOSE):** This rule requires, among other things, that applicants document its performance under the CMS star rating system. Lorien has re-thought its views on this provision and now adopts the position of HFAM as set forth in its May 13, 2019 Comments submitted to Executive Director Steffen. Simply stated the CMS Star ranking system is too volatile for this proposed use.

- **COMAR 10.24.20.04B(2) Docketing Rule Exception – (SUPPORT with Amendment):** Lorien supports the objectives of this provision, but opposes the open-ended number of additional beds that may be added to facilities with less than 100 beds which wish to renovate or rebuild obsolete physical plants. To avoid adverse impacts on existing facilities, Lorien urges that this Rule be amended to limit the number of new additional beds to 10.

LORIEN HEALTH SERVICES' COMMENTS ON PROPOSED PERMANENT COMAR
10.24.20, page 2

- **COMAR 10.24.20.04C(1)(a)(ii) Waiver Bed Room Rule – (OPPOSE):** Lorien opposes this rule which requires that CCFs seeking Waiver Beds must provide “Documentation that the facility has the licensable, physical space to accommodate the additional beds requested consistent with the requirements of COMAR 10.24.20.05A(4).” This requirement will leave CCFs with no choice other than to convert existing Single Bed Private Rooms into Double Occupancy Semi – Private Rooms in order to accommodate the need for the incremental addition of Waiver Beds. This defeats both the purpose of the Waiver Bed rule to allow easy incremental expansions and the policy of increasing the number of available private occupancy rooms. Lorien respectfully requests that the rule be withdrawn and be replaced with a provision allowing existing facilities to construct additional, new space below the capital expenditure threshold to accommodate the addition of Waiver Beds.

- **COMAR 10.24.20.04F Effective Date – (OPPOSE):** Lorien believes the Proposed CCF Services Chapter should not be applicable to projects docketed before the date of their formal adoption. This change would eliminate the necessity of re-reviewing projects under new standards and rules not contemplated when the particular project was planned or originally approved, while streamlining the CON review process and eliminating unnecessary expense and MHCC Staff resources.

- **COMAR 10.24.20.05A (2) Medical Assistance Participation - (OPPOSE):** Lorien opposes the continuation of the Medicaid MOU requirement since there is no evidence that the Medicaid patient population is being discriminated against or lacks access to comprehensive care services.

- **COMAR 10.24.20.05A (5)(c) – (d) Specialized Unit Design - (Support with Amendment):** These provisions require CON applicants proposing Specialized Units to demonstrate that unit designs and facilities are consistent with current FGI Guidelines. Lorien believes the rules should also be amended to provide that applicants should have the same right as applicants proposing renovation projects at COMAR 10.24.20.05A (4)(b)(iv) to “[D]ocument 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.”

- **COMAR 10.24.20.05A (6)(b) - Renovation or Replacement of Physical Plant (Support with Amendment):** This proposed rule requires an applicant to demonstrate how the renovation or replacement of its comprehensive care facility will “[P]rovide a physical plant

design consistent with the FGI Guidelines.” For the reasons discussed with regard to COMAR 10.24.20.05A(4)(iv) Appropriate Living Environment and COMAR 10.24.20.05A (5)(c) – (d) Specialized Unit Design, above, this rule should be amended to allow CON applicants to document why the alternative model set forth in FGI Guidelines was considered and determined not to be feasible.

B. Proposed Additional Changes – The Proposed CCF Chapter should be amended to include these items which were previously identified and commented upon as potential solutions to identified problems:

(1) Allow CCFs to provide home health services to discharges without needing a CON.

(STRONGLY SUPPORT): This proposed provision would assure improved continuity of care and would lead to reduced re-admissions, hospital ED visits, and reductions in TCOC. Lorien would support a change in the statute and regulations to allow existing CCFs to provide home health services to their discharged patients for a period of at least 30 days post discharge. Lorien points out that in the 1980's – 1990's those CCFs which had previously provided such home health services were subsequently grandfathered from the newly imposed need to obtain CON approval to offer this service. As a result of changes in the health care delivery system, including the increased focus on creating cost effective, high quality post-acute care system, existing CCFs should be able to once again provide these services to ensure a successful transition to the home care setting. Moreover, since CCFs are now being held accountable for their patients' post discharge ED visits and hospital readmission rates, they must be allowed to provide transitional services to their discharged patients for the 30 day period for which CCFs are accountable. The emphasis on reducing TCOC makes this proposed solution a high priority.