



December 31, 2018

Ms. Linda Cole, Chief
Long Term Care Policy and Planning
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215

BY EMAIL to linda.cole@maryland.gov & U.S. MAIL

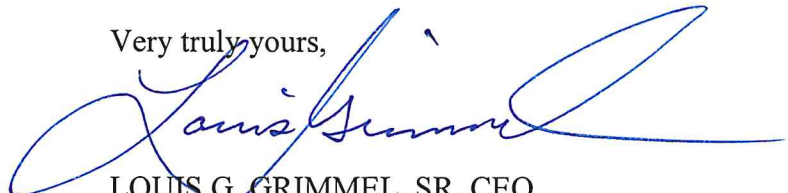
Re: Comments re Proposed SHP CCF changes – Proposed COMAR 10.24.20

Dear Ms. Cole:

On behalf of Lorien Health Services, and the nine existing comprehensive care facilities we manage for the Mangione Family (Lorien Columbia, Encore at Turf Valley, Lorien Elkridge, Lorien Mt. Airy, Lorien Taneytown, Lorien Mays Chapel, Lorien Bel Air, Lorien Riverside, and Lorien Havre de Grace), I enclose our Comments concerning proposed changes to the State Health Plan's existing CCF Chapter as incorporated by reference in Maryland Register, Vol. 45, Issue 25, Friday, December 7, 2018 (the "Proposed CCF Services Chapter").

Thank you for this opportunity to present our views on this important matter.

Very truly yours,



LOUIS G. GRIMMEL, SR, CEO
Lorien Health Services

LGG / me

Encl.

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LORIEN HEALTH SERVICES' COMMENTS ON PROPOSED 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 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 – (SUPPORT with Amendment):** 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*” (Italics supplied). The proposed time period amounts to eight consecutive quarters of data per footnote 16. Lorien respectfully asserts that the intentional over bedding of a jurisdiction is an extreme measure that should only be undertaken as a last resort. Lorien requests that the relevant time period be changed to three consecutive years to allow facilities adequate time to implement changes which address the facilities’ CMS Star ranking.
- **COMAR 10.24.20.04B(3) Docketing Rule Exception – (OPPOSE):** This provision would permit the docketing of a CON Application proposing additional bed capacity, including the establishment of a new facility in a jurisdiction even when there is no bed need, based on the applicant's agreement with one or more hospitals that achieves goals of the Total Cost of Care (TCOC) model (“TCOC Agreements”). Lorien has consistently opposed this proposal because it would negatively impact existing CCFs by effectively de-regulating a special class of proposed CCFs under the guise of CON “modernization”. In addition, establishment of such new facilities would negatively impact existing CCFs since it would result in the steering of hospital discharges to these new CCFs in which hospital partners have an interest.

Further, this proposed exception to need-based docketing rules will negatively impact existing providers and hamstring the creation of a system-wide continuum of care aligned with the goals of reducing TCOC while improving the quality of care across the applicable jurisdiction. The proposed Docketing Exception also ignores the substantial efforts of existing CCFs, like Lorien Bel Air, Lorien Riverside, and Lorien Columbia, to take actions to reduce avoidable hospital admissions/readmissions consistent with the TCOC initiative. In this regard, Lorien facilities in Harford County have joined with UM Upper Chesapeake Medical Center in implementing a Telemedicine Program that was initially funded by an MHCC Grant and which is demonstrating TCOC objectives. Finally, this provision ignores the desires and good faith efforts of all existing providers, in addition to Lorien facilities, to enter into the described “TCOC agreements” with hospitals as responsible providers within the continuum of care. As shown by Lorien’s own experience, existing CCFs are increasingly ready, willing and able to enter into close relationships with hospitals and to design and implement innovative post-acute care proposals which enhance quality of care and align well with TCOC reductions.

Finally, rather than jeopardizing the flow of essential admissions into existing CCFs from hospital discharges and critical CCF revenues, this exception to the Docketing Rule should be withdrawn or amended to require that proposed hospital partners demonstrate that they have undertaken substantial and good faith efforts to enter into such TCOC Agreements with existing CCFs in the jurisdiction.

- **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(4)(iv) Appropriate Living Environment – (Support with Amendment):** This proposed rule would require that CON Applicants proposing new construction “*Identify in detail plans to develop a comprehensive care facility that provides a cluster/neighborhood design or a connected household design, rather than an institutional design, consistent with the most recent FGI Guidelines*” (Italics supplied). Lorien has two suggested revisions to this proposed rule:

First, this language appears to require the submission of detailed architectural drawings with CON Applications and is a marked departure from long-standing Commission practice of requiring only simple line drawings. Such a requirement would complicate the CON process, would add very substantial costs to a proposed project without any guaranty of project approval, and would impose financial barriers on prospective CON applicants seeking to meet the need for services. The language should be amended to make clear that only simple line drawings showing the design and configuration are required.

Second, facility design in compliance with FGI Guidelines may not be feasible given site constraints, facility size, and/or cost restraints. Therefore, the rule should be amended to provide that CON applicants proposing a new facility 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 (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. For the reasons noted immediately above, the rule should also be amended to provide that such 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.” [See COMAR 10.24.20.05A(4)(b)(iv)]

- **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.

A. 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.