



*Keeping You Connected...Expanding Your Potential...
In Senior Care and Services*

July 13, 2018

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

Dear Mr. Steffen:

On behalf of LifeSpan Network, we thank the Maryland Health Care Commission (“Commission”) for the opportunity to submit these comments on the draft *State Health Plan for Facilities and Services: Comprehensive Care Facility Services: COMAR 10.24.20*. We also thank the Commission for extending the comment timeframe to provide additional time to review the draft and solicit comments from our membership. In determining the revisions to the State Health Plan, the Commission convened a Nursing Home Workgroup with representatives from LifeSpan and the Health Facilities Association of Maryland. Two meetings were held with this group prior to distribution of the draft.

At this point, LifeSpan cannot support the draft based on our comments below. We urge the Commission to reconvene the Nursing Home Workgroup to continue discussions on the draft until such time that consensus can be reached. Equally important, we want to continue to emphasize our concern that the Commission should refrain from updating the State Health Plan until such time that the CON Modernization Task Force concludes its work. Again, it is disconcerting that the Commission is operating parallel workgroups on virtually the same issue, with both groups raising the same concerns.

Below are specific comments:

Page 5: Issues and Policies: Consumer Choice

Policy 2.0: LifeSpan recommends adding the following language – “The Commission will coordinate this information with other State agencies, such as the Maryland Department of Health, Maryland Department of Aging and the Maryland Department of Disabilities.”

Rationale: Each of the listed State agencies contain information on their respective websites regarding long-term care services and supports. Many of the websites redirect to the Commission’s website. However, for the public, the websites are not easy to navigate and require several links to get to the information. The Commission should spearhead an effort to make its website and the other State agency websites more consumer friendly for locating long-term care services and supports.

Policy 2.1: LifeSpan recommends adding the following language – “The Commission will work with long-term care providers to assist in advancing the exchange of health information among different health care sectors, *including determining the availability of funding options*, in order to enhance the care of individuals in long-term care institutional and community-based settings.

Rationale: Unfortunately, the long-term care industry was not included when monies were given to other provider groups for the advancement of health information exchanges. LifeSpan has aggressively been working with its members and the industry to increase usage, but funding continues to be a leading obstacle. If the Commission is going to include this policy in the State Health Plan, then it should also coincide with efforts to assist the industry with funding options.

Policy 2.2: Please refer to page 4 of this letter on issues related to the Memorandum of Understanding.

Pages 6 and 7: Quality of Care

Policy 3.1: Please refer to page 3 of this letter on issues related to the use of the Nursing Home Compare (5-Star Rating System).

Policy 4.0 and Policy 4.1: LifeSpan recommends combining these two policies as follows:

“The Commission will encourage hospitals and comprehensive care facilities to work together to reduce inappropriate and avoidable readmissions to hospitals and to improve and provide quality of care to individuals in the most appropriate and cost-effective setting.”

Rationale: LifeSpan is concerned over the use of the phrase “safely reduce overall length of stay.” First, LifeSpan requests clarification as to whether this phrase relates to reducing overall length of stay in hospitals by transferring, when appropriate, to a comprehensive care facility or does it imply that the comprehensive care facility is encouraged to reduce overall length of stay? On the latter, LifeSpan members have already seen individuals with higher acuity levels being admitted into their facilities from hospitals, which appears to be attributable to shorter length of stays in hospitals to reduce inpatient admissions. Consequently, a higher level of care must be afforded to these residents to meet their care needs. Rather than specify reducing length of stay, LifeSpan believes the emphasis needs to continue to focus on the most appropriate and cost-effective setting. It is important to note that, while the Commission quotes the goals set by the American Health Care Association (AHCA), ACHA does not set reducing overall length of stay as a goal but, more appropriately, focuses on the need for reducing readmissions.

Lastly, and separate from the length of stay issue, the top of page 7 refers to considering options such as the relaxation of the three-day rule. It is our understanding that the State Innovation Workgroup and the Health Services Cost Review Commission has stated that it does not plan to apply for a waiver to relax the three-day rule, a decision that LifeSpan believes needs to be revisited.

Page 8, Section A: Comprehensive Care Facility Home Docketing Rules Procedural Rules

LifeSpan supports the Commission not docketing an application if any current owner or senior manager of a facility has met the exclusions listed on page 8 (felony conviction, exclusion from participation in Medicare or State health care programs, etc). However, we do question the reference to any “former owner or senior manager of the facility, of the operator, of the management organization, if any, or of any related or affiliated entity.” The language fails to recognize the circumstance where a senior manager of the facility (or related or affiliated entity) of the applicant commits an act listed on page 8 where the facility promptly acted against the individual. Please note that similar language is used on Page 11, Section D(2)(b).

Page 9, Section B: Docketing Rules Exceptions. LifeSpan believes that certain exemptions related to “former” should apply given that the restriction is for 10 years.

This section also allows the Commission to docket an application even if there is no identified need for additional beds if certain criteria are satisfied. LifeSpan does not believe enough discussion has occurred around this issue and the need to allow additional beds when no need is present, a situation that runs contrary to the purpose of a CON process.

LifeSpan understands that this section is attempting to provide flexibility for developing innovative programs under the new Total Cost of Care Model or for increasing the ability of individuals to choose facilities with higher ratings. However, the Health Services Cost Review Commission is already providing the framework for new models through the Care Redesign Amendment (BPCIM and potential other models). In addition, it is unclear how the Commission would determine an “acceptable” signed agreement or measure the risk sharing agreements. Again, great discussion should be given to this exemption.

Page 9, Section C: Incremental Addition of Comprehensive Care Capacity

Can you please clarify if a comprehensive care facility can waive a “waiver bed?”

Page 13, Section A(2)(b): Comprehensive Care Facility Standards - General Standards

This section refers to the Medicaid Memorandum of Understanding. Again, LifeSpan has consistently raised this as an issue, and we believe that additional discussion needs to take place. LifeSpan is concerned that the policy does not provide any flexibility for facilities that trend higher towards private pay residents. These residents should not be disadvantaged by not being admitted into the comprehensive care facility of their choice because it may affect the facility’s ability to maintain the level required in the MOU. Lastly, in this section, the Commission references both “jurisdiction or region.” Are they the same?

Page 16, Subsection (8): Quality Rating

Throughout this document, the Commission relies heavily on the 5-Star Rating System as the barometer for docketing and/or approving a CON application. LifeSpan has significant issues with the 5-Star Rating System and is opposed to the use of it in this process. However, our opposition does not mean that we oppose the use of quality metrics; it simply means that we oppose the use of the overall star rating given to comprehensive care facilities. LifeSpan believes that the 5-Star Rating System can unfairly discriminate against comprehensive care facilities depending on their resident acuity levels, the retention of staff vs. staffing numbers as well as the subjectivity of the survey process. It is for this reason that Maryland created its own “Pay for Performance” measurement system. In addition to its overall use, specific concerns include:

1. The measurement is “the most recent quarterly update for which CMS is reported.” Why would the Commission only consider the most recent quarter? A facility could have been a 5-Star facility for the preceding six quarters and then one survey could take them out of the process without any further explanation being provided for the change. It is also important to note that LifeSpan members have experienced situations where incorrect information was used in their rating determination and it has taken over a year to have the corrections posted.
2. Can the Commission clarify the process if an application is docketed and then a subsequent rating is issued that is below three stars? Would the application be removed from the docket?
3. There also appears to be an inconsistency – on page 16, it states that an applicant must document that at least 70% of all the comprehensive care facilities owned or operating by the applicant for three years or more have an overall CMS rating of three or more stars in the most recent quarterly update but on Page 9 in subsection (1)(b) it states that ALL of them must be at least three stars. Again, why would we only look at one quarter? More importantly, if a system operates 10 nursing homes and 9 of them are five stars but one is a two star, it is taken out of the process depending if it is ALL or 70%.

Rather than simply use the overall star rating given to a nursing facility, LifeSpan recommends that the Commission along with the Nursing Home Workgroup examine the quality metrics used by the Star Rating System as well as Maryland’s Pay for Performance to determine if there are more appropriate measures that can be used.

Page 17, Section (9): Collaborative Relationships

This section requires that an applicant document by means of letters and contracts its links with other alternate setting providers such as home health, hospice, and medical adult day. If an applicant is building a new facility, it is unlikely that any other provider is going to enter into a contract with that provider prior to completion of the facility. More importantly, this requirement and the requirements contained in this section appear to be broader than the determination of

“need” for a facility and it is questionable whether they should be a factor in the determination of CON.

Page 17, Section (10): Shell Space

LifeSpan recommends elimination of this entire section. This is a business decision of the applicant and it is unclear why the Commission should be involved in this construction decision when it is separate and distinct from the determination of need and other factors.

Page 19, Section H: Method of Calculation

This section modifies the bed need calculation. LifeSpan requests that the Commission calculate the most recent bed need calculation against this new formula so that we can better understand the impact of the changes.

Again, thank you for the opportunity to submit these comments. LifeSpan again wants to reiterate that it believes additional discussion is necessary prior to moving forward on any final revisions to the State Health Plan. Therefore, LifeSpan recommends that the Nursing Home Workgroup be reconvened to discuss the issues outlined in this letter. We also believe that prior to finalization, the CON Modernization Task Force should also conclude its work to avoid inconsistencies.

Sincerely,



Danna L. Kauffman
Schwartz, Metz and Wise, PA
On Behalf of LifeSpan Network

Sincerely,



Paul N. Miller
Senior VP of Operations and Products
LifeSpan

cc: Linda Cole, MHCC