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Sheppard Pratt

June 7, 2021

VIA EMAIL

Eileen Fleck
Chief, Acute Care Policy and Planning
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, MD 21215
Eileen.Fleck@maryland.gov

Re: Draft State Health Plan for Facilities and Services: Acute Psychiatric Hospital Services, COMAR 10.24.07

Dear Ms. Fleck:

Please accept these comments on behalf of Sheppard Pratt regarding the proposed draft State Health Plan for Facilities and Services: Acute Psychiatric Hospital Services, COMAR 10.24.07 (the "Draft Chapter"), which was published for review and comment on May 7, 2021.

Sheppard Pratt generally supports the Draft Chapter and urges the Commission to propose and adopt the Draft Chapter as a permanent regulation with the modifications to the "adverse impact" standard set forth at COMAR 10.24.07.05B(9) discussed below.

Maryland acute general hospitals and special psychiatric hospitals provide much needed acute inpatient behavioral health services at razor thin or even negative margins. Profit margins for acute psychiatric care are among the lowest of any regulated inpatient service in Maryland. Yet, the Draft Chapter standards provide little to no consideration of the continued financial viability of existing acute psychiatric providers in the process for determining whether to approve a new inpatient psychiatric project subject to Certificate of Need ("CON") review. Through the Total Cost of Care Model Agreement between the State of Maryland and the Centers for Medicare and Medicaid Services, acute general hospitals with inpatient psychiatric programs receive some protection associated with newly established psychiatric programs that may reduce psychiatric patient volumes or result in market share losses, including retained revenue and market shift adjustments. Private special psychiatric hospitals, however, are afforded none of these protections.

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As presently written, the Draft Chapter provides less consideration to the continued financial viability of existing special psychiatric hospitals than nearly every other service or provider type subject to CON review. Certainly, the continued viability of special psychiatric hospitals is given much less consideration under the Draft Chapter than CON review standards governing chronic hospital services and acute inpatient rehabilitation services, two other types of existing special hospitals in Maryland. To this end, the State Health Plan Chapter for Facilities and Services: Special Hospital – Chronic Services, requires that every acute chronic care program in the jurisdiction operate at 85% occupancy before a new chronic care hospital or program may obtain CON approval. COMAR 10.24.08.03A(4). Likewise, the State Health Plan Chapter for Specialized Health Care Services: Acute Inpatient Rehabilitation Services, states that a project subject to CON review "shall not have an unwarranted adverse impact on the cost of hospital services or the financial viability of an existing provider of acute inpatient rehabilitation services." COMAR 10.24.09.04B(3) (emphasis added). Sheppard Pratt understands that "financial viability" within the context of the Acute Inpatient Rehabilitation Services State Health Plan Chapter to mean that a facility retains necessary financial and non-financial resources to remain open. *See* COMAR 10.24.01.08G(3)(e).

The Draft Chapter fails to explain why special psychiatric hospitals operating on the thinnest of margins should be given less protections than those of existing acute chronic or rehabilitation providers.

Sheppard Pratt recognizes that the Draft Chapter does state a "capital project involving psychiatric hospital facilities shall not have an unwarranted adverse impact on hospital charges, availability of services, or access to services." Consistent with the provisions of most other State Health Plan Chapters, this standard should be made applicable to all projects involving acute psychiatric services that require CON review. Further, in order to allow Commission staff to fully assess this impact standard, each CON applicant should have the obligation to provide documentation and analysis of the proposed project on the impact on hospital charges, availability of services, or access to services through the proposed project's impact on existing providers. At a minimum, this documentation and analysis should include:

(1) an estimate of the impact on the proposed project on the patient volume, average length of stay, case payer mix, and case acuity mix at existing acute psychiatric providers in the planning region or from which the CON applicant projects to capture market share;

(2) an estimate of any reduction in the quality of care at other providers that will likely be affected by the project; and

(3) an estimate of any reduction in the ability of affected providers to maintain the specialized staff or resources necessary to provide acute psychiatric services at historic acuity levels.

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Imposing such requirements on a CON application would be consistent with the State Health Plan Chapter for Acute Inpatient Rehabilitation Services, COMAR 10.24.09.04B(3), and would also be consistent with numerous other State Health Plan Chapter standards, including:

- Outpatient Hospice Services – COMAR 10.24.13.05G (requiring a proposed outpatient hospice service provider to demonstrate impact on future demand for the hospice services provided by the existing general hospices authorized to serve each jurisdiction affected by the proposed project);

- Inpatient Hospice Services – COMAR 10.24.13.05P (mandating that an applicant seeking to establish an inpatient hospice "quantitatively demonstrate the impact of the establishment or expansion of the inpatient hospice capacity on existing general hospices in each jurisdiction affected by the project that provide either home-based or inpatient hospice care and in doing so, shall project the impact of its inpatient unit on future demand for hospice services provided by these existing general hospices");

- Home Health Services – COMAR 10.24.16.08G (stating that an applicant to establish a home health agency "shall address the impact of its proposed home health agency service on each existing home health agency authorized to serve each jurisdiction or regional service area affected by the proposed project. This shall include impact on existing HHAs' caseloads, staffing and payor mix.");

- Emergency Hospital Services – COMAR 10.24.19.04B(7) (an applicant seeking to establish a freestanding medical facility "shall also project the impact of the FMF project on each FMF and hospital ED located outside of the parent hospital's or FMF's service area for each hospital and FMF that has a service area that substantially overlaps the parent hospital's ED or the FMF's current or projected service area. This impact projection shall include impact on payer-mix, case mix intensity, and patient volume. A project shall not have an undue adverse impact on the financial viability of any hospital or other FMF."); and

- Ambulatory Surgical Services – COMAR 10.24.11.05B(9)(b) (requiring an applicant for an ambulatory surgical facility to assess "the impact of the proposed project on surgical case volume at acute general hospitals," including "a projection of the levels of use at the affected hospital for at least three years following the anticipated opening of the ambulatory surgical facility").

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Accordingly, Sheppard Pratt suggests that following revisions to the Draft Chapter, COMAR 10.24.07.05B(9):

"(9) Adverse Impact.

(a) A ~~capital~~ project involving psychiatric hospital facilities requiring CON review shall not have an unwarranted adverse impact on hospital charges, availability of services, or access to services. Each applicant must provide documentation and analysis that supports:

(i) Its estimate of the impact of the proposed project on patient volumes, average length of stay, case payer mix, and case acuity mix at other acute inpatient psychiatric providers in the planning region or from which the applicant projects to capture market share;

(ii) Its estimate of any reduction in the quality of care at other providers that will likely be affected by the project; and

(iii) Its estimate of any reduction in the ability of affected providers to maintain the specialized staff or services necessary to provide acute psychiatric services at historic acuity levels.

(b) If the applicant is a Maryland general hospital seeking a capital-related adjustment in its global budget revenue, it shall demonstrate that:

(i) It is an efficient hospital within its peer group as reflected in the most recent integrated efficiency analysis published by Health Services Cost Review Commission;

(ii) If the project involves replacement of physical plant assets, the age of the physical plant assets being replaced exceed the average age of plant for its peer group or otherwise demonstrate why the physical plant assets require replacement to achieve the primary objectives of the project.

(iii) If the project reduces the potential availability or accessibility of psychiatric hospital services by eliminating, downsizing, or otherwise modifying a facility or service, the applicant shall document that each proposed change will not inappropriately diminish the availability or accessibility of the population in the primary service area to acute psychiatric hospital care, including access for the indigent, underinsured, and uninsured."

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Thank you for your consideration of these comments. If you have any questions, please contact me at 410-938-3150 or jwilkerson@sheppardpratt.org.

Respectfully Submitted,

Jennifer Wilkerson
Vice President – Chief Strategy Officer

cc: Paul Parker, Director, Center for Health Care Facilities Planning & Development
Kevin McDonald, Chief, Certificate of Need
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James C. Buck, Gallagher Evelius & Jones LLP