



**MARYLAND HEALTH CARE COMMISSION**  
4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

**MARYLAND HEALTH CARE COMMISSION**  
**Thursday, January 20, 2011**

**Minutes**

Chair Moon called the public meeting to order at 12:00 p.m.

Commissioners present: Conway, Falcone, Fleig, Jefferson, Kan, Krumm, Lyles, McLean, Olsen, Ontaneda-Bernales, Weinstein, and Worthington.

**ITEM 1.**

**Approval of the Minutes**

Commissioner Krumm made a motion to approve the minutes of the December 16, 2010 public meeting of the Commission. Commissioner Worthington asked that the minutes be amended to include his attendance, via telephone, at the meeting. The motion was seconded, and the minutes were unanimously approved, as amended.

**ITEM 2.**

**Update of Activities**

Rex Cowdry, Executive Director, said staff attended the first meeting of the Institute of Medicine's Committee on the Determination of Essential Health Benefits, which is part of the IOM's process to study the Affordable Care Act. He said that the Committee invited Commission staff to discuss the development process of the Comprehensive Standard Health Benefit Plan and the mandated benefit evaluation process, both annual and quadrennial.

Pam Barclay, Director of the Center for Hospital Services, introduced and welcomed Kendall Kodey to the Center for Hospital Services, Hospital Quality Initiatives. Ms. Barclay said Ms. Kodey comes to the Commission from the American College of Cardiology where she worked as a Health Policy Specialist and Senior Coordinator. She will be working to facilitate the development of a cardiac data collection system to support public reporting and hospital performance monitoring.

Ben Steffen, Director of the Center for Information Systems and Analysis, said that Lt. Governor Anthony Brown announced that 61 primary care physician and nurse practitioner practices were

invited to participate in the three-year Patient Centered Medical Homes (PCMH) pilot program. Mr. Steffen said he will present a full update regarding PCMH at next month's public meeting.

Bruce Kozlowski, Director of the Center for Health Care Financing and Health Policy, introduced and welcomed Srinivas Sridhara to the Commission. Mr. Kozlowski said Mr. Sridhara earned a Ph.D. from Johns Hopkins Bloomberg School of Public Health and a Master of Health Sciences from Johns Hopkins School of Public Health. Mr. Sridhara brings to the Commission extensive experience in mental health, project management, research synthesis, advanced statistical analysis, and survey design and analysis. He will be supporting both the Center for Health Care Financing and Health Policy and the Center for Long Term Care and Community Based Services.

Dr. Cowdry said the 2011 legislative session convened on January 12, 2011 and noted that staff provided the Commission with copies of two letters of information that were submitted to the legislature regarding HB 14 - Health Insurance - Medically Underserved Areas and Populations - Reimbursement for Covered Services Rendered by Telemedicine, and HB 16 – Task Force to Study the Use of Telemedicine in Medically Underserved Populations and Areas.

Dr. Cowdry provided staff recommendations on the following bills for action:

- **SB 56 - Health Insurance — Evaluation of Quality of Care and Performance of Health Benefit Plans**

This bill would expand the State's current requirements for health care quality reporting to include preferred provider organizations and other health benefit plan designs entering the market; currently only health maintenance organizations are required to report. Dr. Cowdry said that staff recommended supporting SB 634, with technical amendments. Commissioner Lyles made a motion to accept the staff recommendation, which was seconded by Commissioner McLean and unanimously approved.

**ACTION: SB 56 - Health Insurance — Evaluation of Quality of Care and Performance of Health Benefit Plans - - Support with Amendments, is hereby APPROVED.**

- **SB 57 - Maryland Health Care Commission — Certificate of Need Requirements**

The bill aligns Certificate of Need (CON) requirements for the closure of non-hospital health care facilities with those of a hospital. The process set forth in statutes required a CON not only to establish a health care facility but also to close one. This was changed for hospitals but not for other health care facilities. Staff recommended supporting this bill. Following discussion, Commission Ontaneda-Bernales made a motion to accept the staff recommendation, which was seconded by Commissioner Jefferson and unanimously approved.

**ACTION: SB 57 - Maryland Health Care Commission — Certificate of Need Requirements - - Support, is hereby APPROVED.**

### **ITEM 3.**

Ben Steffen announced that a full update on the Maryland Patient Centered Medical Home program will be presented at the February public meeting.

### **ITEM 4.**

#### **PRESENTATION: Health Insurance Coverage in Maryland through 2009**

Linda Bartnyska, Chief, Cost and Quality Analysis, presented the Health Insurance Coverage Report. Ms. Bartnyska provided an overview of the report's content. She said the report contains information on the characteristics of Maryland's uninsured nonelderly residents, as well as the coverage rates for subsets of the population, including children, young adults, workers, and racial and ethnic minorities. Ms. Bartnyska reported that 14.5% of the State's population under age 65 was uninsured in 2008-2009 and that the rate was not significantly different from the rate reported for this group for the 2006-2007 time period. Ms. Bartnyska noted that the State's effort to reduce the number of uninsured in 2008-2009 was hampered by the economic recession that raised unemployment and pushed some Maryland families into the ranks of the uninsured.

### **ITEM 5.**

#### **ACTION: Annual Mandated Health Insurance Services Evaluation**

Janet Ennis, Chief, Small Group Market, presented the Annual Mandated Health Insurance Services Evaluation report, as required under Section 15-1501 of the Insurance Article. Ms. Ennis said the annual mandate report includes an analysis on the medical, social, and financial impact of proposed mandates that failed during the preceding legislative session. Ms. Ennis noted that this year's report (prepared by Mercer and its sibling company, Oliver Wyman Actuarial Consulting, Inc.) included an analysis of the following proposed changes to existing mandates or proposed newly mandated benefits: extension of habilitation services to patients in older age groups; parity cost sharing for oral chemotherapy drugs; limitations on cost sharing for specialty drugs; preventive physical therapy for insureds with muscular sclerosis; and private duty nursing for insureds with spinal muscular atrophy. Ms. Ennis added that the report does not include recommendations on the proposed mandates and that the Commission was not required to take a position. Dr. Cowdry discussed the prescription drug cost sharing proposal and the oral cancer chemotherapy bill, noting that Commission and Mercer staff met with the medical and pharmacy directors from the five major carriers in Maryland, along with legislative staff and the advocates as part of the review process. He indicated that all parties involved agreed on a cost-sharing cap of \$100/month per prescription as the optimal solution. He then asked the Commission to approve the release of the report to the General Assembly. Commissioner Krumm made a motion to approve the release of the report, which was seconded by Commissioner Jefferson and unanimously approved.

**ACTION: Release of the Annual Mandated Health Insurance Services Evaluation Report, is hereby APPROVED.**

Dr. Cowdry discussed a draft transmittal letter to be submitted to the General Assembly along with the approved mandate report. He provided the following two options for Commission approval:

- Option 1 ....the Commission recommends that the General Assembly take no action establishing new mandated services until final regulations defining the essential benefits package are published.
- Option 2 ...the Commission recommends that the General Assembly carefully examine the likelihood that the services covered by a proposed Maryland mandate would be included in the essential benefits package, and where inclusion is doubtful, defer action until the details of the essential benefits packages are known. The Commission's statutory process for reviewing proposed service mandates will be useful in this regard, as will the Commission's quadrennial evaluation of the cost of all mandated services, which will be submitted to the General Assembly in December, 2011.

Commissioner Worthington made a motion to approve Option 2, which was seconded by Commissioner Krumm and unanimously approved.

#### **ITEM 6.**

- **ACTION: Certificate of Need - Peninsula Regional Medical Center Operating Room Expansion and Renovation**

Peninsula Regional Medical Center applied for a Certificate of Need to expand, renovate, and modernize its surgical facilities. Eileen Fleck, Program Manager, presented the staff recommendation. Ms. Fleck said the project will not change the number of operating rooms at the Medical Center, but will create larger operating rooms to support changes in surgical technology that increase the space requirements for operating rooms and will upgrade the HVAC and power generation systems for the operating rooms. Ms. Fleck said the proposed project will include construction of a two-story, 17,520 square foot addition to the existing surgery department. She said the project is estimated to cost \$17,955,000 and that Peninsula Regional Medical Center plans to fund the project with cash. Ms. Fleck said that Commission staff recommended that the Commission approve the Certificate of Need. Commissioner Jefferson made a motion to approve the staff recommendation, which was seconded by Commissioner McLean and unanimously approved

**ACTION: Certificate of Need - Peninsula Regional Medical Center Operating Room Expansion and Renovation is hereby APPROVED.**

- **Exceptions Hearing: Recommended Decision in the Matter of Proposed New Hospitals in Montgomery County**
  - **Holy Cross of Silver Spring, Inc. (Docket No. 08-15-2286)**
  - **Clarksburg Community Hospital (Docket No. 09-15-2294)**

Vice Chair Falcone stated that he would chair the two agenda items with exceptions hearings, since Dr. Marilyn Moon served as the Reviewer in these matters. Kathleen Ellis, AAG, Acting Counsel to DHMH, served as counsel to the Commission, and Suellen Wideman, AAG, served as counsel to the Reviewer. Commissioners Fleig, Kan, and Ontaneda-Bernales recused themselves.

Vice Chair Falcone said that the Montgomery County New Hospitals review involved applications to establish two new acute general hospitals in Upper Montgomery County. He noted that the review began as a single applicant review of a proposal by Holy Cross Hospital to establish a new hospital in Germantown (Holy Cross-Germantown). Although Clarksburg Community Hospital, a corporation established by Adventist HealthCare, later filed a letter of intent to establish a new hospital in Clarksburg, under the procedural rules that applied at that time, its application could not be considered until the review of the Holy Cross-Germantown application was completed. This changed in April of 2009, when Holy Cross requested that Clarksburg's application be reviewed at the same time as its application; modified applications were later filed by the applicants.

Interested parties include two entities related to Adventist HealthCare: Shady Grove Adventist Hospital and the Shady Grove Adventist Emergency Center at Germantown, which is often referred to as the Germantown Emergency Center. Shady Grove Adventist Hospital and the Germantown Emergency Center supported the application of Clarksburg Community Hospital and opposed the application filed by Holy Cross Hospital-Germantown. These two Adventist Entities, along with Clarksburg Community Hospital, filed joint exceptions to Recommended Decisions. The Montgomery County Department of Health and Human Services is an interested party in the review, but did not file exceptions.

On December 17, 2010, Dr. Moon issued a Recommended Decision to award a CON to Holy Cross Hospital to establish a 93-bed hospital in Germantown, Montgomery County, and that the application of Clarksburg Community Hospital, a corporation formed by Adventist HealthCare, to establish an 86-bed hospital in Clarksburg, Montgomery County, be denied.

Dr. Moon made introductory remarks regarding her Recommended Decision. Dr. Moon said that heard testimony for seven days in August and September, 2010 on issues that she believed would result in information that would help her make a decision in the review. She noted that she considered the huge written record in this review, including comments by the Montgomery County Department of Health and Human Services and others, as well as the written and live testimony at evidentiary hearing, and believed that she had undertaken a thorough analysis of the proposals developed by two strong, existing hospitals serving Montgomery County. Dr. Moon stated that no addition time, information, or work was needed in the review.

Dr. Moon said that she concluded that a single new acute general hospital is needed in upper Montgomery County and that only Holy Cross Hospital complied with all of the State Health Plan standards and was consistent with all CON review criteria. She noted that Clarksburg did not meet six

State Health Plan standards and was not consistent with two review criteria. For these reasons, she recommended that Clarksburg's application be denied.

She recommended that Holy Cross be awarded a Certificate of Need to construct a new hospital in Germantown. She stated that she believed that a new hospital in Germantown will result in hospital bed capacity in upper Montgomery County in a location that will improve access to hospital services for the greatest number of people, and deliver those services at a reasonable cost. Dr. Moon noted that Holy Cross Hospital is well-positioned, financially, to build the hospital and that the Germantown hospital is well-positioned, geographically and demographically, to make the hospital succeed.

Vice Chair Falcone said noted that the Commission had recently received several letters regarding the review, including a letter from State senators and delegates. He noted that the Commission appreciated their interest in the proceeding; however, the letter writers were not interested parties in the review and could not file exceptions to the Recommended Decision. He also noted that many of the same persons had previously submitted letters before the record in this matter was closed.

The Commission then heard oral argument on the written exceptions to the Recommended Decision. William "Bill" Robertson, CEO of Adventist HealthCare, and Howard Sollins, counsel to Adventist HealthCare presented oral argument on the exceptions filed by the Adventist Entities. Jack Tranter, counsel to Holy Cross Hospital, presented argument on behalf of Holy Cross Hospital.

Following the arguments on the exceptions, Dr. Moon stated that, having considered the written exceptions and responses to the exceptions, and having listened carefully to the oral arguments, that her recommendation had not changed. She noted that she had distributed a list of recommended changes to her proposed decision, in response to the exceptions. Dr. Moon pointed out that she had considered matters raised in the exceptions, including: data availability; bed need; the Health Services Cost Review Commission's comments; improved access in the service area; shifting utilization of hospital beds to the growth area in Montgomery County; and the cost effectiveness of the project. Addressing the comments of the Health Services Cost Review Commission on the applications, she noted that, as a health economist, she had paid close attention to the issue of viability, which took place on 4 of the 7 days of testimony. She said that she was confident that her finding, although contrary to the HSCRC's recommendation with respect to the Holy Cross-Germantown project, is correct and consistent with MHCC's policies and standards.

Dr. Moon made a motion that the Commission adopt her Recommended Decision with the changes proposed that had been distributed prior to the meeting, and award a Certificate of Need to Holy Cross Hospital for its Germantown project and deny the application of Clarksburg Community Hospital. Dr. Moon's motion was seconded by Commissioner Krumm. Following discussion among the Commissioners and representatives of the applicants, Vice Chair Falcone called for a vote and the Certificate of Need was unanimously approved for Holy Cross Hospital's Germantown project by the nine Commissioners voting on the matter. Vice Chair Falcone did not vote.

**ACTION: Certificate of Need in the Matter of Proposed New Hospitals in Montgomery County, Holy Cross of Silver Spring, Inc. (Docket No. 08-15-2286) is hereby APPROVED.**

- **Exceptions Hearing: Recommended Decision in the Matter of the Proposed Expansion and Renovation of Holy Cross Hospital of Silver Spring, Inc. (Docket No. 08-15-2287)**

Vice Chair Falcone said that Holy Cross Hospital of Silver Spring submitted an application for a Certificate of Need for a renovation and construction project at its Silver Spring campus. Commissioners Fleig, Kan, and Ontaneda-Bernales recused themselves from this matter as well.

Vice Chair Falcone said that the proposed project seeks to construct a new patient tower and to replace 150 of the beds at the hospital, creating many more private patient rooms to replace semi-private rooms. He noted that the hospital is currently licensed to operate up to 402 acute care beds and plans to operate 369 beds in 360 patient rooms after the project is completed. Renovations on three floors are proposed regarding dialysis services, ambulatory surgery services, post-surgical recovery, and materials management. The project will also include a new central utility plant, a large addition to an existing parking garage, and additional surface parking. The project is estimated to cost \$228.8 million. Shady Grove Adventist Hospital is an interested party in this review. Dr. Marilyn Moon served as the Reviewer in this matter. On December 17, 2010, she issued her Recommended Decision, in which she recommended that the Commission grant a Certificate of Need to Holy Cross Hospital for this project, with seven conditions. Shady Grove Adventist Hospital filed exceptions to the Recommended Decision and Holy Cross Hospital filed responses.

The Commission conducted an exceptions hearing prior to acting on the Recommended Decision. The Commission heard oral argument on the exceptions from Howard Sollins, counsel for the interested party, Adventist HealthCare, Inc., doing business as Shady Grove Adventist Hospital, and from Jack Tranter, counsel to Holy Cross Hospital.

After completion of the oral arguments, Dr. Moon said that she had considered the written exceptions, responses to exceptions, and the oral arguments presented and that she had not changed her opinion that her proposed decision is correct. She recommended that the Commission award a CON, with conditions, to Holy Cross Hospital that will permit it to renovate its Silver Spring campus. Dr. Moon added that the primary impact of this project will be to allow Holy Cross Hospital to operate many more private patient rooms. It proposes to operate a bed complement of 369 beds upon completion of the project, which is ten fewer beds than the hospital currently has the ability to operate. She noted that creating more private rooms has been either a primary, or an important secondary objective of most of the hospital construction projects recently considered by the Commission. Constructing more such rooms has been supported by the Commission on the basis that they enhance patient safety and enable hospitals to operate at higher average bed occupancy levels. In addition, older existing patient rooms, such as those being replaced in this project, are small by contemporary standards and are congested by the equipment now being used in many patient rooms.

Dr. Moon said that the recommended conditions for this CON will: limit the ability of Holy Cross Hospital to exceed the operational bed capacity parameters it has proposed in its application without returning to the Commission for approval; exclude a portion of the project cost from consideration in any future rate request for recognition of project cost; and limit the ability of the hospital to obtain recognition of shell space cost or to use shell space without returning to the Commission. She noted that the hospital will continue to have old building space with serious functional limitations and deficiencies after the proposed project is completed. This is consistent with Commission decisions on large hospital capital projects in recent years and with Commission policies and regulations. This is

necessary because it would be impractical to have a more rigid approach that would require a hospital to resolve every long-term facility or campus issue whenever replacements are proposed.

Dr. Moon added that the Holy Cross Hospital plan for its existing campus reflects the most desirable approach if Holy Cross also proceeds with the Germantown proposal. She said that the recommended conditions will provide the Commission with reasonable control over further configuration of the Holy Cross campus that changes bed capacity.

Dr. Moon noted that she had ruled earlier that there is no basis for delaying Commission action on this project on the basis that Holy Cross did not provide Adventist with information that it provided to HSCRC on November 30, 2010 concerning the assumptions in has used in its financial projects for the project. She pointed out that her ruling noted that, on December 17, 2010, Adventist had the HSCRC staff opinion that the Holy Cross project is financially feasible. The HSCRC opinion specifically referenced Holy Cross's submission of information on November 30<sup>th</sup>. Therefore, the interested party had an opportunity to obtain that data and evaluate whether the HSCRC staff opinion appropriately evaluated and weighted its importance in reaching its conclusion that the Holy Cross project is financially feasible. She noted that HSCRC typically asks hospital CON applicants for information that reflects the financial projections filed as part of the CON application, but involve presentation of the data using formatting and presentation rules other than those used by the MHCC in the CON application instructions. Dr. Moon stated that this is the case in this matter and that no additional time or analysis was needed in this review. She added that the project is a good one, will bring the facilities at Holy Cross Hospital at Silver Spring into the 21<sup>st</sup> century. Dr. Moon made a motion that the Commission adopt her Recommended Decision and award a Certificate of Need to Holy Cross Hospital to expand and renovate its existing Silver Spring campus facilities with the seven conditions that she had recommended. This motion was seconded by Commissioner Krumm. Following discussion among the Commissioners, Vice Chair Falcone called for a vote and the Certificate of Need was unanimously approved for Expansion and Renovation of Holy Cross Hospital of Silver Spring, Inc. by the nine Commissioners voting on the matter. Vice Chair Falcone did not vote.

**ACTION: Certificate of Need in the Matter of the Expansion and Renovation of Holy Cross Hospital of Silver Spring, Inc., Docket No. 08-15-2287, is hereby APPROVED.**

## **ITEM 7.**

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 2:45 p.m., upon motion of Commissioner McLean, which was seconded by Commissioner Jefferson and unanimously approved.