

Craig P. Tanio, M.D.
CHAIR



Ben Steffen
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

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

Thursday, March 23, 2017

Minutes

Chairman Tanio called the meeting to order at 1:00 p.m.

Commissioners present: Carr-York, Hafey, Metz, Moffit, Phillips, Pollak, Sergent, Stollenwerk, and Tomarchio. Commissioner O'Connor participated via telephone.

ITEM 1.

Approval of the Minutes

Commissioner Pollak made a motion to approve the minutes of the February 16, 2017 public meeting of the Commission, which was seconded by Vice Chair Phillips and unanimously approved.

ITEM 2.

Update of Activities

Chairman Tanio referred the Commissioners to the written Update of Activities for the month.

ITEM 3.

ACTION: Certificate of Need – Exceptions Hearing on Revised Recommended Decision – Baltimore/Upper Shore Cardiac Surgery Review – Anne Arundel Medical Center (Docket No. 15-02-2360) and University of Maryland Baltimore Washington Medical Center (Docket No. 15-02-2361)

Chairman Tanio announced that, because he had served as Reviewer in this matter, Commissioner Stollenwerk would chair the meeting for this agenda item.

Commissioner Stollenwerk noted that Commissioners Phillips, Carr-York, and Pollak were recusing themselves from participation in this matter. They then left the meeting. Commissioner

Stollenwerk then announced that each applicant, Anne Arundel Medical Center (or AAMC) and the University of Maryland Baltimore Washington Medical Center (or BWMC) filed an application seeking Certificate of Need approval to establish cardiac surgery services. Each applicant was recognized by Commissioner Tanio as an interested party in the other's application. In addition, Commissioner Tanio recognized other interested parties: Dimensions Health Corporation, which does business as Prince George's Hospital Center; LifeBridge Health, Inc., which does business as Sinai Hospital; two MedStar Health hospitals, MedStar Union Memorial Hospital and MedStar Washington Hospital Center; and the Anne Arundel County Health Department. Anne Arundel County was recognized as a participating entity in the review.

Commissioner Stollenwerk pointed out that, on December 30, 2016, Commissioner Tanio issued his initial recommended decision in the review. After the filing of exceptions and AAMC's response to exceptions, Dimensions filed a motion to strike the December 2016 recommended decision. Commissioner Tanio denied the motion. However, he stated that the parties should have additional time to comment on data from the Virginia Health Information discharge data set, as well as the record layout for the previously provided 2020 Nielsen population projections that were inadvertently omitted from the record, in addition to other data that had previously been admitted into the record. Commissioner Stollenwerk stated that, on March 3, 2017, Commissioner Tanio issued a Revised Recommended Decision in the review and noted that Assistant Attorney General Deborah Donohue would be assisting her during the exceptions hearing.

Before the exceptions hearing began, Commissioner Sergent noted that, in 2014 and 2015, the CEO of CareFirst Blue Cross Blue Shield had sent letters regarding this review. He noted that he was not a party to any discussion relating to those letters, that he had reviewed the issue of the letters with the State Ethics Commission and with CareFirst's internal compliance officer, and concluded that there was no reason for him to recuse himself under the ethics code.

In his initial remarks, Commissioner Tanio recognized the enormous amount of work that had been put into the review by the applicants and the interested parties and noted that he had found reasons to support each of these proposals. He added that, on balance, after analysis of the huge written record in this review he had found more reasons to support the proposal put forth by AAMC, which (unlike BWMC) met each applicable standard and criterion. He stated that, if his Revised Recommended Decision were adopted by the Commission, the high quality cardiac surgery program that AAMC will establish will benefit patients and their families who live in in Anne Arundel County and the region's Eastern Shore counties.

Commissioner Stollenwerk stated that written exceptions to the Revised Recommended Decision were filed by applicant BWMC, and by interested parties Dimensions, and the MedStar hospitals. She noted that the other interested parties, Anne Arundel County Health Department and LifeBridge Health, did not file exceptions and that the only participating entity in the review, Anne Arundel County, did not file comments or request an opportunity to address the Commission.

The Commission conducted an exceptions hearing prior to acting on the Reviewer's Revised Recommended Decision. The Commission heard oral arguments from the following parties: Baltimore Washington Medical Center, through counsel Tom Dame; Dimensions Health Corporation, through counsel Natalie McSherry; the MedStar Hospitals, MedStar Union Memorial Hospital and MedStar Washington Hospital Center, through counsel John Brennan;

and Anne Arundel Medical Center, through counsel Barry Rosen. Each of the parties taking exceptions presented arguments in rebuttal to the argument by AAMC.

Commissioner Tanio spoke next, noting that he had read the written exceptions and had listened carefully to the arguments and that his recommendation remained unchanged. As detailed in his Revised Recommended Decision, he recommended that the Commission award Anne Arundel Medical Center a CON to establish cardiac surgery services.

He again noted the positive impact that either of the proposed programs would have on costs to the health care delivery system in Maryland but stated that he must balance the potential benefits that may be obtained through increasing the number of cardiac surgery programs against the need to move carefully and cautiously in expanding such programs. He pointed out that cardiac surgery case volume had declined approximately 30% in Maryland between 2000 and 2011 and that volume has rebounded about 13% since 2011. He stated that the overall trend suggests that it is prudent to approve only one new cardiac surgery program and that program should be that proposed in AAMC's application, which met all applicable standards and criteria.

Commissioner Tanio said that he had tried to find the appropriate balance among considerations of need for the proposed new cardiac surgery programs and the impact of the proposed programs. He stated that he had considered the impact on the cost of care, on access to care, on the quality of care, and on existing providers of cardiac surgery.

He noted that, in recent years, Maryland has reconfigured its system of regulatory oversight for cardiac surgery and PCI services. He said that this process was strongly aided by the advice and guidance of two panels, including the MHCC's Clinical Advisory Group (composed of regional and national experts), which played a primary role in the development of the standards in the Cardiac Surgery Chapter. Commissioner Tanio pointed out that the 2014 Cardiac Surgery Chapter created opportunities for consideration of new programs that did not exist in previous chapters, noting that earlier Cardiac Surgery Chapters used regional case projections and other rules as a basis for determining whether the MHCC would accept applications. He stated that the 2014 Chapter provides that an applicant may establish a cardiac surgery program if it can show that it will meet the required minimum volume of cardiac surgery cases and that it complies with other standards and criteria, including that the new program not have an impact of a specified magnitude on existing providers. He noted that the 2014 Cardiac Surgery Chapter does not contain a barrier to filing an application seeking to establish a cardiac surgery program.

Chairman Tanio discussed the rationale behind his recommendation, with particular emphasis on a limited number of issues, all of which were raised in the exceptions: (1) impact on existing providers, particularly on Prince George's Hospital Center; (2) his projection of cardiac surgery case volume that each applicant would be likely to achieve; (3) need; (4) access; (5) financial feasibility and the Commission's intent in adopting the 2014 Cardiac Surgery Chapter; and (6) financial impact.

In summary, Commissioner Tanio said that Anne Arundel Medical Center met all the standards and criteria required to establish a cardiac surgery program. He stated that it made the stronger case of the two applicants for developing a program that will operate at an appropriate case volume and showed that it will be able to deliver cardiac surgery services that are effective and of high quality. He pointed out his finding that the new cardiac surgery program at AAMC will not have an impact on existing cardiac surgery providers that warrants denial of this single application. AAMC will be able to offer the service while maintaining profitability and long-

term viability and that the proposed program will provide an improvement in access and a decrease in travel times, particularly for residents of the Upper Shore counties. He stated that the Commission has the opportunity to approve a new cardiac surgery program that will result in substantial savings to the health care delivery system and the lowering of charge for cardiac surgery for residents of the Baltimore and Upper Shore region. He noted that his recommendation does not preclude BWMC from coming back to the MHCC at a future time once there is concrete evidence of the impact on the movement of cardiac surgery volume from a high cost center to a lower cost center on cost, quality, and access.

Commissioner Tanio made a motion that the Commission adopt his Revised Recommended Decision as its decision and approve the establishment of cardiac surgery services at Anne Arundel Medical Center, with the four conditions he had recommended, and that the Commission deny the application of the University of Maryland Baltimore Washington Medical Center. This motion was seconded by Commissioner Moffit, who thanked Commissioner Tanio for comprehensive work on a very difficult and challenging project. Commissioner Moffit noted his concern for the people in Prince George's County because he had done an extensive study of their circumstances. He noted the tremendous potential that CON-approved Prince George's Regional Medical Center (PGRMC) holds for the improvement of the health of Prince George's County residents. Commissioner Moffit noted that PGRMC's location in Largo will give the hospital an opportunity to reverse the out-migration of County residents to Washington, D.C. for hospital services. He noted his belief that the creation of a cardiac surgery program at AAMC will not in any way jeopardize the future of PGRMC and stated his belief that the future is very bright for Prince George's County. Commissioner Sergent thanked Commissioner Tanio for a very thorough review. As there was no further discussion, Commissioner Stollenwerk called for a vote. The Commissioner present and voting, Commissioners Hafey, Metz, Moffit, O'Connor, O'Grady, Sergent, Tanio, and Tomarchio voted unanimously in favor of the motion. Commissioners Carr-York, Phillips, and Pollak recused themselves from this action.

ACTION: Certificate of Need – Baltimore/Upper Shore Cardiac Surgery Review – the Revised Recommended Decision is Adopted as the Decision of the Commission, the application of Anne Arundel Medical Center (Docket No. 15-02-2360) is hereby APPROVED, and the application of University of Maryland Baltimore Washington Medical Center is hereby DENIED.

ITEM 4.

ACTION: Changes in Membership of the Cardiac Services Advisory Committee

Eileen Fleck, Chief of Acute Care Policy and Planning, provided background information on the Cardiac Services Advisory Committee, noting that it is a standing committee that was established in the fall of 2014 to provide a forum for ongoing guidance on the implementation of regulations for cardiac surgery and PCI services. Ms. Fleck said that the current Committee includes six members who represent hospitals that provide only PCI services, eleven members represent hospitals that provide both cardiac surgery and PCI services, and three members represent organizations other than Maryland hospitals. Staff recommended four membership changes and noted that the proposed changes had been approved by the chief executive officer of the organizations represented. The recommended changes are the following: Rawn Salenger, M.D. to replace James Gammie, M.D., one of the two representatives from the University of Maryland

Medical System; John Wang, M.D. to replace Bill Thomas, M.D., one of the two representatives from MedStar Health; James Ridge to replace Sharon Sanders as the representative from Carroll Hospital Center; and Brett Kane to replace Jesus Cepero, Ph.D., as the representative from Meritus Medical Center. Commissioner Stollenwerk made a motion to approve the staff recommendation, which was seconded by Commissioner Metz, and unanimously approved. The applicant and interested parties' exceptions and responses to the discussion are available online at the following link: https://youtu.be/5C_LvjOi3vM.

ACTION: Changes in Membership of the Cardiac Services Advisory Committee are hereby APPROVED.

ITEM 5.

PRESENTATION: Update of State Health Plan Regulations for General Surgical Services, COMAR 10.24.11

Ms. Fleck provided an overview of the current regulations for general surgical services. She explained the suggested changes, as well as feedback from the Surgical Services Workgroup. Ms. Fleck said that the Commission staff were asked to develop regulations for a CON-exemption process by which a provider of ambulatory surgical services could add a second operating room. She noted that the Commission had not previously implemented regulations for such an exemption. She also noted that the State Health Plan Chapter for General Surgical Services needed to be updated to account for proposed regulations for freestanding medical facilities that had been adopted by the Commission. Ms. Fleck outlined the draft regulations and standards, and the draft exemption process for establishing an ambulatory surgical facilities with two operating rooms. The Commission members discussed the regulatory framework for Certificate of Need and planning for health services. That discussion is available online at the following link: https://youtu.be/5C_LvjOi3vM

ITEM 6.

Overview of Upcoming Initiatives

Ben Steffen, Executive Director, announced that the Commission will take final action on the User Fee Assessment regulations, consider a Certificate of Need, and will present findings from Round 2 of the telehealth grant and provide a live demonstration. Ms. Steffen also noted that Erin Dorrien will provide a wrap up of the 2017 Legislative Session.

ITEM 8.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:35 p.m. following a motion by Commissioner O'Grady, which was seconded by Commissioner Stollenwerk and unanimously approved.