

Andrew N. Pollak, M.D.
CHAIR

STATE OF MARYLAND



Ben Steffen
EXECUTIVE DIRECTOR

MARYLAND HEALTH CARE COMMISSION

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

Thursday, March 19, 2020

Minutes

Chairman Pollak called the meeting to order at 1:00 p.m. He began by reviewing the Commission's protocols for convening a virtual meeting. He stated that the meeting is permitted under the Commission's statute, which talks about members, "present and voting." There is no restriction limiting presence to being present in the room, present remotely is being present.

Commissioners present via telephone: Bhandari (attending not voting), Boyer, Boyle, Doordan, Hammersla, McCarthy, Metz, O'Connor, O'Grady, Rymer, Sergent and Wang.

AGENDA ITEM 1.

Approval of the Minutes

Commissioner O'Grady made a motion to approve the minutes of the February 20, 2020 public meeting of the Commission. The motion was seconded by Commissioner Sergent and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Ben Steffen, Executive Director, stated that the work at the Maryland Health Care Commission (MHCC or Commission) has pivoted towards a full focus on COVID-19 issues. Mr. Steffen, reported that he is participating in the Surge Capacity Task Work, which will identify additional hospital capacity that can be brought online.

Mr. Steffen stated that during the Surge Capacity Task Force calls, MHCC and the Office of Health Care Quality (OHCQ) agree that action by the Commission is not needed for an acute general hospital to bring unused physical bed space back online. Under its regulations, the OHCQ can approve a temporary increase in the hospital's licensed bed capacity. Mr. Steffen reported that OHCQ plans to approve these temporary bed increases to last until 30 days after Governor Hogan terminates the state of emergency that he declared on March 5th.

Next, Mr. Steffen stated that MHCC's Executive Director can issue an Emergency Certificate of Need (CON) to address the COVID-19 pandemic after consultation with MHCC's Chairman and receipt of suitably detailed information from the OHCQ regarding the need for prompt action. Turnaround time on an Emergency CON request is expected to be within 24 hours. In the Emergency CON application, it is necessary to include the following: A description of what it wants to do (example: re-open 24 inpatient beds); where (example: on the closed 3-South wing); when the project is expected to be brought on-line (example: 14 days); and the approximate cost, if known.

Mr. Steffen also stated that an Emergency CON is initially valid for 165 days or until 30 days after the termination of the state of emergency declared by Governor Hogan on March 5, 2020. This date may be extended for good cause shown under a waiver authorized by COMAR 10.24.01.20C. Mr. Steffen added that if the hospital or health care facility does not intend to close the beds, etc. approved through an Emergency CON at the end of the emergency, it must file a formal CON application within 30 days of the termination of the state of emergency by Governor Hogan.

AGENDA ITEM 3.

ACTION: Certificate of Need – Baltimore Detox Center, LLC – Establish an Alcoholism and Drug Abuse Intermediate Care Facility (Docket No. 18-03-2419)

Kevin McDonald, Chief-CON Division, stated that Baltimore Detox Center, LLC, seeks to establish a 24-bed Track One intermediate care facility offering Level 3.7-WM (detoxification) services for adults in Woodlawn, Baltimore County. The total cost to renovate two floors located in an existing building is \$585,982, which Baltimore Detox Center will fund with cash.

Mr. McDonald stated that Maryland House Detox initially sought and received interested party status for this project, and subsequently dropped its opposition to the project and withdrew as an interested party. The review reverted back to MHCC staff, which had identified a number of inconsistencies and problems with the application, and determined that a project status conference would be required to give the applicant the opportunity to make the changes that could render the project approvable. The applicant made the necessary corrections and modifications.

Mr. McDonald indicated that the calculated bed need was significant, (i.e., a net need for 85 to 126 Track One ICF beds by the year 2023 in the Central Maryland planning region). He presented the staff recommendation to approve the project, because the applicant met the standards in the ICF Chapter of the State Health Plan and adequately addressed the need, cost effectiveness, financial viability, and impact of the project. Staff also recommended that the CON include four conditions that address the provision of care to the indigent and gray area patients, accreditation, transfer agreements, and referral agreements with providers of outpatient alcohol and drug abuse programs.

Commissioner Boyer made a motion to approve the CON which was seconded by Commissioner Hammersla and unanimously approved.

ACTION: Certificate of Need – Baltimore Detox Center, LLC – Establishment of a new 24-bed Track One Intermediate Care Facility providing Level 3.7-WM, Medically Monitored Intensive Inpatient Withdrawal Management (Detoxification) facility with four conditions that address the provision of care to the indigent and gray area patients, accreditation, transfer agreements, and referral agreements with providers of outpatient alcohol and drug abuse programs – is hereby APPROVED.

AGENDA ITEM 4.

ACTION: Change in Approved Certificate of Need – Brinton Woods Health Care Center, LLC – Relocation of a Comprehensive Care Facility (Docket No. 18-06-2422)

Kevin McDonald stated that Brinton Woods Health and Rehabilitation at Winfield requested a project change after Certificate of Need (CON) approval (modification) of a CON granted in October 2018 to authorize an increase of the total allowable project costs from \$14,837,500 to \$17,176,140. Mr. McDonald stated that Brinton Woods attributes the cost increase to the fact that the original cost estimates were made without the benefit of a final architectural design; inflation of construction costs and changes in market conditions; and additional site work necessitated by an unanticipated amount of rock that had to be demolished and removed from the site.

Mr. McDonald stated that because there are no material changes occurring either in the location capacity or nature of the project, the staff concludes that this requested modification does not change the need for the project or its impact on existing providers, consistent with the Commission's prior findings in the initial CON review. He added that the cost increase will not result in higher costs for the Medicare and Medicaid programs and that the applicant will cover the additional cost with cash on hand. For these reasons, he stated that the staff recommends that the Commission APPROVE the proposed changes to the CON issued to Brinton Woods Health and Rehabilitation at Winfield to construct a 60-bed comprehensive care facility (Docket No. 13-16-2347) and issue a Modified Certificate of Need.

Commissioner Hammersla made a motion to approve the requested project change after CON approval, Commissioner Boyer seconded, and the Commission unanimously approved the change.

ACTION: Project Change after Certificate of Need (CON) Approval - Brinton Woods Health Care Center, LLC – Relocation of a Comprehensive Care Facility - is hereby APPROVED.

AGENDA ITEM 5.

ACTION: Confirmation of Approved Emergency Certificate of Need -- Establishment of 32 Additional Inpatient Beds at Mercy Medical Center (Docket EM-H20-24-001)

Paul Parker, Director of the Center for Health Care Facilities Planning and Development, briefed the Commissioners on an emergency CON order (EM-H20-001) issued by Ben Steffen, Executive Director, on March 18, 2020. This emergency CON authorizes Mercy Medical Center, in downtown Baltimore, to fit out a 30,000 square foot floor of shell space to create a 32-bed medical/surgical unit at an estimated cost of \$12.5 million. The hospital projects that completion of this bed addition can be completed within 75 days, and it anticipates that the project funding will come from

philanthropic sources. This is the first emergency CON issued as part of the State's effort to expand hospital bed capacity during the COVID-19 public health emergency.

Mr. Parker noted that Mercy Medical Center completed construction of a high-rise building in 2010, the Mary Catherine Bunting Center, adjacent to the existing hospital campus, which served as a replacement for nearly all of the general hospital's facilities. The new building was authorized to contain substantial amounts of shell space, allowing for a phased transition of the hospital's facilities to the new space and allowing for a reduction in the amount of debt financing required for completion of the replacement facility. Mercy Medical Center has obtained several additional CONs in the past 10 years to implement this phased transition to the new building. The 17th floor that is the subject of the emergency CON is the last remaining shell space available for creation of an additional inpatient care unit. The emergency CON requires Mercy Medical Center to file a full application for a CON for the bed addition within 30 days of the termination of the state of emergency declared by Governor Hogan on March 5, 2020.

Mr. Parker recommended that the Commission confirm the issuance of the emergency CON. Commissioner O'Grady made a motion to approve the Emergency CON which was seconded by Commissioner Boyer and unanimously approved.

ACTION: Confirmation of Approved Emergency Certificate of Need -- Establishment of 32 Additional Inpatient Beds at Mercy Medical Center is hereby APPROVED.

AGENDA ITEM 6.

ACTION: Legislative Update

Megan Renfrew, Chief of Government Affairs and Special Projects, gave a brief update of legislative activities from the 2020 session of the Maryland General Assembly. Ms. Renfrew noted that the legislature adjourned on March 18th due to the COVID-19 pandemic, compressing three weeks of work into just a few days. The only legislative step remaining is for the Governor to sign or veto bills.

Ms. Renfrew stated that the Maryland General Assembly is expected to reconvene in late May in Special Session to consider urgent legislation related to the impact of COVID-19 on State operations or the State Budget. The staff does not expect the General Assembly to reconsider bills that did not pass during the regular legislative session.

Ms. Renfrew reviewed the status of priority bills for the Commission. SB 106, which aimed to deregulate State-owned facilities from CON, failed early in the legislative session. HB 1486 / SB 752, a bill to establish a prescription record system to share non-controlled prescription drug data with providers, also failed in committee. The MHCC also had a strong organizational interest in the funding bill for the Prescription Drug Affordability Board (PDAB) HB 1095 / SB 669, as this bill would have allowed the PDAB to pay the Commission back for loaned funds. The PDAB funding bill passed.

The State budget package (HB 150 /SB 190 Budget Bill (Fiscal Year 2021) and HB 152 / SB 192 Budget Reconciliation and Financing Act of 2020) is also important to MHCC, as it contains its operating budget. The budget package is often also a vehicle for reporting requirements or other

legislative requests. This year the budget bills moved smoothly, the Commission's budget stayed intact, and no additional reporting requirements were assigned to the Commission.

Ms. Renfrew also provided updates on other bills of interest to the Commission:

- The bills related to anesthesia in ambulatory surgery centers (HB 935 / SB 728) passed with amendments agreed upon by Commission staff and the Maryland Society of Anesthesiologists.
- The legislature considered a number of bills related to the use of electronic prescriptions for controlled substances. Two of these bills (HB 512 and SB 166) passed. These bills require the Commission to identify prescribers with a low volume of prescriptions and collaborate with the Maryland Department of Health (MDH), as MDH develops regulations.
- The Opioid Operational Command Center hoped to deregulate intermediate care facilities that provide drug and alcohol treatment this year although the bill (HB 1572) did not move forward. The Commission had attempted to move a similar bill two years ago.
- The bill related to the Maryland Loan Assistance Repayment Program for Physicians and Physician Assistants (HB 998 / SB 501) passed. The MDH will create a stakeholder workgroup to recommend a permanent source of funding.
- The outpatient facility fee notice bill (HB 915 / SB 632) passed. This bill does not apply to emergency department visits. The effective date of this bill is delayed until July 2021.
- A bill related to notice of hospital closures (HB 926) failed to move forward this year (the third year that it has failed). The Vice Chair of the Health and Government Operations Committee asked that we work with the sponsor on her concerns.
- Bills passed to provide Medicaid payment for telehealth visits for mental health in a patient's home, as well as permitting asynchronous telehealth.
- Existing health insurance mandates on IVF and prostate cancer screening were expanded, and a mandate for health insurance coverage of pediatric autoimmune neuropsychiatric disorders was added.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 7.

PRESENTATION: Maryland Nursing Home Family Experience of Care 2019 Survey Results

Stacy Howes, Chief of Long Term Care and Health Plan Quality initiatives, presented the results of the Commission's 2019 Nursing Home Family Experience Care Survey. The Commission administers the survey almost annually, and it is intended to show levels of satisfaction with a loved one's care in Maryland nursing homes. Loved ones are surveyed, and the results are used to evaluate quality of care and performance in Maryland nursing homes. The 2019 results show that scores on the survey have been steadily declining. Also, the scores are strongly correlated with the CMS stars for nursing homes in Maryland, and this indicates that family satisfaction rates are closely related to quality in nursing homes. Even though survey scores have declined, they are still in the "good" range for all categories, and because they continue to decline, staff has begun to reach out to the nursing home community, Quality Improvement Organization groups, and the Department of Aging to analyze solutions and ways in which the Commission can help nursing homes improve. Commissioners suggested analyzing responses over the past few years to determine what

areas have changed the most, as well as examining the highest performing nursing homes to provide other homes with best practices.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 8.

Overview of Upcoming Activities

Mr. Steffen stated that April's Commission meeting would include several CON applications, a presentation on Spending for the Privately Insured, and a presentation on the Online Telehealth Readiness Assessment Tool.

AGENDA ITEM 9.

ADJOURNMENT

There being no further business, the meeting was adjourned at 2:27 p.m. upon motion of Commissioner Hammersla, which was seconded by Commissioner Boyer and unanimously approved.