



MARYLAND HEALTH CARE COMMISSION

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Thursday, July 15, 2021

Minutes

Chairman Pollak called the meeting to order at 1:05 p.m.

Commissioners present via telephone: Akintade, Bhandari, Boyer, Boyle, Brahmhatt, Doordan, Metz, O’Grady, Rymer, Sergent and Wang

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Sergent made a motion to approve the minutes of the June 17, 2021, public meeting by teleconference of the Commission. The motion was seconded by Commissioner Boyle and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Ben Steffen, Executive Director (ED), noted that responses to the All-Payer Claims Data Base procurement were received on Monday and that staff will be moving through the process as carefully and efficiently as possible.

Next, Mr. Steffen reported that, on July 14, a pre-bid conference was held on the Telehealth Study Request for Proposals (RFP) as a result of the passage of Senate Bill 3/House Bill 123, and that responses to the RFP are due on August 13. Mr. Steffen notes that this is a special emergency procurement given the timeframe that the study must be completed.

Mr. Steffen stated that the Commissions’ Annual Report that reflects the Commission’s work done in 2020 has been circulated. Mr. Steffen thanked Theresa Lee, Richard Proctor, Tracey DeShields, Shadae Paul, and the Commission’s contractor who helped with the development of the Annual Report. Going forward, the plan is to publish the 2021 Annual Report a little earlier so that it is available for presentations at legislative committees in February 2022.

Lastly, Mr. Steffen reported on the Commission's Operating Budget. He noted that the Maryland Physician's Trauma Fund partially funds the Maryland Primary Care Program. The total budget that the Legislature approved is \$35 million, which includes the MHCC Operating Budget, the Trauma Fund Budget, and the operating grant from MEMSOF to Shock Trauma. The Operating Budget for the Commission is \$17.9 million for Fiscal Year 2022. The Commission will close out Fiscal Year 2021 with about \$4.5 million in surplus.

AGENDA ITEM 3.

ACTION: Emergency Certificates of Need Pursuant to Secretary Schrader's Request for a Continuation Through the 2022 Flu Season

Paul Parker, Director of Health Care Facilities Planning and Development, briefed the Commission on the request by the Secretary of the Maryland Department of Health, Dennis Schrader, to extend the period of emergency Certificate of Need (CON) authorization for hospital bed capacity additions previously issued during the pandemic, from September 15, 2021 through April 30, 2022, which corresponds to the end of the 2021-2022 influenza season. Mr. Parker reported that the Commission's Executive Director, Ben Steffen recommended that the Commission agree to the Secretary's request. Mr. Parker noted, in a related matter, that the Maryland Department of Health was also suspending, for the second consecutive year, the annual update of licensed acute care hospital bed capacity because of the pandemic.

The Commissioners discussed the Secretary's extension request and posed several questions. In response, Mr. Parker noted that hospitals were not required to use the authority granted by an emergency CON to keep additional beds set up and staffed because of the extension of the emergency CONs. In addition, he also stated that most of the additional hospital bed authorized by the emergency CONs were not currently being implemented because the number of patients hospitalized for a COVID-19-related illness can be accommodated in existing space. Thus, the extension of the authority granted by the emergency CON will be, in effect, a continuation of approved contingency plans allowing hospitals to add beds over the fall, winter and early spring months, if necessary, to manage surges in patient census, without returning to MHCC.

Chairman Pollak stated that, in his view, there is merit in extending the emergency authorizations because COVID-19 cases have begun increasing in Maryland in recent weeks, with a doubling of the State's positivity rate in the past three weeks.

The ability to assess the cost of the emergency CONs was discussed. It was noted that cost estimates for the actions necessary to implement the emergency CONs were provided by the hospitals applying for the CONs. Most hospitals are not incurring ongoing costs given that most are not implementing the approved bed additions, but that there are ongoing costs in maintaining the temporary modular additions or tent-style units that have been placed on some hospital campuses.

Commissioner Akintade stated that experience in issuing emergency CONs should allow the standardization of this kind of response to situations that may arise in the future. Mr. Steffen noted

that MHCC had procedural regulations in place for issuing emergency CONs and these were adapted for the specific state of emergency that was addressed in 2020. This experience will be considered in updating these regulations, slated for the coming year.

The Commission then moved to vote on the motion, and it was unanimously approved. Mr. Parker noted that the MHCC staff would develop updated guidance for hospitals based on the Commission's action.

Commissioner Doordan made a motion that the Commission adopt Mr. Steffen's recommendation to extend hospital all emergency certificates of need pursuant to Secretary Schrader's Request for through the end of 2012-2022 influenza season, which was seconded by Commissioner Akintade and unanimously approved.

ACTION: Maryland Department of Health Secretary's Request that the Commission Extend all Hospital Emergency Certificates of Need Through the End of the 2021-2022 Flu Season is hereby APPROVED.

AGENDA ITEM 4.

ACTION: Certificates of Ongoing Performance – Percutaneous Coronary Intervention Services - Adventist HealthCare Shady Grove Medical Center (Docket# 19-15-CP030)

Stephanie Kersheskey, Program Manager, Acute Care Policy and Planning, presented the staff report for the Certificate of Ongoing Performance application for Percutaneous Coronary Intervention (PCI) services of Adventist HealthCare Shady Grove Medical Center (SGMC). She reviewed SGMC's compliance with key standards, and she recommended that the Commission find SGMC met all standards and approve the Certificate of Ongoing Performance for SGMC to continue providing primary PCI services for four years. No questions or concerns were raised by the Commission. The Commission approved staff's recommendation. The hospital representatives for SGMC who attended the meeting were: Karen Wolske, Chest Pain Center Coordinator; Dr. Dennis Friedman, Medical Director of the Cardiac Catheterization Laboratory (CCL); Alexis Chase, Operations Manager for the CCL; and Dennis Reed, Service Line Director.

Commissioner Sergent made a motion to approve the Certificate of Ongoing Performance for Adventist HealthCare Shady Grove Medical Center, which was seconded by Commissioner Boyer and unanimously approved.

ACTION: Certificate of Ongoing Performance for Adventist HealthCare Shady Grove Medical Center is hereby APPROVED.

AGENDA ITEM 5.

ACTION: Certificate of Need – Hillhaven Nursing and Rehabilitation Center - Addition of Beds (Docket # 21-16-2447)

Jeanne Marie Gawel, Certificate of Need (CON) Analyst briefed the Commissioners on the application of MH Adelphi Operating, LLC, dba Hillhaven Nursing and Rehabilitation Center (Hillhaven) for a 16-bed expansion to the existing comprehensive care facility (CCF) submitted in response to the Commission's publication of a 32-bed need forecast for Prince George's County. The two main goals of the project are that of meeting the identified bed need and providing more private rooms in the facility. The estimated cost of the project is \$9,446,890 and is expected to be funded with cash.

Staff's review of the standards indicate that the facility has fallen short of the required Medicaid participation rate agreed to in its Memorandum of Understanding with the Maryland Medicaid program, which it became responsible for meeting when it acquired the facility three years ago. Responding to MHCC staff concerns, the applicant submitted a plan to correct the shortfall, with three conditions to the CON to ensure compliance. In its review, staff concluded the proposed project is needed, is a cost-effective alternative for meeting the need, and is viable. The project is unlikely to have a negative impact on costs and charges of other providers and will have a positive impact on the health care delivery system. For these reasons, staff recommends the Commission approve the CON for Hillhaven to construct a 16,477 square foot building addition, adding 26 patient rooms and a net addition of 16 comprehensive care facility beds with the following conditions:

1. MH Adelphi Operating, LLC d/b/a Hillhaven Nursing and Rehabilitation Center (Hillhaven) shall demonstrate progress in increasing the number of Medicaid patient days as a proportion of total patient days in reports it shall file at least quarterly with the Commission that identify the number and percentage of Medicaid patient days and total patient days at Hillhaven for the previous period, also providing this information for other payor sources during that time period;
2. Prior to seeking first use approval, Hillhaven shall document that the percentage of Medicaid patient days as a proportion of total patient days meets or exceeds the requirement in its most recently signed Memorandum of Understanding with the Maryland Medical Assistance Program; and
3. Hillhaven shall continue to maintain the minimum proportion of Medicaid patient days required in Prince George's County in its Memorandum of Understanding with the Maryland Medical Assistance Program.

Commissioner Boyle made a motion to approve the CON for Request for a Certificate of Need – Hillhaven Nursing and Rehabilitation Center - Addition of Beds which was seconded by Commissioner Doordan and unanimously approved.

ACTION: Certificate of Need – Hillhaven Nursing and Rehabilitation Center - Addition of Beds is hereby APPROVED.

AGENDA ITEM 6.

ACTION: Certificate of Need – Request for a Change to a Condition in the Certificate of Need – Relocation of Washington Adventist Hospital (Docket No. 13-15-2349)

Paul Parker, Director of Health Care Facilities Planning and Development, briefed the Commissioners on a request by Adventist HealthCare (AHC) to change the terms of a condition placed on a 2015 Certificate of Need (CON) award, approving the replacement of the former Washington Adventist Hospital (WAH), located in Takoma Park. That condition was to operate an urgent care center on the former WAH campus on every day for a full 24 hours. AHC has operated this urgent care center within the former emergency department facilities of WAH and now asks that it be allowed to reduce its daily operation to 12 hours because of low use of the center, especially between the hours of 8 pm and 8 am, the operating losses this late shift operation entails, and difficulties with staffing a 24-hour center.

Mr. Parker noted the comment provided by the City Manager of Takoma Park, Suzanne Ludlow, on the proposed change, strongly criticizing the good faith of AHC in implementing its former “commitment” to the city. Mr. Parker provided background on the original hospital relocation proposal approved in 2015, which would have remained a special hospital campus (acute rehabilitation and psychiatric) in addition to the urgent care center. Over time, consolidation of AHC hospital services to a more traditional pattern, with general and special hospitals operating on the same campus, has been proposed by AHC and approved. The replacement general hospital, located in Silver Spring, will be the site of a replacement special rehabilitation hospital and is authorized to provide acute psychiatric services. The urgent care center is the only element of the original plan for the Takoma Park campus still in place.

The MHCC staff, because of Ms. Ludlow’s letter, asked for AHC to consider broadening its request for a change in the condition. It was suggested that the entire condition be rethought with the aim of creating a sustainable commitment to the City, if possible. The stakeholders currently lack trust in their dialog concerning the future of AHC operations in Takoma Park. Based on the response of AHC, staff proposed approval of an “interim” and contingent condition allowing the requested reduction in the required operating hours of the urgent care center. During the interim, AHC would develop a new condition for consideration by the Commission, with a target date for presentation in October 2021. Without approval of this new condition, the urgent care center would be required to return to operating 24 hours per day. Mr. Parker noted that representatives of the city and AHC were in attendance.

Commissioner Sergent moved for adoption of the staff recommendation to facilitate discussion and Commissioner O’Grady seconded the motion. Commissioner Boyle asked what AHC’s legal obligation was in operating the urgent care center. Chairman Pollak and staff noted that the CON created an enforceable obligation. The Chairman suggested hearing from the city concerning its acceptance of the proposed condition as a compromise and from AHC concerning the urgency of its need for a schedule change. Prior to the comments, Commissioner Bhandari requested to speak. He stated that he is familiar with the area and its large immigrant population. He believes the population in that region is vulnerable and found Ms. Ludlow’s comments to be accurate in describing the population’s needs and the perception that AHC is abandoning Takoma Park. His comments were supported by Commissioner Akintade.

Chairman Pollak invited Deputy City Manager Jessica Clarke to speak. Ms. Clarke stated that she appreciated the Commission staff’s recommendation and looked forward to engaging with AHC on a long-term plan but would prefer that the 24-hour operating schedule stay in place pending further work on the issue. Commissioner Boyer asked her what “end state” was sought by the city. Ms. Clarke noted that availability and access to behavioral health services was a high priority issue that she hoped to address through planning with AHC. Chairman Pollak then asked Andrew Nicklas, Deputy General Counsel at AHC, to respond. Mr. Nicklas stated that AHC is not abandoning Takoma Park and has acted in conformance with the urgent care condition. However, it is becoming very hard to maintain staffing of the center on a 24-hour basis without increasing expense for staffing agency personnel which exacerbates the operating losses being experienced. He appreciates that the Commission appears reluctant to support the recommendation and understands the concerns expressed. Mr. Nicklas pledged to work in good faith with Takoma Park for a better approach.

Chairman Pollak commented that he was not convinced that modifying the center’s operating schedule was critical at this time when AHC appears to believe that it can return to MHCC within a few months with a new proposed condition that would change the operating schedule. He noted that returning to an overnight schedule after not operating overnight for a few months would probably be quite difficult. Commissioner Bhandari expressed the view that AHC is a big multi-hospital organization that should be able to retain needed staffing resources. Commissioner Sergent believed that it was clear that a 24-hour urgent care center operation was not a critical need but was concerned that approving the move to a 12-hour schedule was not an action likely to maintain pressure on the parties to act in developing a better plan. He told the Commissioners that he was not planning to vote for the motion. Commissioner Boyer urged AHC and Takoma Park to incorporate input from the school system in its discussions about behavioral health services. After a brief discussion of the vote and clarification that a vote against the motion would leave the current condition in place and a discussion of the option of tabling the motion rather than voting, the Commission proceeded to a vote.

The Commission made a motion to unanimously disapprove the Certificate of Need – Request for a Change to a Condition in the Certificate of Need – Relocation of Washington Adventist Hospital.

ACTION: Certificate of Need – Request for a Change to a Condition in the Certificate of Need – Relocation of Washington Adventist Hospital is hereby DISAPPROVED.

AGENDA ITEM 7.

ACTIONS: FINAL PERMANENT REGULATIONS

7A. COMAR 10.24.21 - State Health Plan for Facilities and Services: Acute Psychiatric Services – Final Permanent Regulations

7B. COMAR 10.24.07 – State Health Plan for Facilities and Services: Residential Treatment Centers -Final Permanent Regulations

Eileen Fleck, Chief of Acute Care Policy and Planning, summarized the formal comments received on the proposed State Health Plan (SHP) chapter for acute psychiatric services, COMAR 10.24.21. There were no comments on the SHP chapter for residential treatment centers, COMAR 10.24.07. Ms. Fleck explained staff's recommendations in response to comments from the Maryland Psychiatric Society and Sheppard Pratt Hospital. Johns Hopkins Health System did not request changes to the regulations for acute psychiatric services. Ms. Fleck explained one non-substantive proposed change to the impact standard, COMAR 10.24.21.05B(9)(a). One Commissioner asked about whether the burden placed on an applicant to demonstrate compliance with part of the impact standard was reasonable and feasible. Ben Steffen, Executive Director, responded that the information necessary to address the impact on existing providers was publicly available. The Commission voted to adopt final permanent regulations for COMAR 10.24.21, which repealed and replaced regulations for acute psychiatric services in COMAR 10.24.07. The Commission next voted to adopt final permanent regulations for COMAR 10.24.07, which after repeal of regulations for acute psychiatric services only address residential treatment centers.

Commissioner Metz made a motion to approve COMAR 10.24.21 – State Health Plan for Facilities and Services: Acute Psychiatric Services - Final Permanent Regulations, which was seconded by Commissioner Boyle and unanimously approved.

ACTION 7A: COMAR 10.24.21 – State Health Plan for Facilities and Services: Acute Psychiatric Services - is hereby ADOPTED as Final Permanent Regulations.

ACTION 7B: COMAR 10.24.07 – State Health Plan for Facilities and Services: Residential Treatment Centers - is hereby ADOPTED as Final Permanent Regulations.

AGENDA ITEM 8.

ACTION: State Recognition Renewal of an Electronic Advance Directives Services - ADVault | My Directives

Justine Springer, Program Manager, Health Information Technology, presented the ADVault, Inc. renewal application for State Recognition as an electronic advance directives service. COMAR 10.25.19, *State Recognition of an Electronic Advance Directives Service* outlines program procedures for State Recognition, a prerequisite for connecting to the State-Designated HIE. Ms.

Springer reported that ADVault’s application demonstrates compliance with State Recognition criteria, which includes meeting standards for privacy and security and other technical provisions. The Commission approved ADVault’s renewal application for State Recognition.

Commissioner Boyle made a motion to approve the State Recognition Renewal of an Electronic Advance Directives Services - ADVault | My Directives, which was seconded by Commissioner Bhandari and unanimously approved.

ACTION: State Recognition Renewal of an Electronic Advance Directives Services - ADVault | My Directives is hereby APPROVED.

AGENDA ITEM 9.

ACTION: MDPCP Advisory Council - Nomination

Anene Onyeabo, Program Manager, Innovative Care Delivery, presented the nomination of Kenneth Buczynski, M.D. to the Maryland Primary Care Program (MDPCP) Advisory Council (Council). Ms. Onyeabo noted that Dr. Buczynski is a board-certified family physician with more than 15 years of experience in primary care and the founder of Wellspring Family Medicine located in Western Maryland. The Council provides stakeholder input on operations of the MDPCP and serves a consultative and advisory role to the Secretary of the Maryland Department of Health and the MDPCP Program Management Office.

Commissioner Sergent made a motion to approve the MDPCP Advisory Council – Nomination, which was seconded by Commissioner Doordan and unanimously approved.

ACTION: MDPCP Advisory Council - Nomination is hereby APPROVED.

AGENDA ITEM 10.

PRESENTATION: Follow Up on Nursing Home Family Experience of Care Survey Results

Stacy Howes, Chief, Long Term Care and Health Plan Quality Initiative, presented a follow up to the 2020 Nursing Home Family Experience of Care Survey presented in May 2021. Like other industries, a Nursing Home Consumer Assessment of Health Care Providers (Nursing Home CAHPS) is available, but it is not mandated for use in the nursing home industry. Only four states mandate a nursing home satisfaction survey, and Maryland is one of those states. She offered support showing that Maryland’s survey is reliable and valid based on traditional statistical and research criteria. Furthermore, she presented data about health disparities, noting that Medicaid payers were statistically significantly less satisfied on all measures compared to private payers, and non-white respondents were statistically significantly less satisfied on all measures compared to white respondents. There were very few differences between Hispanic and non-Hispanic respondents.

In 2018, multiple nursing homes expressed frustration that they care for unique populations that may not be accounted for in the survey. Therefore, staff began to calculate an additional peer group. To be included, at least 50% of a nursing home's residents had to be younger than 65 years or at least 50% of their residents had to use Medicaid. When comparing the average satisfaction scores to the statewide average, this new peer group was statistically significantly less satisfied on four of seven domains and both individual satisfaction measures. Preliminary analyses were conducted to determine if COVID-19 infections were associated with satisfaction scores, and we determined that more resident COVID-19 infections were associated with lower satisfaction scores (and vice versa). Resident deaths, staff infections, and staff deaths due to COVID-19 were not associated with satisfaction scores. Finally, staff are working on a program to identify nursing homes in need of improvement, and multiple nursing homes have been identified for this program. Discussion mainly centered on whether the analyses included any controls and whether a multivariate analysis could be conducted in order to specify where the differences lie and what can be done to improve disparities. Specifically, Commissioners asked about income levels, payer types, race/ethnicity, and Medicaid usage as controlling variables. Finally, Commissioner Bhandari inquired as to whether information about Medicaid usage by nursing homes was available on the website, which it is.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 11.

Overview of Upcoming Activities

Mr. Steffen stated that the September's Commission meeting may include at least one Certificate of Need (CON), at least two certificates of ongoing performance for percutaneous coronary intervention services (PCI), a report on hospital cybersecurity, an update of the telehealth procurement approval, an update on MDPCP, and a report on the privately insured.

AGENDA ITEM 12.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:38 p.m. upon motion of Commissioner Bhandari, which was seconded by Commissioner O'Grady and unanimously approved.