



Thursday, April 21, 2022

MINUTES

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

Commissioners present via telephone and in person: Akintade, Bhandari, Boyer, Boyle, Brahmhatt, Cheatham, Doordan, Jensen, Metz, O’Grady, Sergent, Wang and Wood.

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Jensen made a motion to approve the minutes of the March 17, 2022, public meeting of the Maryland Health Care Commission (Commission or MHCC), which was held by teleconference hybrid. The motion was seconded by Commissioner Wood and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Chairman Pollak announced that he submitted a letter of resignation to Governor Hogan stating that he has accepted a position as Chief Clinical Officer for the University of Maryland Medical Systems. Chairman Pollak explained that to transition into his new role it is necessary for him to step down from his current position as Chairman due to the State Ethics Law. Chairman Pollak also stated that it has been an absolute privilege to serve on this Commission with everyone.

Chairman Pollak asked if there were any questions about the written updates. Commissioner O’Grady asked for information about the delicensure of bed capacity in Prince George’s County and requested that the situation be monitored because the county is an underserved area. Chairman Pollak explained that it was an underutilized surgery center and that there were efforts underway to recruit surgeons. Paul Parker, Director of the Center for Health Care Facilities Planning and Development, also noted that there will be another outpatient surgery center operated in Laurel as part of the Capital Region system.

Ben Steffen, Executive Director of the Commission, stated that Staff are continuing to work on Legislative Projects from the 2021 Session, such as engaging Electronic Health Networks and Nursing home industries to enable information exchange with CRISP. Mr. Steffen also noted changes made to prior legislation that require Health Information Exchanges to create a consent registry to allow patients to opt out of the exchanges.

Mr. Steffen stated that the 2023 Budget Bill (SB 290) will allocate \$4 million in general funds to the Maryland Trauma Physicians Fund to offset Fund money that was reallocated for Medicaid physician fees in the 2018 Budget Reconciliation Financing Act.

Next, Mr. Steffen briefed the Commission on efforts to collect data from Medicare Advantage Plans for the All-Payer Claims Database, including Johns Hopkins Advantage Plan, CareFirst Medicare Advantage Plans, and Altarwood Advantage.

Finally, Mr. Steffen noted that the Prescription Drug Affordability Board will be moving from MHCC's budget and will be partnership with the Maryland Health Benefit Exchange. David Horrocks, CEO of CRISP, resigned and the CRISP Board is conducting a search for a replacement. Mr. Steffen said that the Designation Agreement will expire in June, and MHCC should plan to extend the agreement 60 days.

AGENDA ITEM 3.

PRESENTATION: Legislative Update

Tracey DeShields, Director of Policy Development and External Affairs, provided a summary of the 2022 legislative session that ended on Monday, April 11. She noted that the legislature had an ambitious legislative agenda for the end of the four-year term and going into an election cycle, where there will be a new Governor and major changes within the General Assembly as well.

Ms. DeShields mentioned that some two dozen lawmakers will not be returning to the General Assembly in 2023 either due to retirement or campaigns for another office. The legislature introduced approximately 3,124 bills this year; the Senate introduced 1,331 and the House 1,783. The MHCC tracked close to 200 bills.

The legislature tackled a few major issues, including Family Paid Medical Leave, criminal justice reform, and Congressional and State Legislative Redistricting. In the Health arena, the legislature passed the Abortion Care Act, Expansion of Medicaid Services, Rates, and Waivers, and removal of Local Health Officers.

The legislature passed an overall State budget totaling \$61.2 billion dollars. The budget for FY 2023 included MHCC's special fund appropriation of \$35 million plus. The breakdown of the budget for MHCC includes \$19M for operating funds, \$12M for the Trauma Fund (including the \$4M supplement to fiscal 2022), and \$3.7M to the Maryland Emergency Medical System Operations Fund. A new fund was added for MHCC to administer, the Patient Safety Fund, which is a non-lapsing special fund with an annual general appropriation of \$1 million.

Ms. DeShields also noted that the legislature passed budget language that requires MHCC to conduct an independent analysis of the State's behavioral health crisis response system. MHCC will develop a request for proposals to contract with a health research and analytics firm to do a needs assessment and gap analysis of Maryland's behavioral health crisis response services continuum; additionally, MHCC must convene a workgroup. The interim report is due December 2022, and the final report will be due in 2023.

Ms. DeShields then went through MHCC's priority bills. First, she noted the passage of the MHCC user fee assessment bill that increases the assessment cap from \$16M to \$20M. The bill goes into effect July 1. Then she mentioned that *HB 213 - HIE Definition Bill* passed. The bill aligns the definition of health information exchange for the purposes of privacy and the confidentiality of medical records with federal law.

SB 824/HB 1073 Advance Care Planning (Advance Directives) is the culmination of the work done by the Advance Directives Workgroup over the summer/fall interim. The bill requires MHCC to coordinate accessibility of electronic advance care planning documents (including advance directives). It also requires health care providers, including facilities, managed care organizations and insurance carriers, to make advance care planning documents available and to provide the ability for consumers to upload documents into the Advance Directive registry.

HB 1127 Public Health - State Designated Exchange - Health Data Utility requires the State-designated health exchange to operate as a health data facility and, as allowed under the law, provide data to those involved in the treatment and care coordination of patients to support public health goals. In addition, the bill allows for the submission of non-controlled prescription drug information to the State designated exchange.

SB 834/HB1148 – Two-sided Incentive Arrangements and Capitated Payments passed allowing for a carrier (insurance payer) to enter a two-sided incentive arrangement or a capitated arrangement with an eligible provider. The bill further specifies what is permitted and prohibited regarding these arrangements. The MHCC is required to report to the Senate Finance and House Government Operations Committees on the number and types of value-based arrangements entered into and related measures.

HB 378 – Maryland Health Care Commission – Palliative Care Services – Workgroup requires MHCC to convene a workgroup on palliative care to study and make recommendations to

improve palliative care services in Maryland. The bill terminates after 2024. The workgroup must provide an interim report to the General Assembly in July 2023 and the final report in November 2023.

SB 734 – Maryland Health Care Commission - Primary Care Report and Workgroup requires MHCC to provide a report on primary care beginning in 2024 to the Governor and General Assembly containing an analysis of primary care investment, ways to improve quality and access to primary care services, and findings and recommendations.

SB 804/ HB 972 - Continuing Care at Home - Certificate of Need - Exemption exempts continuing care at home agreements from the certificate of need requirements by altering the definition of health care facilities.

SB 531/ HB 636 – Maryland Health Care Commission - Assisted Living Programs - Study requires MHCC, in consultation with the Office of Health Care Quality (OHCQ) and other stakeholders, to establish a workgroup to study assisted living programs with nine or fewer beds.

Ms. DeShields also discussed the post session work to be completed by MHCC. Ms. DeShields noted that MHCC has workgroups ready to convene to address various issues, such as palliative care, assisted living, telehealth, primary care, and the behavioral health crisis response system. Additionally, MHCC must complete three mandate studies on coverage of in vitro fertilization, home test kits for HIV, and physical therapy co-payments.

Lastly, Ms. DeShields mentioned that there are several workgroups and a commission in which MHCC will participate. SB 440/ HB 625 specifically names MHCC’s Chair or designee to the Commission.

MHCC Staff is in the process of reviewing and planning how to best address the work to be completed over the interim and establishing the various workgroups. Ms. DeShields added that next month, staff will be able to provide more details on the post session work.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 4.

ACTION: Certificate of Conformance – Introduction of Elective Percutaneous Coronary Intervention Services at MedStar Franklin Square Medical Center (Docket No. 21-03-CC033)

Commissioner Jensen recused himself from this agenda item.

Eileen Fleck, Chief for Acute Care Policy and Planning, presented the staff report and recommendation for MedStar Franklin Square Medical Center's application for a Certificate of Conformance to add elective percutaneous coronary intervention (PCI) services. She provided an overview of its compliance with key standards, which include meeting the standards for a Certificate of Conformance for emergency PCI services, general requirements in COMAR 10.24.10, the State Health Plan chapter for acute care hospital services, and specific standards for establishing elective PCI services. She introduced the three representatives from MedStar Franklin Square Medical Center who were present and told the Commission that staff recommended approval of the hospital's application. There were no questions on the staff report.

Commission Boyer moved to approve Franklin Square's request for a Certificate of Conformance to add elective PCI services, which was seconded by Commissioner Bhandari and after discussion, unanimously approved.

ACTION: Certificate of Conformance – Introduction of Elective Percutaneous Coronary Intervention Services at MedStar Franklin Square Medical Center is hereby APPROVED.

AGENDA ITEM 5.

ACTION: Release of draft amendments to COMAR 10.25.17 for Informal Comment, Benchmarks for Preauthorization of Health Care Services

Justine Springer, Program Manager, Center for Health Information Technology and Innovative Care Delivery, presented on amendments to COMAR 10.25.17, Benchmarks for Preauthorization of Health Care Services. The amendments modify the length of time a payor can be waived from meeting the benchmarks from two to five years and require a payor to notify the Executive Director within 30 days after the payor can no longer demonstrate extenuating circumstances. The amendments also clarify the processes for the withdrawal of a waiver and include several technical changes.

Commission Boyer moved to approve the amendments for release for informal public comment, which was seconded by Commissioner Boyle and after discussion, unanimously approved.

ACTION: Release of draft amendments to COMAR 10.25.17 for Informal Comment, Benchmarks for Preauthorization of Health Care Services is hereby APPROVED.

AGENDA ITEM 6.

ACTION: Confirmation of Extension of Emergency Certificates of Need – One-Year Extension of the Validity of Hospital Emergency Certificates of Need Expiring April 30, 2022

Chairman Pollak recused himself from this and the remaining agenda items. Vice Chair Sergent presided over the remaining agenda items.

Paul Parker, Director of Health Care Facilities Planning and Development, briefed the Commission on MHCC's response to the Secretary of Health's March 2022 request to extend the validity of hospital Emergency Certificates of Need (E-CONs) for an additional year. This request was considered by the Commission at its March meeting and staff was directed to extend the validity of hospital E-CONs that had been activated or partially activated by the recipient hospitals.

Mr. Parker provided a list of the 21 E-CONs that had been extended based on this criterion:

1. Mercy Medical Center, Baltimore – Docket No. EM-H20-24-001
2. Meritus Medical Center, Washington – Docket No. EM-H20-21-002
3. Meritus Medical Center, Washington – Docket No. EM-H20-21-003
4. Former UM Laurel Regional Hospital, Prince George's – Docket No. EM-H20-16-004
5. Northwest Hospital Center, Baltimore County –Docket No. EM-H20-03-005
6. Peninsula Regional Medical Center, Wicomico –Docket No. EM-H20-22-007
7. AHC White Oak Medical Center, Montgomery –Docket No. EM-H20-15-009
8. Holy Cross Hospital of Silver Spring, Montgomery –Docket No. EM-H20-15-018
9. Anne Arundel Medical Center, Anne Arundel –Docket No. EM-H20-02-26
10. Anne Arundel Medical Center, Anne Arundel –Docket No. EM-H20-02-27
11. Baltimore Convention Center, Baltimore City –Docket No. EM-H20-24-028
12. AHC Fort Washington Medical Center, Prince George's –Docket No. EM-H20-16-029
13. Carroll Hospital, Carroll County –Docket No. EM-H20-06-031
14. UM Harford Memorial Hospital, Harford –Docket No. EM-H20-12-033
15. UM Upper Chesapeake Medical Center, Harford –Docket No. EM-H20-12-034
16. Former AHC Washington Adventist Hospital, Montgomery –Docket No. EM-H20-15-036
17. Sinai Hospital of Baltimore, Baltimore City –Docket No. EM-H20-24-37
18. University of Maryland Medical Center, Baltimore City – Docket No. EM-H20-24-038
19. Former UM Laurel Regional Hospital, Prince George's – Docket No. EM-H20-16
20. Former AHC Washington Adventist Hospital, Montgomery – Docket No. EM-H20-15-04
21. Any Maryland Acute General Hospital – Docket No. EM-H20-FH

These E-CONs are valid through April 30, 2023. Mr. Parker noted that 15 hospital E-CONs were not being extended because staff obtained information indicating that the additional bed capacity authorized by these E-CONs was not activated. These E-CONs have an expiration date of April 29, 2022. These hospitals will be notified that they may request, for good cause, reconsideration of the termination of their E-CONs. Mr. Parker asked the Commission to confirm the extension of the 21 E-CONs.

Commission Doordan moved to approve the extension of the 21 E-CONs, which was seconded by Commissioner Bhandari and after discussion, unanimously approved.

ACTION: Confirmation of Extension of twenty-one (21) Emergency Certificates of Need to April 30, 2023, is hereby APPROVED.

AGENDA ITEM 7.

ACTION: Certificate of Need - Change in Approved Certificate of Need - Capital Expenditure of \$60,000,000 by the University of Maryland St. Joseph Medical Center to Upgrade Surgical, Cardiac Catheterization, and Coronary Care Unit Facilities – Addition of Operating Room (Docket No. 18-03-2415)

Chairman Pollak and Commissioner Boyer recused themselves from this agenda item.

Laura Hare, Program Manager, stated that University of Maryland St. Joseph Medical Center requested a change in an approved Certificate of Need (CON) to add one operating room to its previously approved project. The previously approved project seeks to modernize and reconfigure the hospital's surgical, cardiac catheterization, and coronary care units at an approved estimated cost of \$60,000,000. The estimated cost of the renovations for this change is \$400,000, plus an additional \$100,000 in moveable equipment, for a total of \$500,000. The applicant stated that this project change will not exceed the originally approved CON project budget because contingency funds will cover these additional costs. Upon completion of the project change, St. Joseph Medical Center will have 12 general purpose operating rooms (ORs) and three special purpose ORs for a total of 15 ORs. Ms. Hare stated that the change in the approved CON does not involve any material changes to the nature of the project, its location, or budget, nor does it change the findings that the Commission made when the CON was originally approved in 2018. Ms. Hare recommended approval of the project change.

Commission Jensen moved to approve the project change, which was seconded by Commissioner Wood and after discussion, unanimously approved.

ACTION: Certificate of Need - Change in Approved Certificate of Need - Capital Expenditure of \$60,000,000 by the University of Maryland St. Joseph Medical Center to Upgrade Surgical, Cardiac Catheterization, and Coronary Care Unit Facilities – Addition of Operating Room is hereby APPROVED.

AGENDA ITEM 8.

ACTION: Certificate of Need - Exceptions Hearing: Recommended Decision in the Matter of the Establishment of a Special Psychiatric Hospital for Children and Adolescents in Baltimore County – Hope Health System, Inc. (Docket No. 20-03-2444)

Chairman Pollak and Commissioner Akintade recused themselves from this agenda item.

Vice Chair Sergent provided an overview of the project submitted by Hope Health System, Inc. (Hope Health), and stated that Commissioner Boyle had served as the reviewer. Vice Chair Sergent noted that Commissioner Boyle had recognized and granted Sheppard Pratt Health System, Inc. (Sheppard Pratt) and University of Maryland Medical Center (UMMC) interested party status. He stated that both Hope Health and Sheppard Pratt filed exceptions to the Recommended Decision and responses to each other's exceptions and concluded his remarks with the procedure to be followed for this action item.

- Commissioner Marcia Boyle, as the reviewer, will present her recommended decision
- Following her remarks, the Commission will begin an exceptions hearing. During this hearing, oral arguments will be heard on the exceptions filed first by Hope Health, and then by Sheppard Pratt, to the recommended decision. Vice Chair Sergent reminded the parties that each representative will have 10 minutes to present and may reserve time for rebuttal.
- Once the exceptions and rebuttals are completed, Commissioner Boyle will present her response and any detail on her recommended decision she decides to share with the Commission. This will be followed by an opportunity for questions from Commissioners to Commissioner Boyle or the representatives for Hope Health and Sheppard Pratt.
- At the conclusion, there will be a vote taken on one of three options available in this action:
 1. A vote to approve the application with condition as proposed by Hope Health in the exception filed, or as amended during the meeting;
 2. A vote to approve the application;
 3. A vote to deny the application.

Vice Chair Sergent concluded his introductory remarks and stated that Assistant Attorney General Paul Ballard is serving as Commission counsel for this hearing, and that Assistant Attorney General Alexa Bertinelli is representing Commissioner Boyle. Vice Chair Sergent then introduced Commissioner Boyle and thanked her for her extensive work in reviewing this application.

Commissioner Marcia Boyle provided introductory remarks about the application from Hope Health, and provided background about the project, the history of the review, and her recommended decision. Commissioner Boyle stated that Hope Health proposes to establish a 16-bed special psychiatric hospital for children and adolescents in the Woodlawn area of Baltimore County by renovating a vacant portion of an existing building where it currently provides outpatient services.

Commissioner Boyle stated she recognized and granted to Sheppard Pratt and UMMC interested party status because both provide acute psychiatric hospital services in the same planning region. However, only Sheppard Pratt submitted comments on both Hope Health's initial and modified applications, urging the Commission to deny Hope Health's application. In addition, Sheppard Pratt also filed a response to the exceptions filed by Hope Health regarding the recommended denial of the application.

Commissioner Boyle also stated that the Health Services Cost Review Commission (HSCRC) was asked to opine on the financial feasibility of the project. The HSCRC engaged in lengthy exchanges with Hope Health to request additional information in order to complete its review. The HSCRC issued memoranda in August and September 2021 that detail HSCRC staff's numerous concerns with Hope Health's financial statements and projections, and determined that Hope Health did not provide sufficient information for it to reach an opinion on the financial feasibility of the project.

Commissioner Boyle stated she would like to see more resources dedicated to the provision of culturally competent mental health services to children and adolescents, particularly the low-income population Hope Health seeks to serve, and appreciates Hope Health's vision to improve the continuum of care through the creation of a psychiatric hospital for this vulnerable population on the site of its existing outpatient services. Ultimately, she concluded that it is Hope Health's burden to show that its proposed project meets all standards and criteria required by Maryland regulations and it has failed to do so.

Commissioner Boyle stated that as detailed in her Recommended Decision and as shown in the full record of this review, that Hope Health had made dramatic changes to its financial projections throughout the review, without sufficient explanation or justification. Given the concerns about Hope Health's underlying assumptions and its inability to absorb significant financial loss, Commissioner Boyle stated she cannot find that Hope Health met the cost-effective alternative or financial viability criteria required by the regulations. For these reasons,

she recommended that the Commission deny Hope Health's application for a CON. Commissioner Boyle concluded this portion of her remarks and stated that she would provide further remarks after the exceptions hearing.

The Commission heard oral arguments from Marta Harting, counsel for Hope Health, and seated with her was Robert Dashiell, general counsel for Hope Health. Ms. Harting requested seven minutes and reserved three minutes for rebuttal. Ms. Harting presented Hope Health's exceptions to the reviewer's determination that it had not met the cost-effective alternative and financial viability criteria. Ms. Harting urged the Commission to either approve the CON application or approve the application with the condition that Hope Health present evidence that it had obtained working capital reserve funding from Baltimore County. Mr. Dashiell briefly spoke about his personal experience with the applicant. Sheppard Pratt was represented by Ella Aiken in person and James Buck via Zoom. Ms. Aiken presented Sheppard Pratt's responses to Hope Health's exceptions as to cost effectiveness and financial viability. After Sheppard Pratt's presentation, Ms. Harting used her remaining rebuttal time.

Commissioner Boyle then presented a detailed summary of her recommended decision. In particular, she cited the details about the cost-effectiveness and viability concerns. Commissioner Boyle presented two charts: Table L, for personnel projections in the application, and another illustrating the revenue, expense, and net income projections in the application. Commissioner Boyle reasserted she cannot find that Hope Health met the financial viability criteria required by the regulations and that Hope Health's proposed condition did not resolve her concerns. For multiple reasons, she recommended that the Commission deny Hope Health's application for a CON.

After Commissioner Boyle presented the summary of her recommended decision, she and the applicant's counsel responded to questions. Commissioners asked questions about the decision and Hope Health's finances and discussed the Commission's options at this stage in the review. Discussion continued until the question was called.

Vice Chair Sergent asked if anyone wanted to make a motion to adopt either of the exceptions of Hope Health or Sheppard Pratt. No Commissioner made a motion. Vice Chair Sergent then asked for a motion on the CON application of Hope Health Systems, Inc. Commissioner Boyle made a motion to adopt the reviewer's recommendation as the Commission's decision and deny Hope Health's CON application, which was seconded by Commissioner Bhandari. During discussion, Commissioner Doordan asked for clarification whether the vote now was only whether to accept or deny the application. Vice Chair Sergent confirmed that was accurate.

The Commission voted unanimously to deny Hope Health's CON application.

ACTION: Certificate of Need - Establishment of a Special Psychiatric Hospital for Children and Adolescents in Baltimore County – Hope Health Systems, Inc. (Docket No. 20-03-2444) is hereby DENIED.

AGENDA ITEM 9.

Overview of Upcoming Activities

Mr. Steffen stated that May Commission meeting agenda will likely include a report on spending for the privately insured, an Emergency CON that was previously withdrawn, a standard CON, and a chapter of the State Health Plan.

AGENDA ITEM 10.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:47 p.m. upon motion of Commissioner Boyer, which was seconded by Commissioner Jensen and unanimously approved.