



**Thursday, October 20, 2022**

## **MINUTES**

Chairman Sergent called the meeting to order at 1:07 p.m.

**Commissioners present via telephone and in person:** Boyle, Bhandari, Buczynski, Cheatham, Doordan, Jensen, O'Connor, O'Grady, Ojikutu and Wang.

### **AGENDA ITEM 1.**

#### **Approval of the Minutes**

Commissioner Buczynski made a motion to approve the minutes of the September 15, 2022, public meeting of the Maryland Health Care Commission (Commission or MHCC), which was held by teleconference hybrid. The motion was seconded by Commissioner Boyle and unanimously approved.

### **AGENDA ITEM 2.**

#### **ACTION: Certificate of Need – Recommended Decision in the Matter of the Establishment of an Alcoholism and Drug Abuse Intermediate Care Facility (Prince George's) – Pyramid Healthcare, Inc. – (Docket No. 22-16-2452)**

Acting Chair Wang noted that Commissioner Mark Jensen served as the Reviewer and issued a Recommended Decision to grant the Certificate of Need (CON) application of Pyramid Healthcare, Inc. (Pyramid) to establish a 50-bed intermediate care facility (ICF).. The applicant, Pyramid filed exceptions to the Recommended Decision, which were subsequently withdrawn after Commissioner Jensen revised one of the conditions. The interested party, Luminis Health Pathways, Inc., did not file exceptions nor respond to the applicant's exceptions.

Commissioner Jensen presented his Recommended Decision by advocating that MHCC conditionally approve Pyramid's application for a CON to establish a 50-bed ICF. Commissioner Jensen provided an overview of his findings. He noted that Pyramid was proposing to establish a Track 2 facility, meaning that Pyramid has committed to reserving at least 50 percent of its bed capacity for indigent and gray area patients. He stated that he found that that the project proposed by Pyramid complies with the applicable State Health Plan standards established for this category of facility and that the applicant had demonstrated need for the project, its cost-effectiveness and viability. The proposed project should have a positive

impact on availability and access to alcohol and drug treatment services to patients across the full range of income levels, especially for lower income individuals and families.

Commissioner Jensen recommended that MHCC **APPROVE** Pyramid Walden's application for a CON to establish a 50-bed ICF in Bowie with the following conditions:

1. Prior to first use approval, Pyramid shall document that it has posted a statement of charges and information regarding the range and types of its services online and in a prominent place in the registration area, and shall also provide a copy of the document with this information that it will deliver to the public upon request;

2. Prior to first use approval, Pyramid shall provide proof of preliminary accreditation of its Bowie, Maryland facility by the Commission on the Accreditation of Rehabilitation Facilities (CARF) or another accrediting body approved by the Maryland Department of Health and must timely receive final accreditation by CARF or another approved accrediting body; and

3. Pyramid shall notify the Commission and the Behavioral Health Administration, in writing, within fifteen days after it receives notice that its accreditation has been revoked or suspended or should it lose its State license. If its accreditation has been revoked or suspended for reasons related to health or safety or it loses its State license, Pyramid shall cease operation until the Behavioral Health Administration notifies the Commission that the deficiencies have been corrected.

Commissioner Buczynski moved to approve the CON for the Recommended Decision in the Matter of the Establishment of an Alcoholism and Drug Abuse Intermediate Care Facility (Prince George's) – Pyramid Healthcare, Inc. with conditions which was seconded by Commissioner Boyle and, after discussion, was unanimously approved.

**ACTION: Certificate of Need in the Matter of the Establishment of an Alcoholism and Drug Abuse Intermediate Care Facility (Prince George's) – Pyramid Healthcare, Inc. with conditions is hereby APPROVED.**

### **AGENDA ITEM 3.**

#### **Update of Activities**

Commissioner Boyle noted that once again there was an acquisition of a comprehensive care facility by an entity that would not qualify for a CON. She asked that the Commissioners and MHCC staff discuss this issue to determine what could be done to improve the situation.

Ben Steffen, Executive Director of the Commission, provided an update on the MHCC's activities. Mr. Steffen first provided an update on challenges to the Total Cost Of Care Model

in 2022. Last week, the Health Services Cost Review Commission (HSCRC) informed stakeholders that Maryland will not be able to achieve the \$300 million in savings for calendar year 2022. . The HSCRC plans to bring together hospitals, policymakers in both executive and legislative branches, and other state partners. Mr. Steffen noted that the State had not finalized a response, but that there are various options. One option is to invoke the exogenous factor clause in the contract, which could permit CMS to waive or reduce the saving targets in 2022. It's also possible that HSCRC might move forward with some rate reductions for hospitals. The MHCC will work more closely with HSCRC as hospital projects are considered.

Mr. Steffen briefed the Commission on plans for the implementation of House Bill 1148, legislation passed in 2022 that requires MHCC to examine the cost efficiency and quality of two-side risk arrangements. The Commission staff has worked to develop a data gathering template that allows MHCC to undertake a serious assessment of these arrangements and has encountered some objections from payers.

Next, Mr. Steffen briefed the Commission on the Maryland Care Data Base (MCDB) data submission status of Kaiser Permanente to pricing information since Kaiser does not pay fee-for-service. Kaiser has developed a methodology to develop TCOC estimates at the patient level.

Mr. Steffen stated that Dr. Bandari is serving as the Commission's representative on the Health Care Workforce Crisis Commission created under SB 440. Mr. Steffen also noted that the Commission has convened its Palliative Care Workgroup, with the aim of providing a report to the legislature in the fall of 2023 and is launching a small Assisted Living Programs Workgroup focused on assisted living facilities with nine or fewer beds.

Lastly, Mr. Steffen talked about COMAR 10.24.01, and stated that senior staff will be working through stakeholder comments on the procedural regulations. Mr. Steffen thanked all the stakeholders for their thoughtful comments and hopes to bring the regulations to the Commission soon.

#### **AGENDA ITEM 4.**

#### **ACTION: Exemption from Certificate of Need Review - CommuniCare Health Services - (Clinton Health Care Center/Forestville Healthcare Center) (Docket No. 22-16-EX014)**

Jeanne Marie Gawel, Program Manager and CON Analyst, briefed the Commissioners on the request for an Exemption from CON filed by CommuniCare Health Services (CommuniCare) to change the bed capacity between two of its Comprehensive Care Facilities (CCF) in Prince George's County, Maryland. The first CCF is Clinton Healthcare Center (Clinton) and the second is Forestville Healthcare Center (Forestville). She stated that the project will result in enlargement of Forestville, which will add 37 beds, and a corresponding reduction of bed capacity operated at Clinton. As a result of the project, neither of the facilities will operate

patient rooms that accommodate more than two patients after the project is completed. Ms. Gawel stated that these moves maintain the existing bed supply without increases.

Ms. Gawel shared that the project plan is for Forestville to renovate 10,550 square feet (SF) of existing space and add 32,934 SF of new construction to its current 44,760 SF facility to accommodate the additional beds and eliminate all three-bed rooms. Clinton will not need structural renovations, only improvements to flooring, paint, artwork, and furnishings. The total cost of the project is \$31,143,408.

Lastly, Ms. Gawel described how this proposed project is the initial step in a more comprehensive strategic and capital improvement plan to eliminate all patient rooms licensed for three or four beds throughout CommuniCare's 18 Maryland facilities. The long-term plan involves closing and downsizing several CCFs, renovating existing facilities, and constructing new CCFs.

Ms. Gawel stated that staff determined that the project was in the public interest, not inconsistent with the State Health Plan, and would result in the more efficient and effective delivery of health care services.

Ms. Gawel concluded that staff recommends that the Commission **APPROVE** the Exemption from CON review with the following conditions:

1. CommuniCare will temporarily delicense CCF beds at Clinton upon completion of this project to eliminate operation of any three or four-bed rooms at Clinton.
2. CommuniCare agrees to execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with .05A(2)(b) of this Chapter for both the Clinton and Forestville facilities.

Commissioner Doordan moved to approve the Exemption from CON Review - CommuniCare Health Services - (Clinton Health Care Center/Forestville Healthcare Center), which was seconded by Commissioner Buczynski and after discussion, unanimously approved.

**ACTION: Exemption from Certificate of Need Review - CommuniCare Health Services - (Clinton Health Care Center/Forestville Healthcare Center with CONDITIONS is hereby APPROVED.**

#### **AGENDA ITEM 5.**

**ACTION: Certificate of Need - Encompass Health Rehabilitation Hospital of Southern Maryland, LLC (Prince George's) – Addition of Special Rehabilitation Beds to an Approved but Uncompleted Special Rehabilitation Hospital (Docket No. 22-16-2458)**

Program Manager and CON Analyst, Jeanne-Marie Gawel, presented the staff report and recommendation for a 10-bed addition to the previously approved 60-bed Encompass Health Rehabilitation Hospital of Southern Maryland, LLC (Encompass-Southern Maryland). Ms. Gawel stated that On May 21, 2020, MHCC approved a CON for Encompass-Southern Maryland, to establish a 60-bed special rehabilitation hospital in Bowie, Maryland located in Prince George’s County, and the applicant now proposes to add 10 beds to the originally approved 60-bed hospital.

Ms. Gawel described that the proposed 10-bed addition would add 5,899 square feet of new construction including 10 private patient rooms, a nursing unit, storage space, a day room and general circulation. She stated the estimated total project budget to complete the 10-bed addition is \$13,109,242, which the applicant will fund with a cash loan from its parent company Encompass Health. In conclusion, Ms. Gawel stated that, based on the review of the proposed project’s compliance with the CON review criteria, staff concludes that the project complies with the applicable standards, is needed, is a cost-effective approach to meeting the project’s objectives, is viable, and will have an impact that is positive with respect to the applicant’s ability to provide inpatient rehabilitation services demanded in its service area.

Ms. Gawel stated that staff recommends that the Commission **APPROVE** the CON application with the following conditions:

1. In its request for first use approval, provide information, acceptable to Commission staff, that details the activities it has undertaken for outreach to the community regarding the availability of charitable services;
2. Maintain compliance with the provisions of COMAR 10.24.09.04A(1) regarding the availability of charity care and a sliding scale of discounted charges for low-income individuals who do not qualify for full charity care; and
3. Prior to first use, provide written transfer and referral agreements, acceptable to Commission staff, with facilities, agencies, and organizations that can manage cases that exceed its own capabilities and/or provide alternative treatment programs appropriate to the needs of the people it serves.

Commissioner Doordan moved to approve the CON Encompass Health Rehabilitation Hospital of Southern Maryland, LLC (Prince George’s) – Addition of Special Rehabilitation Beds to an Approved but Uncompleted Special Rehabilitation Hospital which was seconded by Commissioner Buczynski and, after discussion, was unanimously approved.

**ACTION: Certificate of Need for Encompass Health Rehabilitation Hospital of Southern Maryland, LLC (Prince George’s) – Addition of Special Rehabilitation Beds to an Approved but Uncompleted Special Rehabilitation Hospital is hereby APPROVED.**

## **AGENDA ITEM 6.**

### **ACTION: Data Release Advisory Committee (DRAC) Nomination**

Mahlet Konjit-Solomon, Chief, APCD Public Reporting and Data Release stated that as required by COMAR 10.25.05, MHCC staff is developing a DRAC made up of a diverse group of industry stakeholders and other related interested parties including but not limited to academic research organizations, consumer advocacy groups, payers, providers, employers, and other state agencies.

Ms. Konjit-Solomon stated that COMAR 10.25.05 was approved and adopted at the end of 2021. The impetus for the regulation was the need for improvement of the regulation governing the MCDB data release and all other data to which MHCC is a custodian.

Ms. Konjit-Solomon presented COMAR 10.25.05.08-09 pertaining to the DRAC and provided an overview of the specific responsibilities of the DRAC members.

Ms. Konjit-Solomon then presented the list of nominees and recommended to the Commission to approve the nominations to the DRAC.

As the next steps staff will notify nominees of their appointment, then convene the DRAC members in the November/December timeframe.

Commissioner Boyle moved to approve the DRAC Nominations, which was seconded by Commissioner Doordan and, after discussion, was unanimously approved.

**ACTION: Data Release Advisory Committee (DRAC) Nominations are hereby APPROVED.**

## **AGENDA ITEM 7.**

### **ACTION: Primary Care Workgroup - Nomination**

David Sharp, Director of the Center for Health Information Technology and Innovative Care Delivery, presented the nominations of Tyler Blanchard and Ron Gresch for Commission consideration to the Primary Care Workgroup (workgroup). The MHCC is required by Senate Bill 734, Maryland Health Care Commission – Primary Care Report and Workgroup to convene a workgroup to annually study primary care investments and make recommendations based on its findings that include quality and access to primary care services, among other things.

Commission Buczynski moved to approve the Primary Care Workgroup – Nomination, which was seconded by Commissioner Bhandari and, after discussion, unanimously approved.

**ACTION: Primary Care Workgroup - Nominations are hereby APPROVED.**

## **AGENDA ITEM 8.**

### **PRESENTATION: Overview of Draft Changes to COMAR 10.24.10- State Health Plan for Facilities and Services: Acute Care Hospital Services**

Eileen Fleck, Chief of Acute Care Policy and Planning provided an overview of the changes to the State Health Plan Chapter for Acute Hospital Services, COMAR 10.24.10. Ms. Fleck noted that once internal review of draft regulations is complete, the draft regulations will be posted for informal comment. Staff will consider the comments in making further revisions to the regulations prior to bringing draft regulations to the Commission for consideration as proposed permanent regulations.

Following Ms. Fleck's presentation, there were several questions from Commissioners regarding the cost-effectiveness standard, adverse impact standard, and changes to the bed need methodology. One Commissioner requested clarification on how pediatric bed need would be evaluated, given the suggested elimination of bed need projections for pediatric services. Another Commissioner asked what would happen if a hospital decided to eliminate pediatric beds. Ben Steffen, Paul Parker, and Eileen Fleck addressed questions from the Commissioners.

**ACTION: NO ACTION REQUIRED**

## **AGENDA ITEM 9.**

### **Overview of Upcoming Activities**

Mr. Steffen stated that November's Commission meeting agenda will include several reports that are due from legislation that has passed, including the telehealth report, at least one CON, regulations pertaining to advance directives and benchmarks for pre-authorization. some regulations that will be slightly modified.

## **AGENDA ITEM 10.**

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:15 p.m. upon motion of Commissioner Boyle, which was seconded by Commissioner Buczynski.