



Thursday, October 19, 2023

MINUTES

Chairman Sergent called the meeting to order at 1:03 p.m.

Commissioners present via telephone and in person: Bhandari, Blake, Boyle, Buczynski, Cheatham, Douglas, Gelrud, Gilmore, Jensen, Spinner, Stroughton-Duncan, Wang and Wood.

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Boyle made a motion to approve the minutes of the September 21, 2023, public meeting of the Maryland Health Care Commission (Commission or MHCC), which was held by teleconference hybrid. The motion was seconded by Commissioner Jensen and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Ben Steffen, Executive Director welcomed the new Commissioners to their first Commission meeting and gave an update on Workgroups and Reports due to the Legislature.

Mr. Steffen talked about the four mandate studies requiring MHCC to complete reports. These mandates are as follows:

- 1) SB0075 – Insurance and Maryland Medical Assistance Program – Treatment of Alopecia Areata – Coverage Requirements (Bill Failed) - Study report due December 2023;
- 2) SB0108 – Annual Behavioral Health Wellness Visits – Coverage and Reimbursement (Bill Failed) - Study report due December 2023;
- 3) SB0184/HB0376 – Diagnostic and Supplemental Exams and Biopsies for Breast Cancer – Cost-Sharing - MHCC to study and report on the financial impact of eliminating cost-sharing for diagnostic image-guided biopsies for breast cancer. The report is due on or before October 1, 2023; and
- 4) HB1217/SB0805 – Maryland Medical Assistance Program and Health Insurance – Required Coverage for Biomarker Testing - Report on the impact of providing biomarker testing by December 1, 2025.

Mr. Steffen also gave updates on the following reports:

- A. Interstate Telehealth Report was sent to Governor.
- B. Palliative Care Report will be reviewed by the Commission today.
- C. Nursing Home Acquisitions recommendations are being drafted.
- D. Oversight of Small Assisted Living Facilities Recommendations are being drafted.
- E. Recommendations will be presented at the next Commission on Trauma Funding meeting.
- F. Recommendations on Provision of Pediatric Dental Services

Mr. Steffen talked about the status on the Annual Report and the Trauma Report. Next, Mr. Steffen gave us an overview on the States Advancing All-Payer Health Equity Approaches and Development (AHEAD) Model. AHEAD establishes goals to increase statewide primary care investment in proportion to the total cost of care, links hospital global budgets with advanced primary care, and creates a flexible framework to implement advanced primary care in alignment with existing Medicaid primary care program activities. The AHEAD model is a multi-state model. At least two tracks are planned. It offers additional states the opportunity to curb growth in health care spending, improve population health, and advance health equity by reducing disparities in health outcomes. Maryland is expected to apply in one of the early rounds.

AGENDA ITEM 3.

ACTION: University of Maryland Medical Cancer Center Project Change - Docket No. 19-24-2438

Moira Lawson, Program Manager, presented the staff recommendation for the University of Maryland Medical Center Change after Certificate of Need Approval request which sought to increase the costs associated with the construction of a nine-story addition to the existing hospital and to make changes in the physical plant design. Ms. Lawson stated that the total project cost has increased to \$269,190,180, a change of \$74,822,180. The project cost increase is due to delays that occurred due to the COVID-19 pandemic, unanticipated construction requirements, and design changes needed to increase efficiency and meet regulatory requirements. Design changes include a 45,000 SF increase in the building's square footage, a decrease in the size of the renovated space, building out space originally slated as shell space, and adding service elevators to provide adequate support for that portion of the hospital campus. The additional cost will be paid for with \$50 million in authorized bonds, \$4 million in related interest income, and \$20 million in increased philanthropy.

A motion to approve the Project Change Request was made with the following conditions:

1. Prior to its request for first-use approval, UMMC will submit an assessment of the need for surge bed capacity at UMMC and its plan to maintain and deploy adequate surge bed capacity when needed.
2. Any future change to the financing of this project involving adjustments in revenue must exclude \$10,470,000 in shell space-related costs, which includes the estimated new construction costs of the proposed shell space and portions of the contingency allowance, inflation allowance, and capitalized construction interest expenditure related to the estimated cost of the shell space.
3. UMMC will not finish the shell space on either the second or third floor without giving notice to the Maryland Health Care Commission and obtaining all required Commission approvals. UMMC will not request any adjustment in budgeted revenue by the Health Services Cost Review Commission (HSCRC) that includes depreciation or interest costs associated with the construction of the proposed shell space unless UMMC has obtained either CON approval for finishing the shell space or a determination of coverage from the Maryland Health Care Commission that CON approval is not required.
4. In calculating any future adjustment to budgeted revenues related to the costs of this project, HSCRC shall exclude the capital costs associated with the shell space until the space is finished and put to use in a regulated activity. In calculating any revenue adjustment that includes accounting for capital costs associated with the shell space, the rate shall only account for depreciation and interest expenses going forward through the remaining useful life of the space.
5. Any future change to the financing of this project involving adjustments in rates set by the HSCRC must exclude \$9,120,808, which includes the estimated new construction costs that exceed the Marshall Valuation Service guideline cost and portions of the contingency allowance and inflation allowance that are based on the excess construction cost.

Commissioner Bhandari moved to approve the Certificate of Need- University of Maryland Medical Cancer Center Project Change, which was seconded by Commissioner Douglas and after discussion, unanimously approved.

ACTION: Motion to APPROVE the Certificate of Need Project Change for University of Maryland Medical Cancer Center is hereby APPROVED.

AGENDA ITEM 4.

ACTION: CommuniCare Exemption Request Clinton/Fort Washington (Matter No. 23-16-EX015)

William Chan, Program Manager and Certificate of Need Analyst presented the staff recommendation for an Exemption from CON filed by CommuniCare Health Services (CommuniCare) to change the bed capacity between two Comprehensive Care Facilities (CCF) in Prince George's County, Maryland: Clinton Health Care Center (Clinton) and Fort Washington Health Center (Fort Washington). The project will result in Fort Washington adding 46 beds, and a corresponding reduction of bed capacity at Clinton. After the project is completed, neither facility will operate patient rooms that accommodate more than two patients. Mr. Chan stated that CommuniCare's request for exemption will not increase the existing CCF bed supply in Prince George's County.

Fort Washington plans to renovate 8,596 square feet (SF) of existing space and add 32,420 SF of new construction to its current 54,833 SF facility to accommodate the additional beds and eliminate all quad rooms. Clinton will need no additional structural renovations. The total cost of the project will be \$18,098,308. CommuniCare will finance the project with about \$3.6 million in cash, with the remaining balance of \$14.5 million financed through a U.S. Department of Housing and Urban Development (HUD) secured mortgage loan.

Mr. Chan 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. Staff recommends that the Commission APPROVE the Exemption from CON review with the following condition:

1. CommuniCare shall execute a Memorandum of Understanding with Medicaid to maintain the required proportion of Medicaid patient days in accordance with COMAR 10.24.20.05A(2)(b) for the Clinton and Fort Washington facilities and provide a copy of the memoranda to the Commission before a request for first use review and approval.

Commissioner Buczynski moved to approve the Certificate of Need for CommuniCare Exemption Request Clinton/Fort Washington, which was seconded by Commissioner Jensen and after discussion, unanimously approved.

ACTION: Motion to APPROVE the Certificate of Need for CommuniCare Exemption Request Clinton/Fort Washington is hereby APPROVED.

AGENDA ITEM 5.

ACTION: Primary Care Investment - Analysis and Reporting Plan

David Sharp, Director of the Center for Health Information Technology and Innovative Care Delivery, presented the draft *Primary Care Investment Analysis and Reporting Plan* (Plan).

Senate Bill 734, Maryland Health Care Commission – Primary Care Report and Workgroup, enacted in 2022 requires MHCC to submit a Plan to the General Assembly by December 1, 2023.

Commissioner Buczynski moved to APPROVE the Primary Care Investment - Analysis and Reporting Plan, which was seconded by Commissioner Douglas and after discussion, unanimously approved.

ACTION: Motion to APPROVE the Primary Care Investment - Analysis and Reporting Plan is hereby APPROVED.

AGENDA ITEM 6.

ACTION: COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information, and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses - proposed and emergency regulations.

Anna Gribble, Program Manager in the Health Information Technology Division, presented proposed amendments to COMAR 10.25.18 and COMAR 10.25.07 in support of Chapter 249 of the 2023 Laws of Maryland, House Bill 812, *Health – Reproductive Health Services – Protected Information and Insurance Requirements*. The law prohibits the disclosure of legally protected health information by health information exchange and electronic health network entities operating in the State. Modifications to the draft regulations based on informal comments received in October were considered. The Commission deliberated on the impact of several amendments; Commissioner Cheatham requested staff provide Commissioners with a list of stakeholder comments; and Chair Sergent requested staff draft a letter to the General Assembly outlining future considerations should the legislature decide to amend the law.

Commissioner Jensen made a Motion to ADOPT COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information, and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses emergency regulations, which was seconded by Commissioner Douglas and after discussion, unanimously approved.

Commissioners Buczynski and Bhandari opposed this action item.

ACTION: COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information, and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses emergency regulations are hereby ADOPTED.

Commissioner Jensen has made a Motion to APPROVE COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses proposed regulations, which was seconded by Commissioner Douglas and after discussion, unanimously approved.

Commissioners Blake, Buczynski and Bhandari opposed this action item.

ACTION: COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses proposed regulations are hereby APPROVED.

AGENDA ITEM 7.

ACTION: COMAR 10.24.01 - Procedural Regulations for Health Care Facilities and Services - Final Regulations

Wynee Hawk, Director of Health Care Facilities Planning and Development, and Caitlin Tepe, Assistant Attorney General, presented proposed final non- substantive changes to COMAR 10.24.01 Procedural Regulations for Health Care Facilities and Services which govern the MHCC's certificate of need (CON) program. The presentation highlighted the formal comments received and the staff's responses to those comments. Generally, the proposal streamlines CON reviews, creates new review criteria to support the Commission's strategic objectives, and clarifies regulatory oversight of non-CON projects.

Commissioner Gelrud made a Motion to ADOPT COMAR 10.24.01 - Procedural Regulations for Health Care Facilities and Services - Final Regulations, which was seconded by Commissioner Buczynski and after discussion, unanimously approved.

ACTION: Motion to ADOPT COMAR 10.24.01 - Procedural Regulations for Health Care Facilities and Services - Final Regulations are hereby ADOPTED.

AGENDA ITEM 8.

ACTION: Palliative Care Services in Maryland: Final Report

Linda Cole, Chief of Long-Term Care Policy and Planning, presented the Final Report on Palliative Care Services in Maryland. This is pursuant to HB 378, passed during the 2022

legislative session, which directed the Commission to convene a workgroup to make recommendations to improve the provision of palliative care services statewide. Ms. Cole described the workgroup, its membership, and the selection of the Center to Advance Palliative Care (CAPC) definition of palliative care to guide its work. SEA Healthcare, the MHCC contractor conducted a statewide survey of palliative care; it was sent to hospitals, nursing homes, hospices, and home health agencies. SEA also conducted a literature review and an analysis of palliative care programs in other states. In addition to the Final Report, a Provider Directory and a 12-State Summary of Palliative Care Services were also products developed during this project.

Ms. Cole presented the recommendations, which addressed the issues outlined in the legislation: public education; provider education; financing; community-based palliative care; quality improvement; and data collection.

Ms. Cole also mentioned that Maryland was selected to participate in the Serious Illness Initiative of the National Academy for State Health Policy (NASHP). This selection provides two years of technical assistance for both planning and actuarial analysis. The work with NASHP will help MHCC and other partner agencies in moving forward to promote the expansion of palliative care services in Maryland.

Commissioner Jensen made a Motion to APPROVE the Palliative Care Services in Maryland: Final Report, which was seconded by Commissioner Douglas and after discussion, unanimously approved.

ACTION: Motion to APPROVE the Palliative Care Services in Maryland: Final Report is hereby APPROVED.

AGENDA ITEM 9.

ACTION: COMAR 10.24.10- State Health Plan for Facilities and Services: Acute Care Hospital Services - Proposed Regulations

Eileen Fleck, Chief for Acute Care Policy and Planning, reviewed changes made in response to comments on draft COMAR 10.24.10, the State Health Plan chapter for acute care hospital services. She also described additional changes by staff.

Commissioner Buczynski made a Motion to APPROVE COMAR 10.24.10- State Health Plan for Facilities and Services: Acute Care Hospital Services - Proposed Regulations , which was seconded by Commissioner Jensen and after discussion, unanimously approved.

ACTION: COMAR 10.24.10- State Health Plan for Facilities and Services: Acute Care Hospital Services - Proposed Regulations are hereby APPROVED.

AGENDA ITEM 10.

OVERVIEW OF UPCOMING ACTIVITIES

Mr. Steffen briefly spoke about November's Commission meeting. He stated that there will be an important CON application Luminis Health, 2024 All Claim Database, and several other agenda items.

AGENDA ITEM 9.

ADJOURNMENT

Chairman Sergent asked for a motion to adjourn the meeting, and after there being no further business, the meeting was adjourned at 5:04 p.m. upon the motion of Commissioner Boyle, which was seconded by Commissioner Buczynski.

ACTION: NONE