Maryland Health Care Commission

Thursday, December 20, 2018

1:00 p.m.

MARYLAND HEALTH CARE COMMISSION

AGENDA

1. **APPROVAL OF MINUTES**
2. UPDATE OF ACTIVITIES
3. HEARING: Modernization of the Maryland Certificate of Need Program
4. ACTION: Modernization of the Maryland Certificate of Need Program – A Final Report to the Maryland Senate Finance Committee and the House Government Operations Committee
5. ACTION: Exemption from Certificate of Need – Summit Ambulatory Surgery Center, LLC – (Docket No. 18-02-EX009)
6. ACTION: Certificate of Need – Change to Approved Certificates of Need
   A. Western Maryland Regional Medical Center (Docket No. 97-01-2012)
   B. Suburban Hospital (Docket No. 04-15-2134)
7. ACTION: COMAR 10.24.17 State Health Plan for Facilities and Services: Specialized Health Care Services – Cardiac Surgery and Percutaneous Coronary Intervention Services – Final Action
8. PRESENTATION: School Based Teletherapy for Special Education Services Grant Award Announcement – Charles County Public Schools
9. OVERVIEW OF UPCOMING INITIATIVES
10. ADJOURNMENT

MARYLAND HEALTH CARE COMMISSION

APPROVAL OF MINUTES

(Agenda Item #1)

MARYLAND HEALTH CARE COMMISSION

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MARYLAND HEALTH CARE COMMISSION

UPDATE OF ACTIVITIES

(Agenda Item #2)

MARYLAND HEALTH CARE COMMISSION

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2. UPDATE OF ACTIVITIES

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MARYLAND HEALTH CARE COMMISSION

HEARING:

Modernization of the Maryland Certificate of Need Program

(Agenda Item #3)

MARYLAND HEALTH CARE COMMISSION

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2. UPDATE OF ACTIVITIES

3. HEARING: Modernization of the Maryland Certificate of Need Program

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MARYLAND HEALTH CARE COMMISSION

ACTION:

Modernization of the Maryland Certificate of Need Program – A Final Report to the Maryland Senate Finance Committee and the House Government Operations Committee

(Agenda Item #4)

Modernization of the Maryland Certificate of Need Program: Final Report

Maryland Health Care Commission

December 20, 2018

Modernizing CON Regulation – Charge to Commission

1. Examine major policy issues -CON regulation should reflect dynamic & evolving health care delivery system

2. Review approaches other states use to determine appropriate capacity

3. Recommend revisions to CON statute

4. Recommend revisions to State Health Plan (SHP) regulations that:
   - Create incentives to reduce unnecessary utilization
   - Eliminate, consolidate or revise individual chapters of SHP
   - Develop criteria that determine service need in the context of Maryland's All-Payer Model
   - Improve clarity and appropriateness & reduce ambiguity

5. Consider what flexibility is needed to streamline CON project review process

6. Identify areas of regulatory duplication in consultation with HSCRC & MDH

Scope of Health Facility Planning

- 10.24.07: State Health Plan: an Overview; Psychiatric Services; Emergency Medical Services
- *10.24.08: Special Hospital - Chronic Hospital (proposed)
- *10.24.09: Specialized Health Care Services: Acute Inpatient Rehabilitation Services
- 10.24.10: Acute Hospital Services
- *10.24.11: General Surgical Services
- 10.24.12: Inpatient Obstetrical Services
- 10.24.13: Hospice Services
- 10.24.14: Alcoholism and Drug Abuse Intermediate Care Facility Treatment Services
- *10.24.15: Organ Transplant Services
- *10.24.16: Home Health Agency Services
- *10.24.17: Cardiac Surgery and Percutaneous Coronary Artery Intervention Services (proposed)
- 10.24.18: Neonatal Intensive Care Services
- *10.24.19: Freestanding Medical Facilities
- *10.24.20: Comprehensive Care Facilities (proposed**)**

- 10.24.01: Certificate of Need for Health Care Facilities Authority (procedural regulations)

Note: '*' indicates the plan has been updated in the last three years or an update is in process

A look at CON Review Today

To award a CON today, MHCC considers six review criteria:

- **State Health Plan.** An application should be consistent with the applicable State Health Plan standards, policies, and criteria.

- **Need.** Need is defined in most State Health Plans. In instances where need is not defined, the applicant should demonstrate unmet needs of the population to be served and how the project meets those needs.

- **Availability of More Cost-Effective Alternatives**.

- **Viability of the Proposal**. The applicant should demonstrate that financial and nonfinancial resources are available, including community support to implement the project, including meeting post-approval performance requirements.

- **Compliance with Conditions of Previous Certificates of Need.**

- **Impact on Existing Providers, Costs and Charges of the Project Sponsor, and the Health Care Delivery System.**

MHCC's CON Modernization Task Force

Randolph Sergent, Chair, MHCC Commissioner, VP, Assist Gen. Counsel CareFirst	Brett McCone, Vice President, Maryland Hospital Association
Regina Bodnar, Executive Director, Carroll Hospice	Mark Meade, Principal, Consulting Underwriters
Ellen Cooper, Former Chief, Antitrust Division, OAG	Jeff Metz, MHCC Commissioner, President, Egle Nursing & Rehab
Lou Grimmel, CEO, Lorien Health Care	Michael O'Grady, MHCC Commissioner, Senior Fellow, NORC
Elizabeth Hafey, MHCC Commissioner, Miles Stockbridge	Rich Przywara, Senior Vice President, Ashley Addictions
Ann Horton, Executive Director Strategic Partnerships, LHC Group	Barry Rosen, CEO, Gordon Feinblatt LLC
Andrea Hyatt, Director ASC Operations, UMFP	Andrew Solberg, Principal, Solberg Consulting
Adam Kane, HSCRC Commissioner, Senior Vice President, Erickson Living	Harsh Trivedi, M.D, CEO, Sheppard Pratt
Ben Lowentritt, MD, Urologist, Chesapeake Urology	Renee Webster, Assist Director, OHCQ

Note: Frances Phillips, Maryland's Deputy Secretary for Public Health and a past MHCC Commissioner, served as Task Force Co-Chair until June 2018

Modernizing CON Regulation – MHCC Response

- **Phase One**
  - Identification of problems that need to be addressed in modernizing CON regulation, with assistance of a stakeholder Task Force
  - *Interim Report on Modernization of the Maryland Certificate of Need Program*, June 1, 2018
- **Phase Two**
  - Work with expanded stakeholder Task Force to develop consensus on the legal, regulatory, and process changes that are practical and best address the identified problems.
  - Commission considers and finalizes recommendations and Final Report (December 20, 2018) for General Assembly Committees (to be submitted by January 2, 2019)

Guiding Principles for Reform of CON Regulation

1. Promote the availability of general hospital and long term care services in all regions of Maryland. Assure appropriate availability of specialized services that require a large regional service area to assure viability and quality.
2. Complement the goals and objectives of the Maryland Total Cost of Care Model.
3. Provide opportunities to enter the Maryland market for innovators committed to the delivery of affordable, safe, and high-quality health care.
4. Minimize the regulatory requirements for existing providers to expand existing capacity or offer new services when those providers are committed to the delivery of affordable, safe, and high-quality health care.
5. Reduce the burden of complying with CON regulatory requirements to those necessary for assuring that delivery of health care will be affordable, safe, and of high-quality.
6. Maintain meaningful review criteria and standards that are consistent with the law and understandable to applicants, interested parties, and the public.

Modernizing CON Regulation – Common Themes

- Most regulated facilities see a need for CON regulation in some form – most support keeping CON regulation with reforms than eliminating CON regulation

- Substantive discussion by Task Force of appropriate scope of CON and project review process

- Literature reviewed does not provide strong evidence for the effectiveness of CON regulation in controlling cost or improving quality

- CON regulation shapes the health care system:
  - Defines level of capacity that should be provided for inpatient care (bed capacity) and, to some extent, surgery (operating rooms)
  - Strongly influences the number of institutions (hospitals, nursing homes, larger ambulatory surgical facilities, residential treatment centers, alcohol and drug abuse intermediate care facilities) established and their distribution
  - Strongly influences the number of home health agencies and hospices established and their service areas

Modernizing CON Regulation – Common Themes

- Supporters see benefit of CON regulation in reducing overcapacity, facilitating more equitable access to care & more appropriate care, reducing opportunities for fraud & the potential of overwhelming the oversight capacity of licensing & certification agencies, & keeping labor shortages from becoming more acute

- Some supporters also see limits on growth & new market entry as beneficial in protecting expensive investments in facilities,

- CON regulation imposes a significant direct compliance cost on regulated facilities – the project review process is complex & often involves significant legal & other expenses

- CON regulation limits competition that may increase costs & may limit new competitors with innovative approaches for reshaping care delivery

Modernizing CON Regulation – Common Themes

- CON regulation encourages a “silo” perspective on the appropriate role of particular types of facility at a time when more flexibility may be needed to encourage facilities to break out from their limited traditional roles & provide different types of service to maximize care management/coordination & reduce cost

- Role of CON regulation as a tool for quality improvement is limited & quality improvement objectives may be better addressed with more appropriate tools

- CON regulation is the primary way for MHCC to implement its objectives for health care facility services – It should be reformed to better focus on achievement of this purpose

Modernizing CON Regulation – Key Problems

- Scope of CON regulation is outdated
- Review processes for handling different types of project review are underdeveloped – not all projects need the review process currently imposed
- State Health Plan regulations are, in some cases, outdated & overly complex – need to be better aligned with evolving All Payer Model regulating total cost of care
- The average period of time needed to review & act on CON applications is too long – period for completeness review and developing recommendations is often excessive
- Information requirements imposed by CON regulation are sometimes excessive/duplicative
- Post-approval performance requirements for approved projects are outdated and inflexible
- Capability to obtain broader community perspective on projects is underdeveloped

Context for the Recommendations

Successful implementation of CON reforms will proceed on three different tracks.

1. Regulatory actions that can be started immediately.
    - Modernization requires modifications to State Health Plan (SHP) and procedural regulations
    - Pace of work is dependent on…
        - Building consensus among stakeholders
        - Staff workload, a rewrite of a SHP chapter can take ~ 9-12 months
        - MHCC may wish to consider obtaining consultants to assist in rewrites
2. Statutory changes that could be sought In 2019/2020 General Assembly Session...
    - Must obtain approval from the Governor's Legislative Office and build consensus among stakeholders
    - Statutory changes will require supporting regulatory changes
3. Areas for further study from which further regulatory and statutory changes are likely to emerge...
    - Removing certain services from the scope of CON regulation will require identifying the agency to assume the "gatekeeper" role
    - Some reforms require statutory action likely to have an impact on a sister agency such as the Office of Health Care Quality (MDH) or the Health Services Cost Review Commission

- **MHCC should be focused on modernization and recognize some reforms will require time. Success or failure won't be determined in twelve months, but let's begin in 2019.**

Immediate Regulatory Reforms: Changes to State Health Plan

Immediate Regulatory Reform: Streamlining SHP Standards

1. Identify the State Health Plan chapters that are most in need of updating and which offer the greatest potential to meet reform objectives and prioritize their revision.

    a. Limit SHP standards to those addressing project need, project viability, project impact, and applicant qualifications.
        - Any other standards that do not address these four specific criteria should only be included if necessary because of the particular characteristics of a health care facility.
        - Applicant qualification standards will allow for the establishment of performance or track record thresholds that must be met to become an applicant and, as such, will become the single way in which CON regulation addresses quality of care, as a “gatekeeper.”

Immediate Regulatory Reform: Abbreviated Review Process

b. Create an abbreviated review process for certain uncontested projects

Applicable to changes to bed or operating room capacity, changes in the type or scope of services provided by an existing health care facility, expansion of the service area of a home health agency or hospice, or a capital expenditure that exceeds a specified expenditure threshold, if such projects are uncontested. Two goals:

- Limit completeness review to one round of questions and responses before docketing an application as complete. (This goal presupposes reforms are adopted to reduce or better define SHP standards.)

- Issuance of a staff recommendation within 60 days of docketing and final action by the Commission within 120 days of application filing.

Projects not eligible for abbreviated review…

- establishment of a health care facility;
- relocation of a health care facility;
- the introduction by a hospital of cardiac surgery or organ transplantation; and
- contested applications

Immediate Regulatory Reform:
Changes in Procedure Regulations (post- approval)

c. Revise performance requirements for approved projects that include a deadline for obligating the capital expenditure and initiating construction but without project completion deadlines.
   - Timely obligation and initiation of construction will result in a 12-month extension with subsequent requirements to report progress (in essence, an annual progress report) and obtain additional 12-month extensions until project completion.
   - Projects that do not involve construction will continue to have a deadline for completing the project.
   - Failure to timely obligate and initiate construction will void the CON.

d. Establish a process for staff review of certain post-approval project changes….
   - Changes in physical plant design,
   - Capital cost increases that exceed defined limits, or
   - Operating cost increases that exceed defined limits.

   Retain Commission approval for following actions:
   - changes in the project financing mechanism that involve additional debt financing; and
   - changes in the location or address of the project.

   Continue the current list of impermissible changes (i.e., changes in the fundamental nature of a facility or the services to be provided)

Immediate Regulatory Reform: Alignment with TCOC Incentives

2. Create the ability to waive docketing requirements or other considerations for approval of a CON for a capital project if the HSCRC endorses the project as a viable approach for reducing the total cost of care under Maryland's TCOC model.

    - MHCC would retain control over approval of new capacity

    - Nursing homes, home health and others have concerns about the lack of models and inability to serve as conveners

Statutory Changes That Could Be Sought In 2019/2020 Legislative Session

Future Statutory Changes:
Eliminate or Modify Capital Thresholds

3. Eliminate the capital expenditure threshold used to mandate CON approval for non-hospital health care facility projects, limiting all definitions of projects requiring CON approval to "categorical" projects involving the establishment of facilities or specific types of changes to an existing health care facility, no matter what capital expenditure is required.

4. Replace existing hospital project capital expenditure thresholds with a requirement that hospitals obtain CON approval for a project with an estimated expenditure that exceeds a specified proportion of the hospital's annual budgeted revenue, but only if the hospital is requesting an adjustment in budgeted revenue, based on an increase in capital costs.

Future Statutory Changes: CON Review Criteria

5. Limit the required considerations in CON project review to:
   (a) Alignment with applicable State Health Plan standards
   (b) Need
   (c) Viability of the project and the facility;
   (d) Impact of the project on cost and charges.

This reform would eliminate the currently required consideration of the costs and effectiveness of alternatives to the project, the impact of the project on other providers, and compliance with the terms and conditions of previous CONs the applicant has received.

Future Statutory Changes: Changes in Bed Capacity

6. Eliminate the requirement to obtain CON approval of changes in bed capacity by an alcoholism and drug abuse treatment intermediate care facility or by a residential treatment center.*

7. Eliminate the requirement to obtain CON approval of changes in acute psychiatric bed capacity by a general acute care or special psychiatric hospital.*

8. Eliminate the requirement to obtain CON approval of changes in hospice inpatient bed capacity or the establishment of bed capacity by a general hospice.*

*These recommended changes in the statutory scope of CON regulation could include nominal limitations (or limits based on the proportion of total existing bed capacity) that could be added by an existing facility without CON approval

Future Statutory Changes: Ambulatory Surgery and Review Cycle

9. Define “ambulatory surgical facility” in the CON statute as an outpatient surgical center with three or more operating rooms. (Current statute defines “ambulatory surgical facility” as a center with two or more operating rooms.)

10. Limit the requirement for CON approval of changes in operating room capacity by hospitals to the rate-regulated hospital setting, i.e., a general hospital. Any person would have the ability, under the new definition of “ambulatory surgical facility,” to establish one or two-operating room outpatient surgical centers without CON approval, but with a determination of coverage after a plan review by MHCC staff.

11. Establish deemed approval for uncontested project reviews eligible for an abbreviated project review process if final action by the Commission does not occur within 120 days.

Areas for Further Study of Potential Regulatory and Statutory Changes

Areas for Further Study

12. Convene a task force with the home health, hospice, alcohol and drug treatment, and residential treatment center sectors and the Maryland Department of Health to identify alternatives to conventional CON regulation. The principal goal of the task force is to define the agency that would implement the “gatekeeper” function:

    a. eliminate CON regulation for these health care facility categories with MDH incorporating the gatekeeper function into the facility licensure process; or

    b. establish MHCC’s role in regulating these facility categories solely as a gatekeeper (e.g., any facility of this type that gets a clean bill of health following a rigorous background check and character and competence review and is compatible with limitations for gradual expansion of new providers would be issued a CON, without further review). The task force would have specific deadlines for completing the recommendations.

13. Work with HSCRC to develop an approach in which hospital CON project review and the Total Cost of Care project can be further integrated.

MARYLAND HEALTH CARE COMMISSION

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MARYLAND HEALTH CARE COMMISSION

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Exemption from Certificate of Need – Summit Ambulatory Surgery Center, LLC – (Docket No. 18-02-EX009)

(Agenda Item #5)

MARYLAND HEALTH CARE COMMISSION

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MARYLAND HEALTH CARE COMMISSION

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(Agenda Item #6)

MARYLAND HEALTH CARE COMMISSION

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MARYLAND HEALTH CARE COMMISSION

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COMAR 10.24.17 State Health Plan for Facilities and Services: Specialized Health Care Services – Cardiac Surgery and Percutaneous Coronary Intervention Services – Final Action

(Agenda Item #7)

MARYLAND HEALTH CARE COMMISSION

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PRESENTATION:

School Based Teletherapy for Special Education Services Grant Award Announcement – Charles County Public Schools

(Agenda Item #8)

Grant Award

School-Based Teletherapy for Special Education Services

December 20, 2018

The MARYLAND
HEALTH CARE COMMISSION

Telehealth Grants

- Since 2014, MHCC has awarded telehealth grants to 14 organizations to implement innovative projects in the State
  - Enable assessment of telehealth services across a variety of settings, including primary care practices, patient homes, and community centers
- Findings inform stakeholders locally and nationally on:
  - Successful practices to evaluate the need, willingness, and readiness to use telehealth
  - Strategies to integrate telehealth within a multidisciplinary team
  - Existing and future telehealth projects in the State

School-Based Teletherapy

- Staff released an *Announcement for Grant Applications* on July 11th for *School-Based Teletherapy for Special Education*
  - Two applications were received
- Evaluations were conducted with the assistance of external reviewers, including a physician and representatives from Maryland Medicaid
- The grant was awarded to Charles County Public Schools (CCPS) to increase access to qualified specialist that can provide services to schools
  - 18-month time frame
  - Up to $200,000 available based on achieved milestones
- The grant will help inform efforts of the School-Based Telehealth Workgroup

Project Goals

- Connect students eligible for special education with a provider who can deliver specialized services during the school day
- Increase knowledge of the benefits and barriers of teletherapy and identify leading best practices for providing teletherapy in schools
- Reduce the stigma associated with small group instruction by an in-person special education services
- Identify current policy gaps and challenges that may hinder the use of teletherapy in schools
- Formulate policy recommendations and solutions aimed at expanding school-based teletherapy in schools

Project Team

Melanie Upright
Coordinator for Speech-Language Pathology (SLP)

Kelly Bryant
Related Services Agency

Roxane Burlack
Instructional Specialist for SLP

Project Overview

- CCPS will utilize a vendor to provide speech teletherapy services, in accordance with Individual Education Program (IEP) determinations of the students (e.g., 30-minute speech-language therapy sessions per week)
- An Instructional Assistant will facilitate the teletherapy program onsite in four schools (middle and high school)
- Students receiving home and hospital-based instruction will also be provided an option to receive teletherapy, as well as students participating in the Extended School Year program will be offered services
- Approximately 77 students will be provided teletherapy over the grant period

Project Assessment & Sustainability

- CCPS will work in coordination with staff to identify and collect measures to assess:
  - Increase access to services or utilization;
  - Student, parent, provider satisfaction; and
  - Outcomes (e.g., progress toward IEP goals)
- CCPS will also work in coordination with staff to develop an achievable sustainability plan, which will allow CCPS to continue services after grant funds end

Timeline

- January 2018: Launch the project
- April 2019: Go-live with the technology
- November 2019: Implementation progress and preliminary outcomes summary
- Summer 2020: Release final report

Thank You!

The MARYLAND
HEALTH CARE COMMISSION

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9. **OVERVIEW OF UPCOMING INITIATIVES**

10. ADJOURNMENT

MARYLAND HEALTH CARE COMMISSION

Overview of Upcoming Initiatives

(Agenda Item #9)


ENJOY THE REST OF
YOUR DAY