



June 22, 2018

Mr. Ben Steffen  
Executive Director  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215-2299

**Re: Comments on the Interim Report: Modernization of the Maryland Certificate of Need Program**

Dear Ben:

Thank you for the opportunity to comment on this interim report. Together we are at a time of both challenge and opportunity as we strive to create a more integrated health delivery landscape that sets the stage for quality providers to serve and help Marylanders in need to be as healthy and productive as they can be, while also reducing the total cost of care across all settings.

You can tell from my my words here and from our interactions with you and the Maryland Health Care Commission ("Commission") that the Health Facilities Association of Maryland ("HFAM") and its members view the work of the Commission on modernizing the certificate of need process, updating the State Plan, and the work of the Health Services Cost Review Commission and the Maryland Department of Health on the Total Cost of Care Contract as critically integrated.

HFAM members provide over 5.7 million days of care annually in Maryland, paid for by Medicare, Medicaid and privately, and are collectively the largest group of providers of post-acute and long-term care in Maryland. We have insights that we believe are useful in our shared work of modernization.

Following are comments on the June 1, 2018 Interim Report of the task force on the Modernization of the Certificate of Need Program (the "Interim Report"). On behalf of HFAM, Maryland's largest association of long term care providers, we appreciate the Commission including us in the process.



As an overall comment, we are strongly supportive of the approach of preserving the certificate of need ("CON") process, while also taking steps to make it more timely and efficient, more focused on the statutory scope of the Commission's authority and mission, avoiding overlap with other regulatory agencies and more cost-effective. Thus, we support the Interim Report's statement that the CON process "primarily functions as a mechanism to influence the supply and distribution of certain types of health care facilities and services." This does and should include comprehensive care facilities ("CCFs").

It is apparent that there is a disconnect between the Commission's approach to the CON process as reflected in the Interim Report, and the approach to the regulation of CCFs reflected in the working draft for a proposed CCF chapter to the State Health Plan ("SHP") that would be adopted under a new COMAR 10.24.20 (the "Draft CCF Chapter"). We will be commenting separately on the Draft CCF Chapter. It is noteworthy that CCFs are the only part of the health care delivery system that is being subject to a concurrent major revision of the applicable SHP chapter, while there is this review modernization of the CON process as a whole. We wish to discuss why this is the case. It is vitally important that CCFs not be treated in a distinctly different approach than other health care facilities under the CON process.

**For example:**

- On Page 1, the following sentence should be amended to read: "Second, the Committees noted that the CON regulatory process used to review and act on health care facility capital projects is complicated, particularly for hospitals [and comprehensive care facilities.]"
- We endorse the statement on Page 8 that "Health care quality, for example, is an issue that may be best addressed through licensure regulation, rather than the one-time, front-end review offered by CON regulation. A robust licensure process should be more effective than CON regulation in ensuring that health care facilities and providers are operated soundly and under responsible ownership." When we comment on the Draft CCF Chapter we will point out where that document is contrary to the Interim Report.
- We endorse the statements on Pages 9 and 10 of the Interim report that:  
  
"Thus, there is a common theme that standards within the SHP should be re-evaluated for applicability and necessity. \* \* \* Thus, thematically, as the SHP is revised over time, need methodologies should be reevaluated to

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ensure they are appropriate, clearly described and defined, and incorporate the most relevant and accurate assumptions with respect to demand for service and the capacity needed to address service volume."

When we comment on the Draft CCF Chapter, these Interim Report statements are relevant to consider.

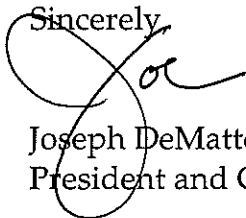
For convenience, we are attaching our initial comments. We urge that our suggestions and comments be more fully included in the Nursing Homes "Problem Statement" section and the Interim Report not be used to carve out a different regulatory approach than is planned for other health care facilities.

For example, under the Problem Statements, Item 2 on the total cost of care issue foreshadows an "update process" in 2018. The "update" is also mentioned in Item 3 relating to the use of the federal Centers for Medicare and Medicaid Services Nursing Home Compare Star Rating System, that was the subject of debate and concern by multiple task force participants. There is no "Comment" in Item 4 referring to the Medicaid Memorandum of Understanding requirement that was also the subject of concern and debate about the lack of justification for this outdated mandate.

We focus in this letter on these points that they illustrate why the Interim Report should focus on the need to make the CON process overall more up to date, focused, and efficient while avoiding duplication with other agencies. We are concerned that the Interim Report and its references to a future "update" for CCFs, coupled with the approach taken in the concurrently issued Draft CCF Chapter, foreshadow disparate treatment for CCFs that would hold back from them the benefits of a modernized CON process.

We hope and trust this is not the intention and appreciate the opportunity to obtain clarity on this point. We look forward to continued collaboration and participation. We look forward to open, candid and cooperative discussions; working together we have a tremendous opportunity to create public-private partnership for a healthier Maryland and create a landscape of national importance.

Sincerely,



Joseph DeMattos, MA.  
President and CEO

CC: Howard Sollins, Esq.  
HFAM Board of Directors