

Potential CON Reforms for CCFs and HHAs: Options for discussions
MHCC staff generated based on review of Phase 1

Nursing Homes

- Allow project development without CON review when occupancy rates in a jurisdiction are above an agreed ceiling.
- Permit docketing of applications for new facilities in jurisdictions where existing facilities report, on average, a Nursing Home Compare overall rating of two stars (below average quality of care) or one star (much below average quality of care).
- Amend “waiver” bed exception to CON requirements to allow unregulated changes in CCF bed capacity of more than 10% of existing bed capacity.
- Permit docketing of applications in jurisdictions that have no identified bed need if the proposal is well aligned with the Total Cost of Care Demonstration.
- Allow nursing homes to establish home health agencies or general hospice programs without CON approval.
- Eliminate the requirement to provide a minimum number of patient days to Medicaid patients (the Medicaid MOU).
- Eliminate CON regulation of CCFs and CCF bed capacity given that demand side initiatives including the TCOC Demonstration and initiatives by Medicaid and private payers are effective in limiting any negative consequences of overcapacity.

Home Health Agencies

- Provide greater flexibility for existing operators:
 - Allow an existing provider to expand its service area without CON approval. Replace with a registration requirement; or
 - Establish an abbreviated review process, without interested party participation, for an existing HHA that seeks to expand its service area.
- Allow hospitals, nursing homes, and hospices to establish HHAs without CON approval.
- Limit CON standards to a review of an applicant’s performance and quality of care history.
- Eliminate CON regulation of HHA services. To the extent that provider quality is a concern, address needed improvements in quality assurance through changes in MDH’s oversight of quality through licensure, certification, and sanctions on poor quality providers.

General – Applicable to All Categories

- Eliminate capital expenditure thresholds as a basis for requiring CON approval of projects.
- When a facility is modernizing but will not be seeking additional capacity: (a) Eliminate the need for a CON; (b) Replace the requirement for CON approval with a registration requirement that allows MHCC to impose approval requirements if it affirmatively intervenes within a set time frame based on the project's inconsistency with State Health Plan standards.
- Modify the standard of review for financial viability of projects replacing it with a financial feasibility standard.
- Eliminate consideration of "impact" on competing providers as a review requirement or a basis for obtaining interested party status. If there is a need, and the provider and project meet other qualifications, competitive harm to existing providers or difficulty in competing for staff should not be the basis for a challenge to a CON.
- Modernize COMAR 10.24.01 to streamline review and reduce post-approval requirements. In particular, modernize CON post-approval reporting processes to eliminate or minimize post-approval progress reporting requirements.
- Streamline and clarify exemption requirements:
 - Currently, exemption requirements differ by the types of service eligible for exemption. Review the limits for changes in health care services that qualify for a CON exemption in 19-120(j)(2).
 - For all projects for which a CON exemption is available, institute a "deemed approval" process. If MHCC does not act within a set time after filing the exemption request, the project is approved.
- Require MHCC to update each chapter of the State Health Plan *annually* in accordance with the requirement of an annual review set out in 19-118(b).
- Align project performance requirements (deadlines for obligating, initiating construction, and finishing projects) for replacement and expansion projects (currently, not aligned).