CON Task Force: Phase 2

August 10, 2018

MHCC | MARYLAND HEALTH CARE COMMISSION

AGENDA

- Call to Order, Welcome and Introductions
- Approval of June 29, 2018 Task Force Meeting: Summary
- Guiding Principles for CON Reform: A framework for think about changes in CON
- Comprehensive care Facilities (CCFs or Nursing Homes)
  - Current State Health Plan: Key policy objectives guiding CON regulation
  - Current problems/issues: Stakeholder perspectives (Based on Phase One input/discussion)
    - Scope of CON regulation
    - Needs-based review standards
    - Compatibility of CON regulation with total Cost of Care All Payer Model
    - Role of CON regulation in promoting quality of care
    - Access to care for Medicaid patients/Medicaid burden-sharing
    - Information requirements and review process: Aligning with type and scale of a project
  - Recommendations: Task Force discussion
- Home Health Agency (HHA)
  - Current State Health Plan: Key policy objectives guiding CON regulation
  - Current problems/issues: stakeholder perspectives (Based on Phase One input/discussion)
    - Scope of CON regulation
    - Needs-based review standards based on patient choice, market concentration, and availability of high quality performers
    - Compatibility of CON regulation with Total Cost of Care All Payer Model
    - Role of CON regulation in promoting quality of care
    - Information requirements and review process
    - Charity care
  - Recommendations of Task Force
- Adjournment

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Principles to Guide CON Reform

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.**

Note: MHCC staff recommends focusing on the goals for CON reform. We have proposed principles for access, TCOC alignment, affordable high quality safe care, regulatory reform, and internal coherence.

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GENERAL DISCUSSION

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COMPREHENSIVE CARE FACILITIES

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COMPREHENSIVE CARE FACILITIES (CCF)

- Scope of CON Regulation
  - Are current requirements for a CON appropriate and purposeful?
  - Should additional circumstances/projects be exempt from CON review?

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CCF (CONTINUED)

- Needs-based review standards: bed capacity
  - Are the needs-based review standards/methodologies appropriate?

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CCF (CONTINUED)

- Compatibility of CON regulation with the Total Cost of Care All Payer Model
  - How can the CON process support the goals of the TCOC All Payer Model and encourage more integrated/innovative models of post-acute care?
    - What changes/allowances would support these objectives?
    - What review criteria should be included/modified to promote these goals?

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CCF (CONTINUED)

- Role of CON regulation in promoting quality of care
  - How can quality metrics be effectively used in the CON process?
  - How can the application process better leverage publicly available State & Federal data and patient survey findings?
  - What metrics should be used?

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CCF (CONTINUED)

- Access to care for Medicaid patients/Medicaid burden-sharing requirements
  - Should the Medicaid MOU requirement continue to be used a part of the CON review to set the minimum required levels of Medicaid participation?

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CCF (CONTINUED)

- Information requirements & application review process: aligning/streamlining
  - How can the requirements and the review process be more aligned with the type and scale of a project?
  - How can the application process be modified to be more efficient and produce more timely responses?
  - How can processes be streamlined to minimize delays in the review process and project implementation?

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POTENTIAL CON REFORMS FOR CCF: OPTIONS FOR DISCUSSION

- CCF
  - Permit docketing of applications for new facilities in jurisdictions where existing facilities report an average of a two star or lower rating on the CMS five star system
  - Allow changes in bed capacity of more than 10% without needing a CON
  - Permit docketing of applications in jurisdictions that have no need if proposal is well aligned with the TCOC demonstration

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POTENTIAL CON REFORMS FOR CCF: OPTIONS FOR DISCUSSION

- CCF (continued)
  - Allow CCFs to provide home health or hospice services without needing an additional CON

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HOME HEALTH AGENCIES

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HOME HEALTH AGENCIES (HHA)

- Scope of regulation
  - Are the current requirements of a CON appropriate and purposeful?
  - Should additional circumstances/projects be exempt from CON review?

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HHA (CONTINUED)

- Needs-based review standards & other standards
  - Are the review standards for HHA CON review appropriate?
    - *Note from MHCC staff: need-based methodology has been eliminated in the Home Health Chapter of the State Health Plan*

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HHA (CONTINUED)

- Compatibility of CON regulation with the Total Cost of Care All Payer Model
  - How might the CON process support the goals of the TCOC model and encourage innovative models of post-acute care?
    - What changes/allowances could be made to support these objectives?
    - What review criteria should be included/modified to support models that promote these goals?

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HHA (CONTINUED)

- Role of CON regulation in promoting quality of care
  - How can quality metrics be used in the CON process?
  - How can the process better leverage publicly available State & Federal data and patient survey findings?
  - What metrics should be used?

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HHA (CONTINUED)

- Access to care – charity care requirements
  - Should charity care requirements continue to be a standard incorporated in the CON review process?
    - *HHAs are required to provide charity care and are required to make presumptive eligibility determinations for charity care within two days of a patient's initial inquiry. Less than one percent of patients receive charity care, however.*

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HHA (CONTINUED)

- Information requirements & review process
  - How can the requirements and the review process be more aligned with type and scale of a project?
  - How can the application process be modified to be more efficient & timely?

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POTENTIAL CON REFORMS FOR HHA: OPTIONS FOR DISCUSSION

- Home Health Agencies
  - Provide greater flexibility for existing operators
    - Allow an existing provider to expand its service area without CON review; replace with a filing requirement that does not require MHCC approval; or
    - Establish an "exemption" from CON for an existing provider that seeks to expand its service area
  - Exempt from CON HHA review for any health facility that already has a CON as a health care facility (exemption for hospital, CCF, and hospice)

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POTENTIAL CON REFORMS FOR HHA: OPTIONS FOR DISCUSSION

- Home Health Agencies (continued)
  - Allow CCFs to provide home health or hospice services without needing an additional CON
  - Limit CON standards to a review of the provider's history and quality of previous services
  - Eliminate CON, and to the extent that provider quality is an issue, address provider quality through MDH requirements: obtain and receive a license from MDH, which will continue to provide appropriate license oversight

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POTENTIAL CON REFORMS FOR HHA: OPTIONS FOR DISCUSSION

- Home Health Agencies (continued)
  - Eliminate CON – there is some evidence that home health is underutilized in CON states (in favor of CCFs). CON for CCF does not help reduce CCF utilization or promote appropriate home health utilization

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Potential Cross-cutting Recommendations

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POTENTIAL CON REFORMS THAT APPLY TO CCF AND HHA: OPTIONS FOR DISCUSSION

- General
  - Eliminate the capital thresholds across all provider categories
  - Where a facility is modernizing but will not be seeking additional volume:
    - Eliminate CON review
    - Replace CON with a requirement that the facility must make a filing and the MHCC must affirmatively intervene within a set timeframe if it concludes that the project is not in accord with the MHCC standards for such an exemption

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POTENTIAL CON REFORMS FOR CCF AND HHA: OPTIONS FOR DISCUSSION

- General (continued)
  - Modify the standard of review for financial viability of projects – a project need only be feasible in order to be approved
  - Eliminate "impact on competing providers" as a consideration or as a basis for 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

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POTENTIAL CON REFORMS FOR CCF AND HHA: OPTIONS FOR DISCUSSION

- General (continued)
  - Modernize COMAR 10.24.01 – CON procedural regulations to account for statutory changes
  - 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) and expand those limits

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POTENTIAL CON REFORMS FOR CCF AND HHA: OPTIONS FOR DISCUSSION

- General (continued)
  - For all projects for which a CON exemption is available, institute "file and use" – if MHCC does not act within a set time, the exemption is deemed 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)

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POTENTIAL CON REFORMS FOR CCF AND HHA: OPTIONS FOR DISCUSSION

- General (continued)
  - Modernize CON post-approval reporting processes to eliminate unneeded post-approval requirements
  - Align completion deadlines for replacement and expansion projects (currently, not aligned)

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RECOMMENDATIONS FROM HEALTH FACILITIES ASSOCIATION OF MARYLAND (HFAM)

AND

MARYLAND-NATIONAL CAPITAL HOMECARE ASSOCIATION (MNCHA)

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HFAM RECOMMENDATIONS

- **<u>Modernization of CON Process CCFs</u>**
  - The wisdom and guiding principles identified in the Task Force should be applied generally and uniformly through updates to the applicable SHP chapters.
  - A simpler and less costly CON process should be a goal of the process. This includes a review and revision of the process for project changes, performance requirements, and cost increases that do not increase costs to the health care delivery system.
  - The process for CCFs undertaking beneficial capital projects should be more streamlined. The threshold for capital expenditures for CCFs should not be in the same, lower capital cost threshold category as all "non-hospital" projects.

HFAM (CONTINUED)

- **Modernization of CON Process CCFs (continued)**
  - The MHCC should not duplicate the role of other agencies. For example, the OHCQ should retain its role as the regulatory agency monitoring quality of care, the qualifications of health care facility owners and operators, and the change of ownership process. Similarly, OHCQ approves the designs of CCFs; the MHCC should not be dictating how CCFs should be designed.
  - Modernization of the CON should include a waiver that allows current skilled nursing and rehabilitation centers to secure CONs for Home Health. Consumers want consistent care and increasingly post-acute providers will be held responsible for hospital readmissions over a longer timeframe. Allowing skilled nursing and rehabilitation centers not to handoff to another Home Health organization will reduce a reliance on secondary agencies, better integrate care, be a better consumer experience, and likely reduce hospital readmission.

HFAM (CONTINUED)

- **<u>Key Elements of the SHP CCF Chapter that Need to be Addressed</u>**
  - See HFAM's comments on the informal draft of the CCF Chapter. As a few selected highlights from that letter:
  - CON should be preserved.
  - The CMS Five Star ranking system should be a source of information along with additional information about quality. Moreover, the five-star ranking information should simply be considered along with other appropriate quality information that is provided by an applicant. Data over a 24-month period should be used. It should not be used as a Plan Standard or review criterion but as informational.
  - The Medicaid Memorandum of Understanding should be removed.

HFAM (CONTINUED)

- **<u>Key Elements of the SHP CCF Chapter that Need to be Addressed (continued)</u>**
  - The CCF bed need methodology should be specifically explained in a "live" work session with sample calculations.
  - Waivers of standards should be permitted based on applicant information.
  - The acquisition process should not seek information unnecessary for the CON regulation process such as purchase price, market share.
  - There should be no change to the current process for information disclosed by proposed owners or operators. As noted, OHCQ is responsible for this evaluation and no need for a change has been explained or demonstrated.
  - Capital projects that improve facilities and do not increase costs to payers should not require a CON application; the waiver bed rules should be applied per the current statute and available to enhance capital improvements.

MNCHA RECOMMENDATIONS

- **Environmental Considerations**
  - Home health patients are among the most vulnerable (aged; multiple chronic conditions; live alone); thus this service is a target for fraud and abuse.
  - CON for HHA plays a key role in reducing hospital readmissions and reducing the overall cost of care. Maryland providers average 4 stars (others 3.5); hospital readmissions slightly lower than nation.
  - Maryland HHAs are engaged in CMS pilot: Home Health Value-Based Purchasing.
  - "Association strongly believes that any dramatic changes to the home health infrastructure during these two pilots (both in their infancy) – HHVBP and Total Cost of Care – would threaten the success of these projects and place at risk the established hospital/home health continuum of care."
  - Other factors -- Major fraud and abuse (6 of the 7 major ones) is in non-CON states. Home Health is in a workforce crisis; lack of qualified staff.

MNCHA (CONTINUED)

- **<u>Recommendations: General:</u>**
  - Streamline CON and make it more accessible to existing (established high quality) providers.
  - Maintain CON for HHA and add patient satisfaction, using CMS Star Rating System.
  - Maintain a needs-based standard that considers population growth and aging .
  - Continue to allow for opening of rural areas for new HHA applicants.
  - Do not require data from applicants that has previously been submitted via the state report.
  - Streamline the process by allowing existing licensed Maryland providers that meet quality standards to expand to high need jurisdictions with modified application process.

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MNCHA (CONTINUED)

- **<u>Recommendations: Specific:</u>**
  - Remove COMAR 10.24.16.08G (Impact): impossible to determine impact on existing agencies .
  - Remove COMAR 10.24.16.08I (linkages): it falls to the applicant to work on building relationships with existing healthcare facilities in the area.
  - Remove COMAR 10.24.16.08J (Discharge Planning): HHA does not regularly discharge to another healthcare facility . ***MHCC Note: the legal definition of a healthcare facility includes a home health agency. The definition of a health care facility may also have to be changed***
  - Remove COMAR 10.24.01.08G (Need Criterion): once the state determines that there is need, the applying HHA should not have to demonstrate need.
  - Remove COMAR 10.24.01.08G(3)(c) (Availability of More Cost-Effective Alternatives): remove and focus on higher quality providers; HHA is proven to be more cost-effective than hospital or SNF.

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MNCHA (CONTINUED)

- **<u>Recommendations: Specific (continued):</u>**
  - Remove/Update COMAR 10.24.01.08G(3)(f) (Impact on Existing Providers): see comments above. This allows interested parties to protect their own interests. Once state determines need, an interested party should only be allowed to file concerns based on quality standards or specific performance concerns.

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