

CON Task Force: Phase 2 Draft Recommendations

December 3, 2018



AGENDA

1. Call to Order, Welcome and Introductions
2. Approval of the October 12, 2018 Task Force Meeting Summary
3. Review of Commissioner Comments at the November 15th Commission Meeting
4. Overview of the Draft Final Report
5. Review of Recommendations
 - Regulatory Changes that can be Started
 - Statutory Changes that could be made in the 2019-2020 Legislative Sessions
 - Statutory and Regulatory Changes that Require Coordination with other State Agencies or Further Study
6. Next Steps
 - Staff releases Draft Final Report – December 7th
 - Comments from stakeholders -- December 8th-12th
 - Stakeholders' comments distributed to Commissioners – December 14th
 - Public comment at December 20th Commission meeting
 - Commission action on report
7. Public Comment
8. Adjournment

OVERVIEW OF RECOMMENDATIONS

- The report provides 14 Recommendations for CON Modernization, grouped into 3 categories:
 1. Regulatory Reforms to be Started Immediately
 2. Regulatory Reforms Requiring Statutory Changes to Be Sought in the 2019 or 2020 Legislative Session
 3. Areas for Further Study from which Further Regulatory and Statutory Changes Are Likely to Emerge
- These recommendations, as they affect CON regulation of specific health care facility project categories, appear in the report within the appropriate facility subsections

REGULATORY REFORMS TO BE STARTED IMMEDIATELY

RECOMMENDATION 1: IMMEDIATE REGULATORY REFORM

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. Simultaneously review and revise the procedural regulations governing CON application review. Among the changes implemented should be:

RECOMMENDATION 1a: IMMEDIATE REGULATORY REFORM

- a. Limiting 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 absolutely necessary to 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 in order to become an applicant and, as such, will become the single way in which CON regulation addresses quality of care, as a “gatekeeper.” For example:
 - i. The SHP regulations for home health agencies could be streamlined to facilitate quicker approval of qualified applicants by eliminating extraneous standards or standards with low impact (such as charity care requirements).
 - ii. The SHP regulations for general hospices could be revised to create a pathway for facilitating the establishment of alternative choices for hospice care in jurisdictions with only one authorized hospice.

RECOMMENDATION 1b: IMMEDIATE REGULATORY REFORM

- b. Creating an abbreviated review process for all uncontested projects that do not involve: a) establishment of a health care facility; b) relocation of a health care facility; c) the introduction by a hospital of cardiac surgery or organ transplantation. The features of this review process will include:
 - i. A goal -- not a hard and fast requirement -- to limit completeness review to one round of questions and responses before docketing an application as complete. (*This goal presupposes reforms to significantly reduce and better define SHP standards.*)
 - ii. Issuance of a staff recommendation within 60 days of docketing and final action by the Commission within 90 days of docketing.

RECOMMENDATION 1c: IMMEDIATE REGULATORY REFORM

- c. Establish performance requirements for approved projects that include a deadline for obligating the capital expenditure and initiating construction but without project completion deadlines. Failure to timely obligate and initiate construction will void the CON. 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.

RECOMMENDATION 1d: IMMEDIATE REGULATORY REFORM

- d. Establish a process for review of changes in approved projects as a staff review function with approval by the Executive Director. Limit required change reviews to 1) changes in the financing plan that require additional debt financing and/or extraordinary adjustment of a hospital's budgeted revenue and 2) changes in "medical services" approved to be provided by the facility. Continue current list of impermissible changes.

RECOMMENDATION 2: IMMEDIATE REGULATORY REFORM

2. Create the ability for the waiver of CON requirements for a capital project that is endorsed by the HSCRC as a viable approach for reducing the total cost of care consistent with HSCRC's TCOC model and alternative models for post-acute care.

STATUTORY CHANGES THAT COULD BE SOUGHT IN 2019/2020 LEGISLATIVE SESSION

RECOMMENDATION 3: FUTURE STATUTORY CHANGES

3. Eliminate the capital expenditure required for a non-hospital health care facility project as an element requiring CON approval, limiting all definitions of projects requiring CON approval to “categorical” projects involving establishment of facilities or specific types of change to an existing health care facility, no matter what capital expenditure is required.

RECOMMENDATION 4: FUTURE STATUTORY CHANGES

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 extraordinary adjustment in budgeted revenue, based on an increase in capital costs.

RECOMMENDATION 5: FUTURE STATUTORY CHANGES

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 would eliminate the current required consideration of the costs and effectiveness of alternatives to the project compliance with the terms and conditions of previous CONs the applicant has received.

RECOMMENDATION 6: FUTURE STATUTORY CHANGES

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.

RECOMMENDATION 7: FUTURE STATUTORY CHANGES

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

RECOMMENDATION 8: FUTURE STATUTORY CHANGES

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.

RECOMMENDATION 9: FUTURE STATUTORY CHANGES

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.)

RECOMMENDATION 10: FUTURE STATUTORY CHANGES

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.

RECOMMENDATION 11: FUTURE STATUTORY CHANGES

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 90 days.

**AREAS FOR FURTHER STUDY FROM
WHICH FURTHER REGULATORY AND
STATUTORY CHANGES ARE LIKELY TO
EMERGE**

RECOMMENDATION 12: AREAS FOR STUDY

12. Engage with the home health, hospice, alcohol and drug treatment, and residential treatment center sectors and the Maryland Department of Health on alternatives to conventional CON regulation for accomplishing the “gatekeeper” function of keeping persons or organizations with poor track records in quality of care and/or integrity from entering Maryland and accomplishing the objective of expanding the number of such facilities gradually. The objectives would be either to: (1) eliminate CON regulation for these health care facility categories with MDH incorporating the gatekeeper function into the facility licensure process; or (2) 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). Establish specific deadlines for recommendations.

RECOMMENDATION 13: AREAS FOR STUDY

13. Engage with HSCRC on ways in which hospital CON project review and the Total Cost of Care project can be further integrated. The objective would be to limit hospital projects requiring CON review and to improve MHCC's use of HSCRC expertise in consideration of project feasibility and project and facility viability.

RECOMMENDATION 14: AREAS FOR STUDY

14. Consider structural changes in how the Commission handles CON project reviews in light of creating an abbreviated process for most reviews and providing meaningful participation by the public in the regulatory process. Possible changes could include use of a project review committee. The objective would be further streamlining the review process and facilitating more public engagement.