

CON Task Force: Phase 2

November 9, 2018



AGENDA

1. Call to order, Welcome and Introductions
2. Approval of the October 12, 2018 Task Force Meeting Summary
3. Staff Resources and the Organizational Foundation for Reform
 - Current staffing and workload
 - MHCC approach to modifying State Health Plans
4. 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
5. Plans for a December 3, 2018 meeting
6. Public comment
7. Adjournment

Resources and Staff Capacity

CENTER	NUMBER OF POSITIONS
EXECUTIVE DIRECTION – Operations, Attorneys, Procurement, Personnel	12
ANALYSIS AND INFORMATION SYSTEMS – All Claims Payer Database, Data Analytics	11
QUALITY MEASUREMENT AND REPORTING – Maryland Health Care Quality Reports, Quality Data Collection	7
FACILITIES PLANNING AND DEVELOPMENT – State Health Plan Development, CON Review, Facility Surveys	15
INFORMATION TECHNOLOGY AND INNOVATIVE CARE DELIVERY – Health Information Technology Adoption, New delivery Model Support	9

Facility Planning and Development Workload

- State Health Plans Under Active Review – Cardiac Services, CCF, Psych
- CON Applications Docketed and under review (17)
- CONs Submitted, but not Docketed (15)
- Docketed and contested by Interested Parties (8)
- Exemption Requests (4)
- Project Change Requests (2)

Impact of Recommendations on Staffing

- Immediate regulatory action – Revisions of SHP Chapters and Procedural Regs – Impacts SHP staff
- Immediate statutory action - Impacts Government relations staff
- Longer term – Workgroups senior staff

MHCC approach to SHP Development

- Transparent
- Engaging Commissioners at an early stage
- Formation of Stakeholder Workgroups
- Commission preference to engage consumers, not just entities governed by SHP

RECOMMENDATIONS

REGULATORY REFORMS THAT CAN BE STARTED IMMEDIATELY

IMMEDIATE REGULATORY REFORMS: RECOMMENDATION 1 (Four Parts)

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.

IMMEDIATE REGULATORY REFORMS: RECOMMENDATION 1a. (CONTINUED)

- a. SHP standards limited to those addressing project need, project viability, project impact, and applicant qualifications.
 - » 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 – this addresses quality of care, setting the CON process as a “gatekeeper.” For example:
 - i. Streamline home health agency SHP, eliminating extraneous standards or standards with low impact (e.g., charity care requirements) to facilitate quicker approval of qualified applicants.
 - ii. Revise SHP regulations for general hospices to create a pathway for facilitating the establishment of alternative choices for hospice care in jurisdictions with only one authorized hospice.

IMMEDIATE REGULATORY REFORMS: RECOMMENDATION 1b. (CONTINUED)

- b. Create 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.

An abbreviated 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. .

IMMEDIATE REGULATORY REFORMS: RECOMMENDATION 1.c (CONTINUED)

- c. Revise performance requirements for approved projects to include a deadline for obligating the capital expenditure and initiating construction, but eliminating 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.
 - » Failure to timely obligate and initiate construction will void the CON. Projects that do not involve construction will continue to have a deadline for completing the project.

IMMEDIATE REGULATORY REFORMS: RECOMMENDATION 1.d (CONTINUED)

- d. Make the review of changes in approved projects 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.

IMMEDIATE REGULATORY REFORMS: RECOMMENDATION 2

Create a waiver of CON requirements for:

- a hospital capital project that is endorsed by the HSCRC staff as a viable approach for reducing the total cost of care consistent with HSCRC's TCOC model
- and allow docketing of alternative models for post-acute care that is endorsed by the HSCRC staff as a viable approach for reducing the total cost of care consistent with HSCRC's TCOC model

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

FUTURE STATUTORY CHANGES: RECOMMENDATION 1

Eliminate capital expenditures by a health care facility as an action requiring or permitting CON approval, leaving all definitions of projects requiring CON approval as categorical with respect to the changes in a health care facility, no matter what capital expenditure is required.

FUTURE STATUTORY CHANGES: RECOMMENDATION 2

Replace existing capital expenditure threshold with a requirement that hospital obtain CON approval for a project with an estimated expenditure that exceeds a specified proportion of the hospital's annual budgeted revenue and for which it is requesting an extraordinary adjustment in budgeted revenue, based on an increase in capital costs.

FUTURE STATUTORY CHANGES: RECOMMENDATION 3

Change the CON statute to include only

- a. Alignment with the State Health Plan standards;
- b. Need;
- c. Viability of the project and the facility;
- d. Impact on cost and charges.

This would remove the criteria pertaining to Cost Effectiveness and identification of alternatives, and Compliance with the terms and conditions of previous CONs the applicant has received.

FUTURE STATUTORY CHANGES: RECOMMENDATION 4

Eliminate CON review of changes in bed capacity:

- by an alcoholism and drug abuse treatment intermediate care facility that has level 3.7 beds
- by a residential treatment center.

FUTURE STATUTORY CHANGES: RECOMMENDATION 5

Eliminate from CON review changes in acute psychiatric bed capacity by a hospital.

FUTURE STATUTORY CHANGES: RECOMMENDATION 6

Eliminate from CON review changes in hospice inpatient bed capacity or the establishment of bed capacity by a general hospice.

FUTURE STATUTORY CHANGES: RECOMMENDATION 7

Define ambulatory surgical facility as an outpatient surgical center with three or more operating rooms instead of the current definition's threshold of two operating rooms.

FUTURE STATUTORY CHANGES: RECOMMENDATION 8

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 and any other entity 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 staff.

FUTURE STATUTORY CHANGES: RECOMMENDATION 9

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**

AREAS FOR STUDY: RECOMMENDATION 1

Engage with stakeholders such as the Home Health, Hospice, Alcohol and Drug treatment, Residential Treatment Center sectors and the Maryland Department of Health to consider developing alternatives to CON regulation for accomplishing the “gatekeeper” function of:

- keeping out organizations with poor track records in quality of care and/or integrity, and;
- expanding the number of such facilities gradually.

AREAS FOR STUDY: RECOMMENDATION 1 (CONTINUED)

The objectives would be to:

1. Eliminate CON regulation for these health care facility categories with MDH incorporating the gatekeeper function into the facility licensure process; or
2. Make establish MHCC's role in regulating these facility categories solely as a gatekeeper
 - a. Any facility of this type that gets a clean bill of health in a background check and character and competence review would be issued a CON, without further review...as long as that is compatible with the gradual expansion of new providers.
 - b. Establish specific deadlines for recommendations.

AREAS FOR STUDY: RECOMMENDATION 2

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.

AREAS FOR STUDY: RECOMMENDATION 3

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.