



12/12/18

To: Mr. Ben Steffen
Executive Director
Maryland Health Care Commission
4160 Patterson Ave
Baltimore Maryland 21215-2299

Mr. Steffen,

On behalf of Seasons Hospice & Palliative Care of Maryland, thank you for the opportunity to comment on the Modernization of the Maryland Certificate of Need Program Final Report dated December 11, 2018. On behalf of the hundreds of patients we serve across Anne Arundel, Baltimore, Baltimore City, Carroll, Cecil, Harford, Howard, Prince George's, and Montgomery Counties, as well as our over 300 employees, we are thankful for the opportunity to comment on the MHCC Certificate of Need modernization project.

The MHCC CON Modernization Task Force recommendations in the report that relate to hospice on pages 23 – 26 are worthy of study, and Seasons agrees that several areas of current CON practice in Maryland are in need of update. Our comments on both the matrix on pages 24-25 and the Reform Recommendations Related to General Hospice CON Regulation on pages 25-26 follow in this letter.

In general, as a multi-state organization with operations in both CON and non-CON states, Seasons sees the value of the CON process. Across the 19 states we have the privilege of serving, we see practices that range from healthy and innovative competition to ethically concerning. In several of our markets where there are no CON programs, we compete with hundreds of hospices to serve eligible need. With the increasing complexity of both the regulatory requirements of CMS as well as the acuity of our patients, we are at times unsure how smaller hospices without our benefits of scale can provide compliant and quality care when competing with so many other entities. Additionally, in several of our markets, specialty or custom programming that could serve the unique patient populations often go underfunded as talent and resources for such programs are scarce given the overabundance of competition.

Conversely, our locations in CON states still engage in healthy competition that fosters innovation, but without the extreme competition for staff and volunteers. For example, having 100 volunteer managers at 100 hospices across the Dallas Metroplex can't support better volunteer programming for Texans facing the end of life, but rather could be seen as actively injecting wasteful spending on duplicative resources.

Seasons would also like to comment on the process the MHCC CON Modernization Task Force has used in their work. At the public meeting on December 3rd, only one hospice topic was raised (#8 under recommendations for future study: "Eliminate the requirement to obtain CON approval of changes in a hospice inpatient bed capacity or the establishment of bed capacity by a general hospice"). However, the final report contains many recommendations and ideas for study, including

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lowering capital thresholds, and allowing hospices to expand into contiguous jurisdictions. We understand that the Commission's time and resources are limited, but we believe that suggestions for study and future legislative or regulatory actions should be robustly discussed in detail, with time for expanded input from stakeholders beyond the six days given to submit comments on this report. The short comment period does not allow providers of all types adequate time to form articulate responses, and the truncated time frame for discussion on several of these policy recommendations also left Seasons feeling rushed to provide measured guidance and comment.

Seasons Specific Comments on the Reform Recommendations Related to General Hospice CON Regulation:

(Seasons comments here are submitted in close coordination with those submitted by the Hospice & Palliative Care Network of Maryland)

- 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. The following SHP and procedural regulation reforms are included under this recommendation
 - Limit SHP standards to those addressing project need, project viability, project impact, and applicant qualifications.
 - 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. Establish performance requirements for approved projects that include a deadline for obligating the capital expenditure and initiating construction but without project completion deadlines.
 - Establish a process for considering changes in approved projects as a staff review function with approval by the Executive Director. (See last section of this report for more detail on this recommendation.)

Comments: Seasons, working with the Hospice and Palliative Care Network of Maryland, has no objections to the first two bullets. We would request further information on the timing and structure of a staff review function and Executive Director approval. As proposed, this approval without adequate public comment is concerning to our organization.

- 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.

Comments: This recommendation, not dissimilarly from several in the Issue / Solution Matrix on page 24, contains broad language that is difficult to interpret in practice. It seems to give the HSCRC broad authority without specifics. Additionally, as TCOC is not set to go into effect until January 1, 2019, it would be difficult to properly evaluate any reductions in care for projects approved by HSCRC in the first 6-12 months the new model is in place.



- 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.

Comment: Seasons does not object to this recommendation.

- Limit the required considerations in CON project review to: (1) 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; and e) Impact of the project on access to care. 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.

Comment: Seasons does not object to this recommendation.

- 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.

Comment: Seasons does not object to this recommendation.

- 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.

Comment: Seasons does not object to this recommendation, pending an established, published framework for the abbreviated process.

- 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.



Seasons Hospice & Palliative Care

Comments: Seasons believes that the CON process, when administered effectively, can allow healthcare entities to innovate, compete, and offer high-quality care without injecting wasted or duplicative resources into the environment. Our program has consistently been able to increase penetration in the Maryland counties we serve, year-over-year. We have also been able to build robust specialty programming in Maryland, including a recent new African American Advisory Council to serve the specific needs of our communities here in Baltimore and the surrounding counties. These programs and increased utilization are due in large part to the well-administered CON process preventing oversaturation of providers.

Finally, Seasons would like to echo the comments of the HPCNM that eliminating CON does not:

- Provide saving for taxpayers or patients
- Create a free market environment for hospice to operate
- Increase needed services back to the community
- Increase quality care for dying patients and their family
- Protect patient and families from being harmed
- Reduce the size of government

Seasons looks forward to continued discussion around these important issues with the MHCC and believes hospice care to be a critical part of achieving the cost savings goals of the Maryland TCOC program by allowing Maryland's seniors to receive care where most express their wishes- at home, with their families. We welcome an ongoing dialogue about how to best serve the end of life needs of communities here in Maryland.

Respectfully submitted,

Todd Stern, CEO

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