

Lorien Health Services' Comments on Recommendations of the Modernization of the Maryland Certificate of Need Program: Draft Final Report, December 11, 2018

Lorien Health Services, a multi-facility provider of comprehensive care ('nursing facility'), assisted living, and residential care services in Central Maryland offers these Comments on the Recommendations of the CON Modernization Draft Final Report as follows.

Regulatory Reforms to be Started Immediately

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:
 - 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 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 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.
 - ii. The SHP regulations for general hospices could be revised to create a pathway for facilitating the establishment of choices for hospice care in jurisdictions with only one authorized hospice.

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

- 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. Thus, the new process would be applicable to changes in bed or operating room capacity, applicable changes in the type or scope of services provided by an existing health care facility, the expansion of the service area of a home health agency or hospice, or a capital expenditure that exceeds a specified expenditure threshold, if such projects are uncontested. 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 are adopted to reduce or better define SHP standards.)

- iii. Issuance of a staff recommendation within 60 days of docketing and final action by the Commission within 120 days of docketing.

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

- 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.

LORIEN COMMENTS: Lorien supports the goal of simplifying and updating the process of establishing and enforcing performance requirements for construction projects. Lorien believes that the deadline for obligating the capital expenditure and initiating construction should continue to include the availability of 6 month extensions for good cause. The initial 12 month extension and subsequent renewals of 12 month extensions should be contingent upon meeting the first two performance requirements and timely submission of annual progress reports by the Applicant / CON holder.

- d. Establish a process for review of changes in approved projects as a staff review function with approval by the Executive Director with two exceptions: (1) changes in the project financing mechanism that require additional debt financing; and (2) changes in the location or address of the project. Staff approval only would be required for significant changes in physical plant design, capital cost increases that exceed defined limits, or operating cost increases that exceed defined limits. Continue the current list of impermissible changes (i.e., changes in the fundamental nature of a facility or the services to be provided, increases in total bed capacity or medical service categories, and any change that requires an extension of time to meet applicable performance requirements).

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

2. Create the ability to waive docketing requirements or other considerations for approval of a CON for a capital project if the HSCRC endorses the project as a viable approach for reducing the total cost of care under Maryland's TCOC model.

LORIEN COMMENTS: Lorien agrees with this proposed provision if and only if it expressly excludes hospital capital projects which would establish or involve the hospital's participation in the establishment of a comprehensive care facility.

Regulatory Reforms Requiring Statutory Changes

3. Eliminate the capital expenditure threshold used to mandate CON approval for non-hospital health care facility projects, limiting all definitions of projects requiring CON approval to "categorical" projects involving the establishment of facilities or specific types of changes to an existing health care facility, no matter what capital expenditure is required.

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

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

LORIEN COMMENTS: Lorien takes no position on this proposal.

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

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization and streamlining the CON review process.

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.**

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

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

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

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.**

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

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.)

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

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.

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization.

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 120 days.

LORIEN COMMENTS: Lorien agrees with these changes and supports these provisions for modernization and streamlining.

*This recommended change in the statutory scope of CON regulation could include a fixed limit on the size of a capital expenditure that could be undertaken by a hospital without CON approval. **These recommended changes in the statutory scope of CON regulation could include nominal limitations (or limits based on the proportion of total existing bed capacity) that could be added by an existing facility without CON approval.

Areas for Further Study from which Regulatory and Statutory Changes May Emerge

12. Convene a task force with the home health, hospice, alcohol and drug treatment, and residential treatment center sectors and the Maryland Department of Health to identify alternatives to conventional CON regulation. The principal goal of the task

force is to define the agency that would implement the “gatekeeper” function of keeping persons or organizations with poor track records in quality of care and integrity from entering Maryland and expanding the number of high-quality 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). The task force would have specific deadlines for completing the recommendations.

LORIEN COMMENTS: Lorien agrees with the proposed elimination of CON regulation of Home Health Agencies and assumption of the gatekeeper function by MDH. Lorien believes that CON regulation of Home Health Agencies should be eliminated by legislative action during the 2019 Legislative session, or, alternatively, that Comprehensive Care Facilities should be exempt from CON requirements so as to allow them to provide home health services to their patients for a period of at least 30 days following the patient’s discharge from the Comprehensive Care Facility.

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 (sic).

LORIEN COMMENTS: Lorien agrees with the concept of this Recommendation provided that the term “hospital projects” expressly excludes hospital projects which would establish or involve the hospital’s participation in the establishment of a new comprehensive care facility. The HSCRC should mandate that hospitals demonstrate their good faith efforts to work with existing Comprehensive Care Facilities to achieve integrated TCOC objectives.

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 the use of a project review committee. The objective would be further streamlining the review process and facilitating more public engagement.

LORIEN COMMENTS: Lorien does not agree that modernization and / or streamlining the CON review process requires further structural changes. The proposed ‘abbreviated’ process / modernization outlined in the Task Force Recommendations will in and of themselves increase Staff efficiency in conducting CON reviews. Further, there is no need to establish Project Review Committees which proved unwieldy in the past and served to add another layer of bureaucracy. Lorien believes that current public notice is sufficient and that existing regulatory provisions for public input are sufficient for an informed CON review process.

[End of Comments]