***Draft* Meeting Summary**
Certificate of Need (CON) Modernization Task Force
Maryland Health Care Commission
Meeting of Friday, September 7, 2018
MHCC Offices, 4160 Patterson Avenue, Baltimore, MD

Committee Members in Attendance
Randolph Sergent, Chair
Regina Bodnar
Armando Colombo (attending on behalf of Harsh Trivedi)
Ellen Cooper
Lou Grimmel
Elizabeth Hafey
Ann Horton (by phone)
Andrea Hyatt
Ben Lowentritt, M.D.
Brett McCone
Mark Meade
Michael O'Grady (by phone)
Richard Przywara
Barry Rosen
Andrew Solberg
Renee Webster

MHCC Staff in Attendance
Ben Steffen
Linda Cole
Kevin McDonald
Paul Parker
Megan Renfrew (by phone)
Catherine Victorine
Suellen Wideman

MHCC Consultants in Attendance
D. Patrick Redmon
Samantha Sender
Thomas Werthman

Others in Attendance
Ella Aiken
Pat Cameron
Gabrielle Charnowitz
Jack Eller
Peggy Funk
Marta Harting
Anne Langley

Ernesto Lopez
Howard Sollins
Dan Shattuck
Shelley Steiner
Rebecca Vaughn
Jennifer Witten

Agenda Item 1: Call to Order, Welcome and Introduction

Ben Steffen opened the meeting shortly after 9 A.M. Task Force members, staff, and those attended by phone identified themselves.

Agenda Item 2: Approval of the August 10, 2018 Task Force Meeting Summary

Chairman Randy Sargent asked the Task Force if there were any comments on the August 10, 2018 meeting summary. No comments were received.

Similar to the meeting of August 10, 2018, a series of slides was presented to help facilitate and guide discussions about the following topics:

- Hospice
- Alcoholism and Drug Abuse Treatment Intermediate Care Facilities (ICF)
- Residential Treatment Centers (RTC)

Each topic consisted of a series of slides that listed current issues raised around each topic and recommended changes to CON regulation within the context of each topic. Mr. Steffen noted the recommended changes were separated into categories: Minimal, Moderate and Major reforms.

To begin the discussion, Paul Parker provided an overview of the scope of the MHCC's authority in the fields of hospice, ICF, and RTC.

Agenda Item 3: General Hospice Services

Moderator Patrick Redmon reviewed the "Issues Raised" for Hospices, and the series of categorized reform proposals:

Minimal Reforms

- **Eliminate Capital Expenditure Threshold defining CON need**
- **Eliminate change in bed capacity as a project requiring CON approval for general hospices**
- **Update SHP to reduce review criteria and standards, and expand ability to provide more than one choice of a general hospice provider in every part of Maryland**

There was Task Force consensus around the elimination of the capital expenditure threshold and bed need capacity requirements from CON. Hospice representatives on the Task Force cited the recent OIG report, which identified a number of serious deficiencies including poor service, lack of information sharing to guide informed decision making, inappropriate billing practices, and inappropriate enrollment of

beneficiaries to hospice care among other problems. Regina Bodnar noted that Maryland was an exception to the generally negative assessment by the OIG. Ms. Bodnar pointed to the stability of the Maryland market and the integrity of Maryland providers. The CON process recognizes that certain areas of the State experience market forces differently, and the process provides some protection from potentially deleterious market forces, while acting as a gatekeeper to maintain quality of care in the programs by preventing the entry of bad actors. Commissioner Sargent questioned whether the gatekeeper function of CON could be better served by Maryland licensing agencies. There was also some disagreement about whether the restrictive nature of CON has limited hospice penetration in different jurisdictions.

Moderate Reforms

- **Eliminate regulation of general hospice services**

The Task Force questioned whether limiting out-of-state providers from entering the market was sound policy, or even legally permissible due to the Commerce Clause of the U.S. Constitution. Task Force members disagreed over whether the CON process as currently constructed was working effectively. The Task Force members also generated a list of concerns for hospice CON: 1. whether the process is influencing the number of potential patients seeking services from hospice; 2. whether the CON projectd review process is too laborious and costly; 3. whether innovation is stifled by blocking new providers; and 4. whether the current process aligns with the Total Cost of Care (TCOC) objectives. Additionally, there was a suggestion to selectively waive CON requirements if existing providers sought to expand their service areas or if HSCRC approved a collaborative project in the context of TCOC.

Major

- **Mandate the Maryland Department of Health (MDH) to deny licensure applications to general hospice applicants with no previous experience in operating a general hospice or specified deficiencies in their health care facility operational track record**
- **Mandate MDH to limit the number of new general hospice applicants approved within a given time period**

The Task Force continued discussions of collaboration between hospice and existing providers. There was recognition that the current payment methodologies discourage some collaboration between hospitals and hospices; under the GBR, a hospital will lose revenue as volume shifts to different sites of service. Selective waiver of CON requirements and flexibility of MHCC to react to certain situations as they arise were noted and generally supported.

Agenda Item 4: Alcoholism and Drug Abuse Treatment Intermediate Care Facility (ICF)

Mr. Parker reviewed the MHCC's authority to issue CONs for alcohol and drug abuse intermediate care facilities (ICFs). He noted that MHCC supported legislation to remove ICFs from CON regulation in the 2018 General Assembly Session with the support of the Behavioral Health Administration (BHA), but the bill had not been voted out of Committee due to strong opposition from some existing ICFs. Dr. Redmon reviewed the "Issues Raised" for ICF, and the series of categorized reform proposals.

Minimal Reforms

- **Eliminate capital expenditure threshold defining need for CON**

- **Eliminate facility relocation and change in bed capacity as a project requiring CON approval for existing Track 2 ICFs (publically funded)**
- **Update SHP to reduce review criteria and standards**

The Task Force generally approved of eliminating the capital expenditure threshold and bed capacity change and relocation review from the CON process. It was suggested that this reduction in regulation should be expanded to all tracks (Track 1 ICFs are funded primarily through private sources, while Track 2 are primarily funded through Medicaid).

Moderate Reforms

- **Eliminate need, cost and effectiveness, viability and all other criteria and standards, with the exception of impact and financial access for reviews involving establishment or expansion of Track 1 ICFs (funded primarily from private payment sources)**
- **Limit scope of final action by Commission on Track 1 ICF projects to consideration of financial access and impact – i.e., approve the project unless it has made an insufficient commitment to serve low income clients and/or is likely to have an existential negative impact on one or more existing Track 1 ICFs.**

Richard Pryzwara, representing alcoholism and drug abuse treatment facilities, stated that addictions recovery must be distinguished from other health care facilities because of the common practice of "patient brokering." More generally, he argued that addictions recovery is rife with bad actors in other states, and the CON process is a way to provide safe, quality care to Marylanders through the gatekeeper function of the CON process. Several Task Force members and Mr. Parker questioned the efficiency of the CON process as a monitor for safety and quality, given that the BHA exists and functions to monitor providers for such purposes.

Major Reforms

- **Eliminate all CON regulation of alcoholism and drug abuse ICF treatment services**
- **Mandate MDH to deny licensure applications to ICF applicants with nor previous experience in operating an ICF or specified deficiencies in their health care facility operational track record.**

The Task Force discussed alternatives to CON including strengthening the authority of the BHA and mandating accreditation as a means to eliminate bad actors.

Given time restrictions and overlap of discussions, the Task Force proceeded to the next agenda item

<u>Agenda Item 5: Residential Treatment Center Services</u>

Dr. Redmon reviewed the "Issues Raised" for RTC services and the series of categorized reform proposals:

Minimal Reforms

- **Eliminate capital expenditure threshold defining need for CON**

- **Eliminate relocation and change in bed capacity as a project requiring CON approval for existing RTCs**
- **Develop updated SHP requirements with minimal review criteria and standard for consideration of establishment of RTCs – approval if supported by State juvenile justice agencies and MDH, unless MHCC finds the project is likely to have an existential negative impact on one or more existing RTCs**

Staff acknowledged that review standards for RTC applications are limited and that applications to establish new RTCs are not common. Armando Colombo, representing Sheppard Pratt, opined that CON serves as both a gatekeeper and maintains quality and safety in the industry. Additionally, there was a discussion generally about whether it is better to utilize licensing to address quality and safety concerns, versus the CON process to regulate quality and safety through a gatekeeper function.

Several Task Force members emphasized the importance in recognizing the difference between legislative versus regulatory action, and the ease or difficulty in altering those structures. In the context of streamlining or amending the CON process, there was some concern about giving the MHCC too much autonomy from statutory restrictions. On the other hand, several members noted that the HSCRC operates with fewer regulations controlling methodology and dictating policy. Others pointed out the fundamental differences between the HSCRC and MHCC.

Agenda Item 6: Discussion of "Cross Cutting" Recommendations for CON Modernization (continuation of August 10, 2018 meeting agenda)

Mr. Steffen noted that "cross cutting" reform ideas would be addressed in October meetings.

Agenda Item 7: Meeting Agendas/Work Plan for Phase Two of the study going forward: September, 2018 – December, 2018

Mr. Steffen reviewed the schedule of future meetings and agendas. (10/1, 10/12, 11/9, 12/2 or 3)

Agenda Item 8: Adjournment

Commissioner Sargent thanked the Task Force for the discussion and its patience in cooperating with his intent to tease out the distinctions and differences among the reform ideas necessary for the future contemplation of those ideas by the full Commission. The meeting was adjourned.