

## MHCC Nursing Home Work Group Meeting

October 4, 2018

### Meeting Summary

**Members Present:** Annette Hodges (phone); Mark Leeds.

**Staff Present:** Linda Cole; Paul Parker; Sarah Pendley; Hui Su; Catherine Victorine; Cathy Weiss; Suellen Wideman

**Others Present:** Commissioner Jeff Metz (phone); Rachel Coe; Joe DeMattos; Jessica Kwasny; Paul Miller; Susan Panek; Howard Sollins.

#### Welcome and Review of Process to Date:

Linda Cole welcomed back work group members. She reminded them that the draft regulations were developed with input from both a small subgroup of Commissioners and from the Nursing Home Work Group. The latter group met January 30 and March 1, 2018. She stated that the October 4 meeting was being held in response to the industry's request.

Ms. Cole reminded the group that the draft Comprehensive Care Facility (CCF) Chapter, COMAR 10.24.20, was posted for informal public comment from June 6 to July 9. At the request of the industry, the period for informal public comments was extended to July 13. Written comments from HFAM, Lifespan, Lorien, and OHCQ were distributed to Work Group members by email on September 26, along with other documents and an agenda for the October 4 meeting. The email noted that the major focus of this meeting would be a discussion of comments received on the draft CCF Chapter.

#### Major Issues:

Ms. Cole stated that the comments were synthesized into seven major issue areas:

1. Why should Commission staff go forward with proposed regulations when there is a CON Task Force currently underway that is making recommendations about the future of CON?

Ms. Cole explained that although the CON Modernization Task Force and the Comprehensive Care Facility Chapter update are occurring at the same time, they have different goals and purposes. She also pointed out that the Commission adopted a replacement Cardiac Surgery Chapter at its September meeting.

2. Why is it necessary to keep the Medicaid MOU in place?

Ms. Cole explained that the Medicaid MOU serves to ensure access to services. It is supported by the Commissioner subgroup. It is also cited in the *Joint Chairmen's Report-*

*Interim Report on Nursing Facilities Discharge Planning and Assistance in Obtaining Financial Eligibility for Medicaid Reimbursement (2017)*. She said that, in response to comments, staff would recommend to the Commission that the language in the current Nursing Home Chapter about renegotiating the MOU be included in the updated CCF Chapter.

Mark Leeds raised questions about the Medicaid MOU. In response to a question from Howard Sollins, he said the Medicaid MOU does not cost Medicaid more money. Mr. Leeds also stated that access is important. Commissioner Metz said that he had no problem with the Medicaid MOU. He said that decisions on admissions of patients should be based on clinical criteria, not payment source.

3. Why does the draft Chapter need to provide specific guidance as to nursing home design (e.g. FGI Guidelines). Do these regulations duplicate OHCQ requirements?

Since OHCQ does not have the FGI Guidelines incorporated by reference in its nursing home licensing regulations (COMAR 10.07.02), they are not duplicative. In addition, MHCC regulations are stricter in areas such as number of residents per room or per toilet. Ms. Cole noted that while MHCC requires no more than 2 residents per room or toilet, current OHCQ regulations permit 6 residents per room and 8 residents per toilet.

4. Why should CMS Nursing Home Compare star ratings be included in the CCF Chapter as a docketing rule and a plan standard?

Quality measures have always been part of the Nursing Home Chapter and these measures have been tested, validated, and used nationally. They permit Commission staff to assess an out-of-state provider that may seek to establish a nursing home in Maryland. In response to comments, staff would recommend to the Commission that the time period for star rating measures be extended to 5 quarterly refreshes, or 2 years.

Mr. Sollins stated that the Five Star Rating system should be one factor, but not be determinant. He also stated that 6 or 7 jurisdictions have very few nursing homes. Ms. Cole responded that Commissioners have said that they want consumers to have a choice of good quality facilities.

5. Why should there be a docketing rule exception that permits the docketing of an application if there is a signed risk-sharing agreement between the applicant nursing home and a hospital that is acceptable to HSCRC?

Ms. Cole stated that, for this exception, the applicant must demonstrate that additional CCF capacity is necessary in order for the cost-reducing agreement between it and one or more hospitals to be effectively implemented. The risk-sharing agreement would have to be approved by HSCRC.

Mr. Leeds stated that he was not in support of any docketing rule exceptions, since he believed that no additional nursing home beds were needed in Maryland.

6. Why should there be a docketing rule applied to former owners, operators, senior managers, management organizations for 10 years?

The 10-year time period is based on federal guidelines from the Department of Health and Human Services and the Office of Inspector General. In response to comments, staff would recommend to the Commission that language be included similar to the acquisition rules, which permits an applicant to show that all of the individuals involved in fraud or abuse are no longer associated with the entity and that each entity has fully complied with the applicable plans of correction.

7. Please do a step-by-step review of the nursing home bed need methodology.

Hui Su presented a step-by-step explanation of how the methodology is applied. She discussed assumptions, data sources, and provided examples of calculations using a few selected jurisdictions. Mr. Sollins recommended that the first projection be 7 years and then be updated to 5 years later. Ms. Cole responded that projections currently run from 2016 to 2021 and will be updated as 2017 data becomes available.

Mr. Sollins also suggested that there be a delay in approving additional beds in Prince George's County as there was recently a new facility added and, although its beds are included in the inventory, its utilization and occupancy are not yet included in the need projection.

#### Next Steps:

Ms. Cole thanked the members for their participation. She stated that draft regulations would be reviewed and updated as needed and then presented to the Commission for consideration as proposed permanent regulations. She noted that this would include a formal comment period, as required by the regulatory process.