

**IN THE MATTER OF THE MERGER/** \*  
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**CONSOLIDATION OF HOSPICE OF** \* **BEFORE THE**  
 \*  
**THE CHESAPEAKE, INC. WITH** \* **MARYLAND**  
 \*  
**HOSPICE OF CHARLES COUNTY, INC.** \* **HEALTH CARE**  
 \*  
**AND CALVERT HOSPICE, INC.** \* **COMMISSION**  
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**DOCKET NO. 23-02-EX016** \*  
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**STAFF REPORT AND RECOMMENDATION**  
**REQUEST FOR EXEMPTION FROM CERTIFICATE OF NEED REVIEW**

**I. INTRODUCTION**

**A. Background**

Section 19-120(k)(6)(v) of the Health-General Article and COMAR 10.24.01.04 allow health care facilities seeking to merge or consolidate to use an alternate project review process instead of obtaining a Certificate of Need (CON). These projects may be considered under an exemption review. To approve an exemption request, the Maryland Health Care Commission (MHCC or Commission) must find that the project: (1) is in the public interest; (2) is not inconsistent with the State Health Plan; and (3) will result in the delivery of more efficient and effective health care services. Md. Code Ann., Health-Gen. § 19-120(k)(6)(v)(2); COMAR 10.24.01.04E(2).

A hospice is considered a “health care facility” under Health General Article, §19-114(d)(vii). In this case, a general hospice is proposing a merger with existing affiliated hospices to achieve administrative efficiencies by consolidating legal entities, licensure, and Medicare/Medicaid provider agreements.

**B. The Applicant**

Hospice of the Chesapeake, Inc. (HOC) is a licensed non-profit general hospice founded in 1979. Originally authorized to serve residents of Anne Arundel, HOC received a CON from the Commission in 2000 to expand into Prince George’s County and a CON in 2012 to establish a 14-bed inpatient unit in Pasadena, Maryland (Anne Arundel County). HOC is affiliated with two other hospices, which are both subject to HOC’s control—Hospice of Charles County, Inc. (Charles) and Calvert Hospice, Inc. (Calvert). Charles is a licensed non-profit general hospice formed in 1982, which is authorized to serve the residents of Charles County and operates an 8-bed inpatient unit in Waldorf (Charles County). Calvert is a licensed non-profit general hospice founded in 1983 that is authorized to serve Calvert County. Calvert does not have any inpatient beds.

HOC entered into affiliation agreements with Hospice of Charles County, Inc. (Charles) on October 2, 2020, and with Calvert Hospice, Inc. (Calvert) on June 14, 2022. Under the affiliation agreements, HOC acquired control of Charles and Calvert's management and operations, though Charles and Calvert remained distinct and separate legal entities and each hospice maintained all pre-affiliation debts and liabilities in its own name. HOC submitted notices of acquisition to the Commission under COMAR 10.24.01.03 prior to executing each affiliation agreement and the Commission sent determinations for each that CON review was not required.

Now, HOC requests an exemption from CON review pursuant to COMAR 10.24.01.04 to merge and consolidate the affiliated hospice services provided by Charles and Calvert hospices under one legal entity, Hospice of the Chesapeake, Inc. Through this merger, Charles and Calvert would cease to exist and HOC, the surviving entity, would be authorized to serve a four contiguous county region and the existing in-patient units in Anne Arundel and Charles counties.

COMAR 10.24.01.04 requires that notice of intent to seek exemption from CON review be filed at least 45 days before the intended action. The regulations also require the Commission to publish notice of the requested exemption to solicit comments and relevant information from the affected public in evaluating whether the action proposed for exemption is in the public interest. Finally, the regulations direct the Commission to issue a determination of exemption from CON review if all requirements under COMAR 10.24.01.04 and Md. Code Ann., Health-Gen. § 19-120(k)(6)(v)(2) have been met.

## **II. Legal Qualification for an Exemption of Certificate of Need Review**

The regulations require that facilities or organizations requesting an exemption pursuant to COMAR 10.24.01.04 provide the Commission 45 days written notice. HOC filed the notice of intent to seek an exemption from CON review on June 21, 2023, with an anticipated closing date of August 5, 2023. The Commission has received the required 45 days written notice.

## **III. Notice by the Commission to the Public**

On July 6, 2023, staff requested publication of notices of receipt of the request for the exemption in the Baltimore Sun and the next available issue of the Maryland Register. Notice was published in the Baltimore Sun on July 7, 2023 and the Maryland Register on July 28, 2023. MHCC did not receive any comments from the public in response to the notices.

## **IV. Determination of Exemption from Certificate of Need Review**

COMAR 10.24.01.04E(2) directs the Commission to issue a determination of exemption from CON review if the merged asset system has provided the required information and the Commission finds that the proposed action:

- (a) is in the public interest;
- (b) is not inconsistent with the State Health Plan; and
- (c) will result in more efficient and effective delivery of health services.

## **A. The Public Interest**

HOC states that the consolidation of hospice services for the four-county area will create a regional hospice program and will enhance HOC's ability to care for patients with significant medical needs. HOC states that the consolidation should improve communication with families, patients, and referring medical professionals by having one contact point for all hospice information and services. The consolidation should improve the hospice operations and services to the residents of all four counties.

Commission staff finds that the proposed consolidation is in the public interest because it provides the opportunity for enhancement of services and improved service coordination. The consolidation will not limit competition because both existing agencies are currently affiliated with the same parent organization. The consolidation will not decrease choice because the three hospices do not have overlapping service areas and Charles and Calvert are the sole hospice provider in the counties in which they are located. Residents of both Charles and Calvert currently have just one local hospice choice and will continue to have one choice. Residents of Anne Arundel County will continue to have five choices for hospice services, while Prince George's County residents will continue to have six options.<sup>1</sup>

## **B. Is not inconsistent with the State Health Plan or the institution-specific plan developed by the Commission**

Commission staff has reviewed this request for exemption from CON review and finds it is not inconsistent with the State Health Plan standards at COMAR 10.24.13. The regulations establish a set of standards that are generally used when evaluating a project seeking to establish a new general hospice program or expand an existing hospice program to one or more additional jurisdictions. COMAR 10.24.13.05.<sup>2</sup>

The change involved in this exemption request is minor. The three non-profit hospices involved in this matter are a merged asset system already under the control of HOC pursuant to affiliation agreements. The merger will not involve any expansion, relocation, or reduction of health care services, renovation of existing facilities, new construction, or change in bed capacity. Further, the surviving entity, HOC, will not be expanding into jurisdictions beyond those currently served by the affiliated hospices. According to HOC, many of the administrative services, management, and control have already been consolidated in HOC through the affiliation agreements and there will be little additional change in the management of the hospice services as a result of the merger.

To assess quality, Commission staff reviewed the most recent (May 24, 2023) quality performance data for the three affiliated hospices on the Centers for Medicare & Medicaid Services

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<sup>1</sup> Origin of General Hospice Patients by General Hospice and Jurisdiction Maryland General Hospices, FY 2021 and Authorized Service Areas of Maryland General Hospices, August 2022, [https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs\\_hospice/documents/chcf\\_hospice\\_origin\\_patients\\_fy21\\_posted\\_20230207.pdf](https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_hospice/documents/chcf_hospice_origin_patients_fy21_posted_20230207.pdf).

<sup>2</sup> Previously, a CON was required for a hospice to establish or change inpatient bed capacity. However, the law was changed in 2019 and a CON is no longer required for an increase or decrease in bed capacity at an existing licensed general hospice program. Md. Code Ann., Health-Gen. § 19-120(h)(2)(v).

(CMS) Care Compare website. CMS tracks four primary quality measures: family caregiver survey rating<sup>3</sup>; the Hospice Information Set (HIS);<sup>4</sup> the percentage of patients who received visits from a registered nurse or medical social worker on at least two of the final three days of their life; and, the Hospice Index Score, which takes ten claims-based indicators into consideration, including weekend visits, per-beneficiary spending, and the number of visits near death. With one exception,<sup>5</sup> all three hospices scored average or above average on all quality measures. All three hospices are currently accredited with deemed status<sup>6</sup> and Medicare certified. Lastly, in its request the applicant states that it “will also facilitate the consolidation of the Affiliated Hospices Medicare and Medicaid enrollments and the eventual termination of Medicare and Medicaid enrollments for Charles and Calvert, with all patients being transferred to Chesapeake’s single Medicare and Medicaid enrollment.”

### **C. Will result in the delivery of more efficient and effective health care services**

The proposed consolidation will enable the sharing of resources, particularly the management and administrative resources that would be required to operate the agencies separately. The merger is designed to achieve administrative efficiencies and create cost savings by eliminating redundancies in the current hospice operations. The Medicare and Medicaid enrollments of Charles and Calvert will be terminated, with all patients being transferred to HOC’s single Medicare and Medicaid enrollment.

Commission staff believes that the resulting closer cooperation between the merged agency and the existing affiliated general hospices is likely to enhance support services and development of shared resources throughout the four-county region. For these reasons, staff believes that the merger will result in the delivery of more efficient and effective health care services.

## **V. CONCLUSION AND STAFF RECOMMENDATION**

For the reasons set forth in this report, staff recommends that the Commission **APPROVE** the request to exempt from CON review the proposed merger of the hospice services currently provided by HOC with its two affiliated general hospices, Charles, and Calvert. The merged hospice agency will be authorized to serve the residents of Anne Arundel, Calvert, Charles, and Prince George’s counties. Staff recommends that the Commission find this action to be **EXEMPT FROM CERTIFICATE OF NEED REVIEW**.

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<sup>3</sup> The family caregiver survey rating includes metrics on communication with family, getting timely help, treating patients with respect, emotional and spiritual support, help for pain and symptoms, training family to care for patient, rating of the hospice, and willing to recommend the hospice.

<sup>4</sup> The Hospice Information Set (HIS) is made up of seven care process measures: Asking patients about their beliefs and values; asking patients about their treatment preferences; checking if patients are in pain; assessing patients who are in pain; checking if patients are short of breath; beginning treatment for patients with shortness of breath; offering care for constipation for patients taking opioids.

<sup>5</sup> For the measure related to the percentage of patients who received visits from a registered nurse or medical social worker on at least two of the final three days of their life, HOC and Calvert Hospice scored 56.8% and 51% respectively which is above the national average of 49.2%. However, Hospice of Charles County only scored 29.3%.

<sup>6</sup> HOC is accredited by The Joint Commission, Charles is accredited by the Accreditation Commission for Health Care, and Calvert is accredited by Community Health Accreditation Program

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**ORDER**

The Maryland Health Care Commission, having reviewed and considered the information and analysis contained in the Staff Report and Recommendation, this 17th day of August 2023 hereby:

**ORDERS** that the findings and conclusions of law included in the Staff Report and Recommendation are adopted by the Maryland Health Care Commission and incorporated into this order; and further

**ORDERS** that the request for exemption from Certificate of Need review filed by Hospice of the Chesapeake, Inc. for its proposed merger with Hospice of Charles County, Inc. (Charles) and Calvert Hospice, Inc (Calvert) and the consolidation of the hospice services of Charles and Calvert under Hospice of the Chesapeake, Inc. is **GRANTED**.

**MARYLAND HEALTH CARE COMMISSION**