



Maryland  
Hospital Association

November 16, 2017

Paul Parker  
Director, Center for Health Care Facilities Planning & Development  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Dear Mr. Parker:

On behalf of its 64 member hospitals and health systems, the Maryland Hospital Association appreciates the opportunity to comment on the Maryland Health Care Commission's proposed revisions to the State Health Plan for General Surgical Services.

### **Background**

At its September meeting, the commission approved a revised General Surgical Services chapter of the State Health Plan to be published for public comment. The approval followed a 10 month process that included several versions and opportunities for stakeholder feedback.

The proposed revisions would allow the commission to issue an exemption from Certificate of Need (CON) review for surgical capacity for the following:

- The office of "one or more health care practitioners or a group practice," as defined in section 1-301 of the Health Occupations Article, seeking to establish an ambulatory surgical facility (ASF) with two operating rooms
- A general hospital with two or more operating rooms seeking to establish an ambulatory surgical facility with two operating rooms, in conjunction with conversion of the hospital to a freestanding medical facility; the ambulatory surgical facility would share a campus with the freestanding medical facility or be immediately adjacent to the freestanding medical facility, if it seeks such an exemption:
  - In conjunction with an exemption to convert to a freestanding medical facility; or
  - After the issuance of an exemption to convert a general hospital to a freestanding medical facility and prior to the closure of the general hospital
- A general hospital seeking to establish an ambulatory surgical facility with two operating rooms in conjunction with the closure of two dedicated outpatient or mixed-use operating rooms

### **Issues for Consideration and Clarification**

On August 23, the Maryland Hospital Association submitted a comment letter on the draft chapter. In the letter, we asked the following questions:

- Are hospitals considered “practitioners or a group practice” as defined by section 1-301 of the Health Occupations Article? (In reading section 1-301, we conclude that hospitals are not defined as a “practitioner or a group practice,” but would appreciate if MHCC would confirm.)
- If a health system has a physician services subsidiary that meets the definition of “group practice” in section 1-301 of the Health Occupations Article, would this subsidiary be permitted to pursue a two-room ASF under a CON exemption?

Though not in commission staff’s September 19 presentation (attached), we understand that hospitals are not defined as a practitioner or a group practice. Hospitals therefore would not be eligible to establish a two-room ASF by seeking a CON exemption. The second question in our August 23 letter was not directly answered. We read the draft chapter to allow practitioners, or a group practice, wholly owned by a health system, to open a two-room ASF under a Certificate of Need exemption. If this is not the commission staff’s interpretation, we request that the language be clarified.

Similarly, if any practitioner already operates a single room physician outpatient surgery center, we assume that this practitioner could seek to expand to a two room surgery center or add a room to the existing surgery center, as the proposed in the revised chapter. If this is not the commission staff’s interpretation, we request that the language be clarified.

### **Conclusions**

We appreciate your thoughtful approach to revising the General Surgical Services chapter of the State Health Plan. Thank you for your consideration.

Should you have any questions, please call me at 410-540-5060.

Sincerely,



Brett McCone  
Vice President

cc: Eileen Fleck, Chief, Acute Care Policy and Planning, MHCC  
Robert Emmet Moffit, PhD., Chairman, MHCC  
Ben Steffen, Executive Director, MHCC  
Katie Wunderlich, Director Engagement and Alignment, HSCRC

Enclosure



## **ACTION:**

**Repeal and Replacement of COMAR 10.24.11 – State Health Plan for Facilities and Services – General Surgical Services - Proposed Permanent Regulations**

(Agenda Item #6)



Draft State Health Plan Chapter for  
General Surgical Services (COMAR 10.24.11)  
for Consideration as Proposed Permanent Regulations

Maryland Health Care Commission  
September 19, 2017

# Overview of Changes to COMAR 10.24.11



- New opportunities to establish an ambulatory surgical facility (ASF) with two operating rooms (ORs) without CON review.
  - A hospital may relocate two ORs from its hospital to establish an ASF.
  - A hospital converting to a freestanding medical facility (FMF) may establish an ASF with two ORs in conjunction with the conversion.
  - An office of one or more health care practitioners or a group practice may establish an ASF with two ORs.

# Exemption Request vs. CON Review



- The following general standards must be met for both exemption requests and CON reviews:
  - Information Regarding Charges
  - Information Regarding Procedure Volume
  - Charity Care Policy
  - Quality of Care
  - Transfer Agreements
- Unlike CON review, there are not interested parties who have automatic standing to appeal the Commission's decision on an exemption request.

# Exemption Request vs. CON Review



- There are about half as many project review standards for an exemption request compared to a CON review. For an exemption request, an applicant must address five standards:
  - Need
  - Design Requirements
  - Location
  - Efficiency
  - Construction Cost



# Summary of Informal Comments and Staff's Analysis and Recommendations





## Comments

- Both the University of Maryland Medical System (UMMS) and Mercy Health Services (Mercy) commented that a health system should be permitted to establish a physician outpatient surgery center (POSC) because the relevant statute refers only to hospitals.

## Recommendation

- Revise the language to be consistent with statute.

## Comment

- UMMS commented that the language in .05A and .05B contained redundant provisions that apply to CON exemptions for ASFs that are included in .06.

## Recommendations

- Revise the language in .05B to specify that the standards do not apply to projects that are eligible for an exemption under .06.
- Include a combined section .06B for general and project review standards that references the applicability of the standards in .05A.



### Comments

- The Maryland Hospital Association (MHA) expressed concern that the expansion of opportunities to develop an ASF without a CON could result in supply-induced demand and unchecked growth in the total cost of care.
- Hospitals will be held accountable for the total cost of care, but others who establish ASFs will not be accountable.



## Recommendation

- Staff recommends no changes for the following reasons.
  - MHA failed to present evidence that an increased supply of ambulatory surgical capacity will induce demand for surgery.
  - A surge of development of ASFs is not anticipated based on trends in the development of POSCs.
  - It is in the State's interest to encourage surgery in lower cost settings when patient safety is maintained.
  - The regulations of MHCC may be modified if trends in ASF development raise concerns regarding supply-induced demand.

# .06A Applicability and .06B General and Project Review Standards

## Comments

- UMMS suggested that greater flexibility in the location of an ASF is needed when a hospital is converting to an FMF and establishing an ASF in conjunction with the conversion.
- UMMS suggested that an ASF be permitted within five miles of the FMF or five miles of the parent hospital.

## Recommendation

- Staff recommends no changes because the additional flexibility suggested by UMMS substantially reduces the extent to which the ASF is connected with the establishment of the FMF and would be inconsistent with statutory requirements. Staff also notes that the flexibility sought by UMMS is available if ORs are relocated before the hospital converts to an FMF, which is a new option.



### Comment

- MHA asked if a hospital relocating surgical capacity to establish an ASF is limited to the hospital's campus.

### Recommendations

- The draft regulations posted for informal comment did not restrict the location of an ASF established by a hospital through relocation of ORs. However, staff recommends limiting the location of the ASF to the service area of the hospital. This approach provides flexibility while encouraging hospitals to serve the same patients, but in a lower cost setting.



### Recommendations (continued)

- Limit co-location of an ASF with two operating rooms established through exemption review with an existing or proposed ASF or POSC. An applicant should not be allowed to establish an ASF with three or more operating rooms without a CON.



### Comments

- UMMS commented that MHCC should not mandate adjustment of the global budget of a hospital because HSCRC has authority over hospital budgets and expressed concern that the payment model could change, resulting in a partially obsolete standard.
- UMMS suggested that the standard be revised to be more general, with less specificity on the analysis required of an applicant. UMMS provided specific changes to the wording of the standard in its comments.





### Recommendation

- Staff recommends no changes for the following reasons.
  - HSCRC will determine whether a hospital's budget will be revenue neutral or result in cost savings.
  - The inclusion of the requirement for an applicant to compare the level of efficiency and effectiveness of establishing a POSC instead of the proposed ASF stems from language in statute.
  - The regulations may be updated to address any changes to the payment model or terminology used by HSCRC.

## .07A Assumptions Regarding Operating Room Capacity

### Comments

- UMMS commented that the language in .07A(1)(b) is convoluted and may not cover all situations where a different optimal capacity standard should apply.
- MHA commented that it supports flexibility in determining the optimal capacity on a case-by-case basis.

### Recommendation

- Staff recommends no changes because the standard is flexible and allows the Commission to make decisions on a case-by-case basis.

# Additional Changes



- Staff added a section .06C to address the transferability and procedural requirements for exemption requests that are consistent with those used for Certificate of Need projects.
- Staff anticipates that the requirements in .06C may be moved to COMAR 10.24.01, when those regulations are updated.



Staff requests that the Commission adopt draft COMAR 10.24.11, the General Surgical Services Chapter of the State Health Plan, as proposed permanent regulations and repeal current COMAR 10.24.11, contingent on proposed COMAR 10.24.11 becoming effective.