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Dear Administrator:

I write to seek your input on potential reforms of health planning and certificate of need (CON) programs, This input will be used to identify issues and problems and develop recommendations for modernizing Maryland's approach to health facility planning.

The Chairs of the Senate Finance Committee and the Health and Government Operations Committee have asked the Maryland Health Care Commission (MHCC) to develop recommendations for modernizing Maryland's health facility planning and CON programs in light of Maryland's implementation of the global budgets under the All-Payer Model and the proposed migration to the Total Cost of Care Demonstration in 2019. The Committees have asked MHCC to submit an interim report in May and a final report in December of next year. The Commission supports this review and further believes that we should consider changes in our health planning and Certificate of Need (CON") authority across all categories of services at the same time.

Over the past several months, the MHCC has developed a comprehensive, constructive, and inclusive plan for responding to the Chairs' request. The Commission will develop recommendations for the Committees through a two-step review process using a Commissioner-led workgroup. In the first step, the workgroup will focus on the examination of issues and problems with existing health planning and CON programs. The interim report in May will identify issues and problems, and also highlight the range of potential solutions.

In step two, the workgroup will focus on assessing potential solutions in detail and developing recommendations that the General Assembly Committees may consider. The final report will provide a roadmap for aligning the health planning and the CON programs with the All-Payer Model and the Total Cost of Care Demonstration planned for launch in 2019. Both the interim and final reports will be developed by the workgroup and then submitted to the full MHCC for approval and transmission to the Committees.

The initial workgroup will consist of five Commissioners and eight stakeholder members. Representatives from the Maryland Department of Health and the Health Services Cost Review Commission will be designated by those respective organizations. Commissioners Fran Phillips and Randolph Sergent will serve as co-chairs. Commissioners Hafey, Metz, and O'Grady have also agreed to serve on the workgroup.

Stakeholder members of the workgroup will represent the types of facilities that are subject to Certificate of Need regulation. MHCC will also appoint a workgroup member from the ranks of consultants that develop CON applications on behalf of clients. We will also select consumer and business representatives for the workgroup.

The Commission has decided that a smaller workgroup will be most efficient in assessing the problems with the existing programs. The co-chairs may decide to expand the workgroup for the second step of work focusing on possible solutions. The co-chairs may also decide to convene advisory groups composed of members from the workgroup as well as non-workgroup members. All workgroup and advisory group meetings will be public meetings held at the Commission's offices at 4160 Patterson Avenue in Baltimore or at another central location. Remote access will be offered to workgroup members, although in-person attendance is preferred. Remote access to the public will be in listen-only mode.

The co-chairs plan to begin the study process by soliciting input from associations and organizations whose members are subject to health facility planning and CON regulation, as well as business organizations and consumers. The staff, in consultation with the co-chairs, have developed the attached Comment Guidance to highlight questions and issues that the Commission would want stakeholders to address in their comments. Questions include known or potential problems with current health planning and CON programs, and also include questions concerning possible changes to address specific issues. Several versions of these comment guidance questions have been developed to reflect some of the specific problems or changes that are most pertinent to particular categories of health care facility projects subject to CON regulation. It will be most helpful if associations submit consensus responses, although individual organizations may also respond. The Comment Guidance is not intended to limit or rigorously channel comments and all stakeholders should feel free to comment on any range of issues, problems, and solutions they wish to offer.

MHCC requests that you submit your comments, which we hope will include responses to the attached questions and any additional issues you wish to address, by January 13, 2018. Please address your comments to Paul Parker, Director of the Commission's Center for Health Care Facilities Planning and Development.

Sincerely,

Robert E. Moffit, Ph.D., Chair

Attachment

cc: Francis Phillips
Randolph Sergent
Ben Steffen

COMMENT GUIDANCE – HOSPITAL
MHCC CON STUDY, 2017-18

Please consider your answers in the context of Maryland's adoption of global budgets for hospitals, its commitment to achieve the goals of the Triple Aim, and its aspiration to bring health care spending under a total cost of care model beginning in 2019. Please provide a brief explanation of the basis for your position(s) in each area of inquiry beginning with the overarching question regarding continuation of hospital CON regulation. All responses will be part of the Maryland Health Care Commission's public record for the CON Workgroup.

Need for CON Regulation

Which of these options best fits your view of hospital CON regulation?

- ☐ CON regulation of hospital capital projects should be eliminated. [If you chose this option, many of the questions listed below will be moot, given that their context is one in which CON regulation would continue to exist. However, please respond to Questions 13 to 15.]

- ☐ CON regulation of hospital capital projects should be reformed.

- ☐ CON regulation of hospital capital projects should, in general, be maintained in its current form.

ISSUES/PROBLEMS

The Impact of CON Regulation on Hospital Competition and Innovation

1. In your view, would the public and the health care delivery system benefit from more competition among hospitals?

2. Does CON regulation impose substantial barriers to market entry for new hospitals or new hospital services? If so, what changes in CON regulation should be implemented to enhance competition that would benefit the public?

3. How does CON regulation stifle innovation in the delivery of hospital services under the current Maryland regulatory scheme in which hospital rate-setting plays such a pivotal role?

Scope of CON Regulation

Generally, Maryland Health Care Commission approval is required to establish or relocate a hospital, expand bed capacity or operating room capacity at ta hospital, introduce certain services

at a hospital, or undertake capital projects that exceed a specified expenditure threshold. For a more detailed understanding of the scope of CON and exemption from CON review requirements, you may wish to review COMAR 10.24.01.02 - .04, which can be accessed at: *http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=10.24.01.**

4. Should the scope of CON regulation be changed?
   A. Are there hospital projects that require approval by the Maryland Health Care Commission that should be deregulated?
   B. Are there hospital projects that do not require approval by the Maryland Health Care Commission that should be added to the scope of CON regulation?

The Project Review Process

5. What aspects of the project review process are most in need of reform? What are the primary choke-points in the process?

6. Should the ability of competing hospitals or other types of providers to formally oppose and appeal decisions on projects be more limited?

   Are there existing categories of exemption review (see COMAR 10.24.01.04) that should be eliminated? Should further consolidation of health care facilities be encouraged by maintaining exemption review for merged asset systems?

7. Are project completion timelines, i.e., performance requirements for implementing and completing capital projects, realistic and appropriate? (See COMAR 10.24.01.12.)

The State Health Plan for Facilities and Services

8. In general, do State Health Plan regulations for hospital facilities and services provide adequate and appropriate guidance for the Commission's decision-making? What are the chief strengths of these regulations and what do you perceive to be the chief weaknesses?

9. Do State Health Plan regulations focus attention on the most important aspects of hospital projects? Please provide specific recommendations if you believe that the regulations miss the mark.

10. Are the typical ways in which MHCC obtains and uses industry and public input in State Health Plan development adequate and appropriate? If you believe that changes should be made in the development process for State Health Plan regulations, please provide specific recommendations.

General Review
Criteria for all Project Reviews

COMAR 10.24.01.08G(3)(b)-(f)) contains five general criteria for review of all CON projects, in addition to the specific standards established in the State Health Plan: (1) Need; (2) Availability of More Cost-Effective Alternatives; (3) Viability; (4) Impact; and (5) the Applicant's Compliance with Terms and Conditions of Previously Awarded Certificates of Need.

11. Are these general criteria adequate and appropriate? Should other criteria be used? Should any of these criteria be eliminated or modified in some way?

CHANGES/SOLUTIONS

Alternatives to CON Regulation for Capital Project

12. If you believe that CON regulation of hospital capital projects should be eliminated, what, if any, regulatory framework should govern hospital capital projects?

13. What modifications would be needed in HSCRC's authority, if any, if the General Assembly eliminated CON regulation of hospital capital projects?

14. Are there important benefits served by CON regulation that could be fully or adequately met with alternative regulatory mechanisms? For example, could expansion of the scope and specificity of hospital licensure requirements administered by the Maryland Department of Health serve as an alternative approach to assuring that certain hospital facilities and services are well-utilized and providing an acceptable level of care quality, with appropriate sanctions to address under-utilization or poor quality of care? Are there ways (other than those touched on in earlier questions) in which the regulation of hospital charges could be adapted as a substitute for CON regulation?

The Impact of CON Regulation on Hospital Competition and Innovation

15. Do you recommend changes in CON regulation to increase innovation in service delivery by existing hospitals and new market entrants? If so, please provide detailed recommendations.

16. Should Maryland shift its regulatory focus to regulation of hospital and health systems merger and consolidation activity to preserve and strengthen competition for hospital services?

Scope of CON Regulation

17. Should the scope of hospital CON regulation be more closely aligned with the impact of hospital projects on charges?
    A. Should the use of a capital expenditure threshold in hospital CON regulation be eliminated? For example, should hospital capital projects or certain types of hospital project only require a CON if the hospital seeks an increase in its global budget to cover project-related capital cost (depreciation, interest, and amortization) increases? Alternatively, should CON

regulation be based on the overall impact of projects on hospital revenues (related to coverage of both capital and operating expenses, which could increase substantially even for low cost projects if new services are being introduced?)

B. Should Maryland's system of hospital rate regulation include capital spending growth targets or capacity growth targets that shape the scope of CON regulation? If so, how would this work? For example, should CON regulation be redesigned to move away from single project review(s) for a multiple hospital system to a broader process of reviewing systems resource development needs and priorities? Such a process

C. could resemble a periodic budget planning process with approval of a capital spending plan that incorporates a set of capital projects for a given budget period.

18. Should MHCC be given more flexibility in choosing which hospital projects require approval and those that can go forward without approval, based on adopted regulations for making these decisions? For example, all projects of a certain type could require notice to the Commission that includes information related to each project's impact on spending, on the pattern of service delivery, and that is based on the proposals received in a given time period. The Commission could consider staff's recommendation not to require CON approval or, based on significant project impact, to require the hospital to undergo CON review.

19. Should a whole new process of expedited review for certain projects be created? If so, what should be the attributes of the process?

The Project Review Process

20. Are there specific steps that can be eliminated?

21. Should post-CON approval processes be changed to accommodate easier project modifications?

22. Should the regulatory process be overhauled to permit more types of projects to undergo a more abbreviated form of review? If so, please identify the exemptions and describe alternative approaches that could be considered.

23. Would greater use of technology including the submission of automated and form-based applications ion improve the application submission process?

Duplication of Responsibilities by MHCC, HSCRC, and the MDH

24. Are there areas of regulatory duplication in the hospital capital funding process that can be streamlined between HSCRC and MHCC, and between MHCC and the MDH?

25. Are there other areas of duplication among the three agencies that could benefit from streamlining?

Thank you for your responses. Remember that it will be helpful if you provide a brief explanation of the basis for your position(s) and /or recommendation(s) in each area of inquiry.