



Maryland-National Capital Homecare Association

Home Health | Private Duty | Durable Medical Equipment

September 19, 2022

Delivered via email to Alexa Bertinelli -MHCC- alexa.bertinelli@maryland.gov

Alexa Bertinelli
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Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Dear Ms. Bertinelli:

Thank you for providing us with the opportunity to respond to the proposed draft amendments to COMAR 10.24.01 regarding the procedural regulations applicable to the Certificate of Need (CON) review process for health care facility planning and development. MNCHA understands that the overall goal of the MHCC CON Modernization Task Force has been to realign 10.24.01 with the statutory and regulatory changes that have taken place since its last update over a decade ago. We appreciate the thoughtful work of the Task Force, and we also recognize that this work has taken place in addition to the daily responsibilities of your team.

Overall, MNCHA supports these draft amendments as they relate to the Home Health Agencies. Our impression is that there are a variety of protections for current CON holders, yet clearly-defined requirements and proof of need thresholds for future applicants. We are pleased that the Task Force has considered a boarder scope of acquisition activity as a reflection of current marketplace trends and included additional protective provisions based on related risks. Additionally, there appears to be an expansion of Certificate of Ongoing Performance provisions that provides added scrutiny and protections against fraud, waste, and abuse.

There are a few areas within the draft that we suggest you clarify and/or revisit. We request that MHCC reconsider the anticipated impact that a CON exclusion for HMOs can have on current CON holders. Given current trends in the marketplace, it is reasonable to expect that HMOs may increasingly pursue acquisitions of Home Health Agencies as a continuum of healthcare service provision that is closely related to the shift to home-based primary care services. MNCHA opposes that exempt status of HMOs as written, and we request that the Task Force give more thought to the serious potential for disruptive impact that HMOs providing home health services can have on the ecosystem of Home Health Agencies. Local small business owners and operators are among these agencies, and they are critical parts of this ecosystem, particularly in the rural areas of our state.

Also, MNCHA would like to request clarification for Home Health Agencies who currently hold a specialty CON and the process by which they would be able to expand their current CON. There are no provisions within these draft regulations that account for CONs previously awarded as specialty (i.e., pediatric private duty agencies).

MNCHA's additional responsive comments are detailed below:

10.24.01.01 Definitions

- There are not currently definitions for "merger" or "consolidation," yet these terms are referenced in latter sections of 10.24.01. Can definitions for these terms please be added to this section?
- B.(3). Clarification: what, if any, are the substantive changes to the rights of an aggrieved party?
- B.(9). Clarification: is the definition of a capital expenditure expanded such that a project that would previously not have required a CON review would now require one?

10.24.01.02 Coverage

- A.(4).(f). This provision references the elimination of an existing medical service. Can you please confirm that this provision does not apply to a Home Health Agency that, for example, will no longer offer Occupational Therapy services?

10.24.01.03 Non-Coverage

- H. This provision references that a Home Health Agency must notify MHCC if opening a branch office, though a new branch office does not require a CON review. Does this only apply if the branch office is within the agency's currently defined service area? We would like to clarify the distinction between a new branch office versus a new service area. Would it make sense to add these as relevant definitions?

10.24.01.22 Effective Date

- B.(1). It appears that the intent of this provision is to allow for a mechanism to review projects that were previously approved. MNCHA opposes this as written and requests that language be added to specify the scope and parameters of such a review. And would this type of determination review occur only if requested by an aggrieved party? The mechanism to carry out this determination is unclear. The total resources of the Commission should be considered, particularly given its expanded responsibilities and respective timeframes that are included in the draft amendments.

MNCHA is available if you would like to have further discussion on any of these topics, or should you determine a future need to convene a workgroup. If you have any questions, please feel free to reach out to me at chouck@mncha.org, or 240-383-0420.

Sincerely,



Caitlin Houck, RN, MS
Executive Director

Cc: Danna Kauffman, Esq.