

March 29, 2018

VIA EMAIL & U.S. MAIL

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Re: Proposed Changes to Certificate of Need  
Adventist Health Care *d/b/a* Washington Adventist Hospital  
Docket No. 13-15-2349

Interested Party Holy Cross Hospital of Silver Spring, Inc. (“HCH”), by undersigned counsel, submits these comments addressing changes proposed by Adventist HealthCare, Inc. (“AHC”) to the Certificate of Need (“CON”) project approved on December 17, 2015. The project changes described in AHC’s recent filings are dramatic and would render meaningless many of the Commission’s careful analyses and conclusions formed during the lengthy CON review process. As presented by AHC, the project changes should be denied for a number of reasons, including:

- The proposed project changes are not permitted under the Commission’s regulations;
- The proposed changes would cause AHC to violate its assurances, as set forth in its previous CON submissions, to provide access to a spectrum of health care services for the vulnerable population in and around Takoma Park.
- AHC fails to demonstrate that the project, with the proposed changes, would be viable, and its submissions leave many unanswered questions regarding project costs and funding.
- AHC fails to demonstrate the financial feasibility and sustainability of the project when completed if the proposed changes are approved; and
- The proposed changes will have an adverse impact on the health care delivery system, existing providers (including HCH), and access to health care services.

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At a minimum, AHC should be required to (i) submit sufficient information regarding the proposed changes to permit an evaluation of the newly designed project's compliance with various CON review standards and criteria, and (ii) recommit to providing the services to the Takoma Park campus that AHC described throughout the CON review, thus ensuring that the underserved and vulnerable population in the primary service area of Washington Adventist Hospital ("WAH") will continue to have access to comprehensive services, as promised. HCH further requests that the Commission seek comment from the Health Services Cost Review Commission ("HSCRC") on the implications of certain financial aspects of AHC's proposed changes, including the Total Cost of Care implications, and the financial feasibility of the newly designed project.

### **Introduction**

The Commission granted AHC a CON to relocate WAH from Takoma Park to White Oak and establish a special psychiatric hospital at the Takoma Park campus for a total project cost of \$336 million (the "AHC CON"). MHCC December 17, 2015 Board Minutes. As described in AHC's application, the special psychiatric hospital would remain at the site of the existing WAH building in Takoma Park, together with a special inpatient rehabilitation hospital, a 24/7/365 full service urgent care center, and ancillary services that would support those facilities. Since approval, AHC requested and received an increase of \$64 million in project costs, and now it seeks to significantly pare down the services that it previously committed would remain in Takoma Park. If AHC's most recent changes are approved, the result will be a project that is at least 19% more expensive and eliminates key services in Takoma Park than the project the Commission approved after a contested CON review.

HCH is a part of Holy Cross Health, a Maryland based health system with two acute general hospitals, six health centers and primary care practices, and numerous locations providing community health and wellness activities throughout its service area. In FY 2017, Holy Cross Health provided \$58.7 million in community benefit, including \$34 million in direct financial assistance for uninsured and medically underserved members of its community. As a part of Holy Cross Health, HCH has been a steward of the health of its diverse community located in Silver Spring, Maryland, and the surrounding service area in Montgomery and Prince Georges Counties, for more than 50 years. Over time, AHC and HCH have shared the interest and responsibility for ensuring

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that this community, especially the most vulnerable members within it, has access to a healthcare delivery system sufficient to meet its needs.

HCH participated in the AHC CON review as an Interested Party. Throughout the review, HCH opposed the project on several grounds. Of chief concern was that the project would have an adverse impact on access to services for the residents of WAH's existing primary service area, which overlaps with HCH's primary service area. HCH sought to ensure that the population currently served by WAH would continue to have access to quality health care services, and to prevent an undue burden on HCH's ability to meet the health care needs of that population, with significant interest focused on emergency and behavioral health services. AHC's second, most recent request to make project changes seeks to substantially reduce its commitment to the residents of WAH's existing primary service area and it does not include sufficient information for the Commission to assess the full impact of the proposed changes on that population.

### **Procedural Background**

AHC submitted a CON application in 2009 proposing the "relocation and replacement of all acute inpatient and outpatient services provided in the general hospital facilities at the WAH campus in Takoma Park," for a total project cost of \$397,705,000. September 4, 2012 Memo to Commissioners and Parties enclosing Recommended Decision, Docket No. 09-15-2295, p. 2. The Reviewer appointed to that project recommended that the project be denied primarily based on "strong doubts with respect to the financial feasibility and viability of the specific proposal." *Id.*, p. 4. AHC withdrew that application.

On October 4, 2013, AHC submitted a new CON application proposing to "relocate and replace WAH, the general acute care hospital operated in Takoma Park, with the exception of acute psychiatric inpatient services and the separately licensed medical rehabilitation facility, to ... White Oak. This approach was chosen to reduce the overall cost of the proposed replacement hospital." December 17, 2015 Recommended Decision (the "Commission Decision"). On December 17, 2015, the Commission approved the decision without change and granted AHC a CON for the "relocation of Washington Adventist Hospital and the Establishment of a Special Hospital-Psychiatric" for a total project cost of \$336,053,030. December 17, 2015 MHCC Board Minutes.

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AHC submitted a Request for Project Change after Certification on July 28, 2017, seeking to increase the project costs by \$64 million to construct a Central Utility Plant and a parking garage structure. The Commission approved that request on September 19, 2017. MHCC September 19, 2017 Meeting Minutes.

On March 2, 2018, AHC submitted: (i) a request for project change, seeking to add a special inpatient rehabilitation hospital to the new hospital in White Oak; and (ii) a request for determination of exemption from CON review, seeking to relocate the psychiatric beds at the existing Takoma Park hospital to be consolidated with existing psychiatric beds at Adventist Behavioral Health – Rockville, which is presently licensed as a special hospital in separate buildings located on the campus of Shady Grove Medical Center (“SGMC”). AHC proposes to consolidate all of its inpatient psychiatric services into SGMC, thereby enhancing its ability to be reimbursed under AHC’s Global Budget Revenue (“GBR”) agreement with the HSCRC.<sup>1</sup>

**I. AHC seeks changes that are not approvable and it has not provided sufficient information for the Commission to properly evaluate its requests.**

Certain changes to a CON project following Commission approval “that would place the project at variance with its Certificate of Need issued under these regulations” require the CON holder to seek Commission approval prior to implementing the change, including:

- (1) Before making a significant change in physical plant design;
- (2) Before incurring capital cost increases that exceed the approved capital cost inflated by an amount determined by applying the Building Cost Index published in Health Care Cost Review from the application submission date to the date of the filing of a request for approval of a project change;

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<sup>1</sup> This proposal will require approvals not only from the Commission, but also the HSCRC and the Office of Health Care Quality within the Maryland Department of Health. Presumably, AHC will seek separate Commission approval to consolidate its existing special psychiatric hospital in Rockville with SGMC.

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- (3) When total projected operating expenses or revenue increases exceed the projected expenses or revenues in the approved Certificate of Need Application, inflated by 10 percent per year;
- (4) Before changing the financing mechanisms of the project;
- (5) Before changing the location or address of the project.

COMAR § 10.24.01.17B. In addition, certain changes are not approvable, including:

- (1) Changes in the fundamental nature of a facility or the services to be provided in the facility from those that were approved by the Commission;
- (2) Increases in the total licensed bed capacity or medical service categories from those approved. . . .

COMAR § 10.24.01.17C.

The changes sought in AHC's project change request are not approvable because AHC seeks to increase the total licensed bed capacity and the medical services categories from those that were approved. AHC's filing further demonstrates that AHC intends to make other changes to the approved project that are not currently the subject of a project change request.

**A. The relocation of the special acute inpatient rehabilitation hospital to White Oak.**

AHC's CON approval for the relocated WAH does not include rehabilitation services. Approval of AHC's proposal to add this service to the White Oak facility would be a clear violation of the prohibition on the addition of new medical services to an existing CON, COMAR § 10.24.01.17C(2). Seeking to avoid this regulation, AHC states it will "simply serve as a landlord" to Adventist HealthCare Rehabilitation ("AHR"), an affiliate of AHC, which will operate the rehabilitation hospital within the walls of the new WAH White Oak facility. The applicable regulations, however, do not include an exception for medical services operated in leased spaces.

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The prohibition on the addition of new medical services refers to an “approved project” without reference to the identity of the provider of the services. COMAR § 10.24.17C. In addition, Commission regulation expressly prohibits the division of a CON project into component parts, except where expressly permitted. COMAR § 10.24.01.02C (“A person may not divide a project into component parts except as permitted by this chapter.”) In determining whether individual projects represent component parts of a single project, the Commission considers “factors such as the timing of the projects, the functional areas of a facility to be affected, the number of construction contracts entered into, and whether expenditures under one contract depend upon the completion of the other.” Here, these factors demonstrate that the rehabilitation hospital is not a separate project. AHC will incur the entire cost of the relocation of the rehabilitation hospital, presumably under an amendment to the existing construction contract for WAH, although in any event dependent upon that contract, and the timing of the relocation of the rehabilitation hospital will coincide with the completion of the WAH contract and relocation of the acute care services to White Oak.

Recent Commission precedent, including the decision in this CON review, also demonstrates that the inclusion of an inpatient rehabilitation unit in an approved CON facility must be considered part of the same project. AHC’s approved project includes not only the relocation and construction of the new WAH facility in White Oak, operated by AHC, but also the establishment of a special psychiatric hospital on the existing Takoma Park campus, to be operated by a separate entity, Adventist Behavioral Health (“ABH”). The Commission found that these two separate locations operated by affiliated, but separate, providers were part of a single CON project. Commission Decision, p. 4. (“[T]he renovation of the behavioral health space is a component of this project and CON application.”) Similarly, in the Application for Certificate of Need of Dimensions Health Corporation d/b/a Prince George’s Hospital Center and Mt. Washington Pediatric Hospital, Inc., Docket No. 13-16-2351, the Commission treated the relocation of the 15-bed Mt. Washington Pediatric Hospital, Inc., to leased space within the relocated hospital facility as part of a single project.

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Because the relocation of the rehabilitation hospital must be treated as a component part of a CON project, it constitutes the addition of medical services to that project and thus would be an impermissible change.<sup>2</sup>

**B. AHC seeks an increase in capital costs, but fails to provide sufficient financial information for the Commission and the HSCRC to evaluate the request.**

Even if the relocation of the Rehabilitation Hospital to White Oak were an approvable change, AHC has not provided sufficient information to evaluate the request. Increase in a project's capital costs require CON approval. COMAR § 10.24.17B. AHC's analysis of its requested changes demonstrates that the relocation of the proposed rehabilitation hospital to White Oak will increase its capital costs by \$6.5 million, which exceeds allowable inflation.<sup>3</sup> AHC March 2, 2018 Request for Project Change, Exhibit 2.

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<sup>2</sup> Any argument that the relocation of the rehabilitation hospital is not part of the same project is also undermined by AHR's failure to file a CON application or an exemption request for the proposed relocation. As a general rule, "a Certificate of Need is required before...An existing health care facility is moved to another site," unless an exception applies. COMAR § 10.24.01.02A(2). AHR has not filed an application to relocate the rehabilitation hospital, and AHC does not argue that any exception applies. That AHC seeks approval to relocate the rehabilitation hospital in the context of the AHC CON review rather than through a separate CON confirms that AHC is seeking the relocation of this medical service as a part of the AHC CON project.

In addition, by failing to file a CON application or exemption request related to the rehabilitation hospital, AHC and AHR fail to demonstrate that the proposed relocation complies with the applicable review standards and criteria. In both the AHC CON review and the Dimensions review, the Commission required the applicants to submit detailed revenue and expense projections for the separately licensed facilities, and evaluated the specialty hospital's compliance with the applicable State Health Plans. Here, AHR and AHC have not provided any such information to the Commission's consideration.

<sup>3</sup> This increase in capital costs is calculated as the approved capital costs, AHC Request, Exhibit 2, Column B, "Total Capital Costs" line, and the projected total capital costs, *id.*, Column E, "Total Capital Costs" line. While AHC highlights that the total project budget has

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AHC's explanations of the increase in costs and impact on its budget are confusing and contradictory, and the Commission should require more information in order to evaluate AHC's request.

AHC states that it is able to make the requested change without increasing the overall project budget based on "savings mainly from efficiencies achieved from the development of the parking garage and CUP, as well as reallocating the \$5.3 million of funds that would have been spent on the behavioral health renovation...in Takoma Park." AHC Request, p. 4. As an initial matter, the Commission should not permit AHC to reallocate funds the Commission approved for the establishment of a special psychiatric hospital – if AHC does not move forward with that part of its CON project, those funds cannot be reallocated for a purpose that was not approved.

In addition, AHC's claim of efficiencies from the CUP and parking garage does not make sense. AHC sought an increase in capital costs of \$64 million to accommodate the CUP and parking garage just eight months prior to submitting the present request. AHC now suggests, without any explanation, that these components actually result in significant savings, allowing it to absorb an additional \$19.4 million in project costs without an increase in the overall budget. Even with AHC's proposal to reallocate the \$5.3 million allocated to the Takoma Park behavioral health, which the Commission should reject, AHC would still need to achieve \$15.1 million in savings to absorb that cost into the current budget. AHC has not provided any explanation of how the CUP and parking garage result in such savings, and has not explained why AHC overestimated the cost of those components by \$15.1 million only months ago.<sup>4</sup>

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not increased, the regulation governing project changes requires Commission approval for any increase in capital costs that exceeds allowable inflation. COMAR § 10.24.01.17B(2).

<sup>4</sup> There are also other unexplained discrepancies between AHC's current proposed budget and the July 28, 2017 project change request. For example, that request included \$2,015,000 in "Legal fees – Other," and \$0 in "Legal fees (CON related)." September 19, 2017 Staff Report, Appendix 2. The current proposed budget decreases the total funds for "Legal fees (CON related)," and shows no expense in the Legal fees (other) category. AHC Request, Exhibit 2. AHC should explain why it anticipated \$2 million in non-CON related legal fees in July related to solely the CUP and parking garage, and now projects that line item for the entire project at \$0.



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The financial information provided by AHC also does not appear consistent with savings achieved related to the CUP and parking garage. Instead, the primary line items reduced in the current budget are capitalized construction interest and financing costs.<sup>5</sup> The Commission should require AHC to submit more detailed financial information regarding how the cost of the additional two floors will be absorbed by the project.<sup>6</sup>

**C. The changes to the Takoma Park Campus constitute a change in the fundamental nature of the facility or services to be provided.**

AHC's request relies in part on reallocating \$5.3 million from the Takoma Park campus to White Oak, though AHC purports not to include the Takoma Park changes in its request for project change. The proposed elimination of the Takoma Park campus services from the project requires CON review not only because it is intertwined with the financial aspect of AHC's current request, but also because, at a minimum, it constitutes a serious variance in the approved CON that requires Commission review, including a new analysis of review standards and criteria implicated by this change. Such a review should result in a finding that the changes impermissibly alter the fundamental nature of the project, in violation of COMAR § 10.24.17C.

Previously, AHC represented that the following services would exist at Takoma Park following completion of the CON project:

- The existing WAH psychiatric unit, establishing a special hospital for psychiatric service, in expanded, renovated space, including both inpatient and outpatient behavioral health services;
- The existing special hospital for rehabilitation services;

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<sup>5</sup> Inflation allowance is also significantly less. HCH presumes this is because the project is under construction, and the inflation shown in Exhibit 2, Column B, has been allocated among the various line items.

<sup>6</sup> AHC should also address whether the project's existing shell space could be used and potentially expanded to house the rehabilitation hospital, and whether that approach would require a lesser increase in capital costs.

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- A 24/7 urgent care center; with full support services;
- An existing Federally Qualified Health Center, scheduled for an expansion that would triple its capacity;
- The existing Women's Center clinic, a maternity clinic serving low income women;
- Laboratory and radiology services; and
- Physician offices.

Commission Decision, pp. 4, 27. While the Commission found that only the behavioral health services were subject to CON review, the Commission conditioned AHC's CON on its operation of the urgent care center. *Id.*, p. 180.

AHC allocated \$5.3 million to the renovation of space for the behavioral health beds. AHC indicated it would contribute significant additional funds to the other components of the Takoma Park campus, a total of \$13.2 million for costs associated with the establishment of the urgent care center, the Women's Center clinic, public corridors, Takoma Park facility upgrades, financing costs, and other requirements. Commission Decision, p. 4; *see also* AHC May 29, 2015 Response to Request for Additional Information (DI#85).

AHC now proposes, without requesting a project change, to eliminate the behavioral health inpatient services from Takoma Park. AHC plans instead to relocate them 18 miles away and consolidate them with Adventist Behavioral Health ("ABH"), a special hospital in separate buildings located on the SGMC campus. AHC's filings discuss the benefit such a move will provide to AHC, but AHC provides no discussion of how this move will impact the vulnerable population, county police, and fire and rescue services that currently access these services. AHC does not indicate whether any existing behavioral health outpatient services will remain in Takoma Park.

During the review, AHC acknowledged that the behavioral health services in Takoma Park were a significant component of ameliorating the impact of AHC's impact on its existing service area and making the project financially feasible. The Commission

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Decision notes that that AHC selected to pursue the CON project, Option 4 in AHC's evaluation of alternatives, rather than an option that included relocation of the behavioral health beds to WAH, noting, in part:

Options 3 and 4 differ only in that Option 4 would not relocate the inpatient psychiatric beds to White Oak, thus saving an additional capital investment of about \$18M, which is \$23M less the \$5.2M that would be spent at Takoma Park to renovate the behavioral health unit. In addition, AHC concluded that under Option 4 the projected combined operating margin – comprised of positive results in White Oak and operating losses in Takoma Park – is marginally better. AHC also rated the impact of Option 3 on the community to be less promising than Option 4, since Option 4 would leave a more robust group of services in Takoma Park, and a greater level of health care activities and revenues.

Commission Decision, p. 40.

AHC's plans for the Takoma Park campus also demonstrate that the urgent care center considered by the Commission in connection with its approval of this project is far different than the urgent care center that AHC now plans to establish. AHC represented that the urgent care center would be a comprehensive facility supported by full laboratory and radiology services. *Id.*, p. 4.

The presence of behavioral health services on the same campus as the urgent care center was also a critical component of the service. AHC represented that behavioral health staff and clinicians would be available to conduct a needs assessment for patients presenting at the urgent care center with behavioral health needs, and that appropriate patients could be directly admitted to the behavioral health hospital. AHC Provision Additional Information, August 10, 2015 (DI#103). *See also* Commission Decision, p. 114 (“The applicant states that ABH Takoma Park’s needs assessment clinical staff ‘will conduct the face-to-face evaluation to determine the psychiatric criteria and the most appropriate level of care for the patient, and will make the arrangements for an appropriate transfer only if the needed services are not available.’”) Significantly, the Reviewer required AHC to submit detailed information regarding the assessment and care path for patients with various behavioral health needs following presentation to the

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urgent care center. AHC Provision of Additional Information, August 10, 2015 (DI#103).

AHC also represented that the urgent care center would be established in the existing emergency department space, following renovations. Commission Decision, p. 38. The Commission relied on this representation in finding the center likely to ameliorate the adverse impact associated with the loss of an emergency department. Id. (“Given that the UCC would not be a brand new provider of service but would be operated by both a provider, AHC, and at the same location (the current ED at WAH) to which the community is accustomed as a source of urgent and emergent care, I believe that it stands a good chance of being well-utilized.”) Now, however, AHC indicates that it is “actively evaluating space on the campus where the center will be maintained,” suggesting that yet another aspect of the urgent care center will be different than the center it presented during the CON review.

The Commission relied on AHC’s representations regarding the urgent care center in finding that the project complied with the adverse impact standard. Specifically, the Commission found that “the proposed 24/7 urgent care center operated by AHC at the existing WAH site will be a viable option for a substantial proportion of the care dispensed by the WAH ED without any change in travel time. Id., p. 38. The Commission further stated that “AHC’s representations regarding its commitment to this UCC [Urgent Care Center] are such an important part of [the] finding” that the project would not have an adverse impact on the population in the primary service area. Id.

The Commission also relied upon AHC’s additional commitments to the Takoma Park campus in rendering its finding on adverse impact:

AHC maintains that it has mitigated access difficulties for those residents who might otherwise have issues with financial or geographic access by virtue of AHC’s commitment to operation of a special hospital and outpatient service campus at the Takoma Park site after relocation of WAH to White Oak. Specifically, AHC notes that the remaining Takoma Park campus will include an expanded FQHC, a women’s clinic targeting indigent women in need of obstetric and gynecological services, and a 24/7 urgent care center. In my view, AHC’s stated intentions are credible given

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its historically strong commitment to serving the disadvantaged and indigent population.

Commission Decision, p. 36.

AHC's proposed changes to its Takoma Park campus violate its promise to ensure access to a spectrum of health care services for the vulnerable population in and around Takoma Park, and undermine the Commission's findings that AHC complied with applicable review standards and criteria, including the adverse impact review standard. Had the Commission evaluated the CON project based on an urgent care center as now envisioned by AHC – a center somewhere on a campus otherwise devoid of services, in an unknown location on the campus, and unsupported by lab, radiology, or behavioral health services – the Commission may have reached different conclusions on AHC's compliance with various review standards and criteria, including adverse impact. The Commission should require AHC to address what behavioral health services and ancillary services, if any, will now be available to visitors to the Takoma Park urgent care center, and to reassess patients' care path following the proposed changes.

**D. AHC has not advanced persuasive reasons for drastically changing the Takoma Park campus.**

AHC had the opportunity to carefully consider its project over the course of a lengthy review. Even if the Commission finds that the changes to the Takoma Park campus are within the scope of permissible changes approvable under COMAR § 10.24.17B, the Commission should deny the changes because AHC has not advanced any persuasive reasons for making these changes after the conclusion of that review.

AHC merely states that the maintenance of the Takoma Park campus “is not the best approach from a continuity of care and cost perspective.” AHC Request, p. 2. AHC provides no information to support its statement regarding continuity of care. Instead, its focus is entirely on impact on and benefit to AHC. *Id.* Furthermore, during the CON review, the Commission considered many review standards and criteria that implicated such issues, including access and cost effectiveness. In the absence of any compelling information from WAH, or any explanation at all, as to why the elimination of services from Takoma Park would improve continuity of care, the Commission should defer to its earlier findings that resulted from a careful and considered review process.

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Regarding cost, AHC contradicts its assertion that the changes to the Takoma Park Campus will result in cost savings. While AHC represents that the planned Takoma Park campus would result in annual losses on that campus of \$5,360,000, AHC states that “the relocation of the rehabilitation and behavioral health services will result in an *additional* loss of \$214,867.” AHC Request, p. 4 (emphasis added). The initial construction costs of the proposed changes are also more expensive. The addition of two floors to the White Oak hospital to house the rehabilitation hospital will add \$19.4 million to the project that presumably would otherwise be saved. AHC Request, Exhibit 2. Previously, AHC represented that the changes to the Takoma Park campus would cost \$13.2 million. Commission Decision, p. 4.

AHC’s proposed changes are thus more costly than continuing the CON project and the additional Takoma Park development as described. In addition, AHC has not demonstrated that it will be able to reduce the costs of its non-CON projects on the Takoma Park campus even with these changes. For example, even though the urgent care center is a condition of the CON, the Commission and AHC did not consider the cost of renovating Takoma Park to create that facility as a project cost. That condition remains a part of the CON. Even if AHC pares down the Takoma Park campus to nothing but the urgent care center – which would seriously change the nature of the facility as considered by the Commission and should not be permitted, AHC would still incur additional costs on the campus to develop that facility, maintain utilities and security on the campus, and decommission any unused space. The Commission should not accept AHC’s blind statement that its proposal is more cost effective to AHC – the numbers stated by AHC show otherwise, and AHC has not provided sufficient information to evaluate the totality of the impact its proposed changes will have on its costs.

**II. The Commission should review AHC’s proposed changes for continued compliance with the general criteria and review standards.**

AHC’s request to add additional medical services to the White Oak campus, and its failure to submit a project change request regarding the elimination of behavioral health services from Takoma Park, constitute improper shortcuts to the required and appropriate regulatory CON review process. The review of AHC’s plans in the form presented by AHC would deprive HCH and other interested parties of a full review of the impact of AHC’s changes to the Takoma Park campus. The proposed changes raise serious concerns that are the proper subject of CON review, such as the financial

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feasibility and viability of the project, the access to health care services, the financial impact a change in services will have on the health care delivery system, and the impact such changes may have on existing providers.

**A. Viability of the proposal**

The viability criterion, COMAR § 10.24.01.08G(3)(d), requires the Commission to “consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission’s performance requirements, as well as the availability of resources necessary to sustain the project.” Id. HCH first addresses the availability of resources to implement the project.

AHC submitted a CON application in 2009 proposing the “relocation and replacement of all acute inpatient and outpatient services provided in the general hospital facilities at the WAH campus in Takoma Park.” October 18, 2012 Recommended Decision, Docket No. 09-15-2295, p. 2. The proposed project included 249 beds for a total project cost of \$397,705,000. Id. September 4, 2012 Memo to Commissioners and Parties enclosing recommended Decision, Docket No. 09-15-2295, p. 2. The Reviewer appointed in that case recommended that the project be denied primarily based on “strong doubts with respect to the financial feasibility and viability of the specific proposal.” Id., p. 4. Following AHC’s withdrawal of its 2009 application, it proposed and received approval for a new project including 170 beds (plus 20 observation beds) for a total project cost of \$336,053,030. At AHC’s request, the Commission later increased the approved cost to \$400,198,988. Thus, AHC is now seeking to build a hospital with significantly fewer beds at a project cost greater than the amount that a Reviewer previously found to be not viable. At the same time, as described further in Section II B, *supra*, AHC’s revised budget contains significant line item changes surrounding interest and debt servicing.

The Commission should require AHC to submit sufficient information for the Commission to reevaluate the viability of the project at the proposed new cost, and should further require an explanation as to the revised line items between the prior allocation of the \$400.2 million cost (Request for Project Change, Exhibit 2, column B) to the revised allocation of the same amount (Request for Project Change, Exhibit 2, column E). As addressed in Section II.B, The Commission should also require AHC to

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submit more detailed financial information regarding how the costs of the additional two floors will be absorbed by the project, and to address the discrepancy noted in footnote 4. In particular, AHC should provide full financial projections that detail and substantiate the specific sources of projected surplus, including a statement of all assumptions. Furthermore, HCH urges the Commission to exclude the incremental project costs related to the CUP, parking garage, and shell space from HSCRC rate relief.

## **B. Financial feasibility**

The Commission assessed the project's financial feasibility largely under the prong of the viability criterion that requires the Commission to examine the resources available to sustain the project. COMAR § 10.24.01.08G(3)(d). Commission Decision, p. 55. Many assumptions underpinning the approved CON have materially changed, and as a result, may impact financial feasibility of the proposed White Oak and Takoma Park campuses.

AHC's analysis of the financial feasibility of the incremental capital costs associated with its prior request to change the project budget did not include the projected losses of the Takoma Park Behavioral Health Services, which were considered in the approved CON. July 28, 2017 AHC Request. AHC projected the FY2023 (uninflated) net income for WAH-White Oak with the modified CUP and parking costs at \$2.6 million. *Id.* The projected loss for Takoma Park Behavioral Health, however, was FY2023 \$5.2 million. The combined financial performance of WAH White Oak and the Takoma Park Behavioral Health is a loss of \$2.6 million. *Id.* AHC now expects that the relocation of the rehabilitation and behavioral health services will result in an *additional* loss of more than \$200,000. AHC Request, p. 4. As a result, it appears that AHC's current project, with or without the relocation of the behavioral health and rehabilitation beds, is not financially feasible.

In addition, while AHC's Request states that the relocation and consolidation WAH's inpatient psychiatric capacity with the special psychiatric hospital at SCMG will result in savings of \$200,771 at SGMC, AHC does not provide details of the drivers of this improvement sufficient to allow the Commission to evaluate that representation. In order to fully understand the impact on regulated revenue of the proposed changes for AHC, ABH, WAH, and SGMC, the Commission should require AHC to its including key assumptions regarding the redistribution of revenue, including the components of the



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\$200,771 financial improvement at SGMC. The Commission should further require AHC to submit detailed revenue and expense projection for WAH, and for the entire project, including the behavioral health beds, so that the Commission can make a fully informed assessment and decision regarding the proposed changes.

If the Commission does approve any of the changes AHC seeks after AHC submits sufficient information to evaluate them, such approval should be conditioned on a commitment that AHC will not seek rate relief related to incremental project costs. While AHC indicates that it will seek not such additional rate relief, the existing conditions on the CON only prohibit rate relief related to the shell space.

**C. Impact on the health care delivery system**

COMAR § 10.24.01.08G(3)(f), impact on existing providers, requires the Commission to consider an applicant's "analysis with respect to the impact of the proposed project on existing health care providers in the service area, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system."

AHC presents its revisions to the Takoma Park campus as more preferable from a cost perspective. However, AHC has not provided sufficient information for the Commission to make that determination.

The impact to both total health care spend and Medicare total cost of care related to the proposed changes to both the existing acute inpatient psychiatric services and the services slated to remain at the Takoma Park campus must be evaluated fully. AHC's request states that if the current WAH inpatient psychiatric beds remained on the Takoma Park campus, as previously proposed by AHC and approved by the Commission, these services would no longer be paid through regulated rates under AHC's GBR agreement with the HSCRC. However, under § 19-201(d)(1) of the Health General Article of the Maryland Code, the HSCRC would continue to have jurisdiction for the regulation of rates of the proposed special psychiatric hospital in Takoma Park, although services paid by Medicare would not be subject to rate regulation because the services are not covered in the State's agreement with the Centers for Medicare and Medicaid Services (CMS), the Maryland All-Payer Model Agreement. As a result, non-federal payers would be required to pay HSCRC approved rates, but Medicare and Medicaid would not be subject

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to the same requirement. Medicare pays Maryland psychiatric special hospitals based on IPPS acute psychiatric payment methodology. AHC's proposed change would result in the inpatient psychiatric services being covered by AHC's GBR agreement and, as a result, Medicare would be required to pay higher HSCRC approved rates.

AHC indicates that by combining the current ABH services and the psychiatric services at Takoma Park within Shady Grove Medical Center will result in the infusion of an additional \$4.5 million of Medicaid federal matching dollars because the beds will no longer be subject to a Medicaid payment exclusion as part of an Institution for Mental Diseases ("IMD"). However, AHC has failed to address the increased Medicare spending that will result for both the change in re-classification of ABH and the relocation of the Takoma Park Behavioral Health beds to SGMC. Under the current and proposed agreements between the State and CMS, the monitoring of Medicare FFS total cost of care is a key metric, and therefore, it must be considered in evaluating the proposed change.

At a minimum, the proposed impact to both total healthcare spending and Medicare FFS total cost of care should be detailed and explained. HCH also urges the Commission to seek the HSCRC's opinion on AHC's key assumptions regarding the assumed redistribution of revenue. Any approval should be conditioned on AHC agreeing not to seek additional rate increases at a later date related to this project.

Finally, as indicated previously, AHC has not outlined whether any outpatient psychiatric services will remain at Takoma Park. The lack of outpatient behavioral health services potentially increases the need for more costly, higher level of care at a later stage.

#### **D. Impact on HCH**

AHC fails to address the impact on other providers, including HCH, resulting from moving its inpatient psychiatric services, acute inpatient rehabilitation services, as well as ancillary services away from the Takoma Park campus. In addition to the burden HCH's emergency department will already bear due to the loss of WAH's emergency services in Takoma Park, the removal of psychiatric services, as now proposed by AHC, will further compound the adverse impact on HCH.

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Following a site visit at WAH's Takoma Park campus, the Reviewer posed a series of written questions to AHC about how patients in apparent need of behavioral health services would be assessed and treated at the Takoma Park campus as well as at the new campus in White Oak. Commissioner Phillips Letter dated July 10, 2015 (DI #99). In response, AHC provided detailed information, assuring that patients who present in the urgent care center would be assessed by qualified mental health professionals and, if services were needed, they could be treated in the same building with inpatient or outpatient behavioral health services. AHC's Provision of Additional Information Requested by the Reviewer's Letter of July 10, 2015, pp. 4 – 19 (DI #103). Without any behavioral health services or inpatient services located on the Takoma Park campus, it is doubtful that Takoma Park patients in need of behavioral health services will present at AHC's Takoma Park urgent care center. Instead, they will seek care in a hospital, and many will present in HCH's emergency department since it will be the closest emergency department for most residents. This circumstance will add to the already heavy burden on HCH's emergency department.

AHC fails to address how its proposed changes alter the strong assurances it gave the Reviewer about how patients in need of behavioral health services would be assessed and treated. Also, AHC fails to address whether its Takoma Park urgent care center will be capable of providing all of the services described in AHC's CON filings. Without this information, it is impossible for the Commission to determine the likely impact on HCH and other providers.

#### **E. Impact on geographic and demographic access to services**

Throughout the CON review, HCH consistently urged the Commission to carefully consider the adverse impact of AHC's proposal to move WAH out of Takoma Park on the residents in WAH's primary service area. In particular, HCH identified the loss of emergency department services in Takoma Park as a serious health care access problem for the residents of the primary service area.

In analyzing the access issue, the Reviewer examined the 52 census block groups ("CBGs") that are most dependent on WAH for emergency services. December 17, 2015 Recommended Decision, pp. 36-37. The Reviewer acknowledged that the median household income in 25 of these 52 CBGs was below 85% of the 2013 Maryland median household income. Id. Also, the areas for which WAH is the closest hospital have a

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poverty rate of 30% and a severe poverty rate of 12.2%. MedStar Comments (DI #52), p. 16. In sum, the people who depend most heavily on WAH's emergency services are underprivileged. In approving the project, the Commission relied upon AHC's representations about the broad scope of services that would remain available to these residents, and it conditioned its approval on, among other things, the requirement that AHC open and operate an urgent care center on the Takoma Park campus 24 hours a day, every day of the year.

As discussed in Section II.C, *supra*, AHC committed to providing a wide variety of services at Takoma Park following the relocation of the majority of its services to White Oak. AHC's recent filings discuss only what services AHC no longer plans to include, with no discussion of the status of other programs. What AHC presented as a robust thriving medical campus may in fact be an empty building housing a sole urgent care facility that lacks the support services and behavioral health support necessary to serve as a meaningful resource for reducing emergency department visits, as AHC presented to the Commission. This lack of services in Takoma Park will be exacerbated by the planned closure of inpatient services at University of Maryland Laurel Regional Hospital as it intends to seek approval to transition to a freestanding medical facility.

The Commission's finding that AHC complied with the impact criterion and related standards on adverse impact and geographic accessibility depended, in part, on the finding that "some services would likely continue to be available on the Takoma Park campus through the existing Federally Qualified Health Center and the establishment of an urgent care center." December 17, 2015 Recommended Decision, p. 159. At this stage, AHC has not provided sufficient information regarding what services it currently plans to provide in Takoma Park following the completion of its White Oak project, and the urgent care center now planned does not resemble the robustly supported center previously presented to the Commission. The Commission should require AHC to provide updated plans regarding the Takoma Park campus, including what support services will be available for the urgent care center, if any, and what access patients visiting the urgent care center will have to AHC's inpatient or outpatient behavioral health services at other campuses, and the care path for such patients. The Commission should then assess whether the revised project continues to meet the impact standard, or whether the project is fundamentally different in nature and the changes not approvable.

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**III. HCH Requests the Opportunity to Present Comment at a Commission Meeting Considering AHC's Request.**

AHC seeks material changes to the AHC CON, which resulted from a lengthy CON review in which HCH participated as an Interested Party. HCH requests the opportunity to present comment on AHC's Request, and any Staff Report to the Commission concerning AHC's Request, at any Commission Meeting that will address the AHC Request.

Thank you for your consideration of this submission.

Sincerely,



Thomas C. Dame



Ella R. Aiken

TCD/ERA:blr

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