

# HCR ManorCare.

## Comments on Proposed Revisions to CON Review Standards for Nursing Home and Hospital Long-Term-Care Unit Beds

Presented at CON Public Hearing on October 26, 2010

HCR Manor Care, Inc., on behalf of its operating companies in Michigan, (“HCR”) submits the following comments on proposed revisions to the CON Review Standards for Nursing Home and Hospital Long-Term-Care Unit Beds. HCR ManorCare is a national long-term care provider with 28 nursing home facilities in Michigan.

HCR commends the CON Commission and Department for its willingness to re-examine the comparative review criteria in the current CON Standards. These criteria provide an opportunity for the Commission to raise the bar for new nursing home projects in Michigan and to incorporate standards that incentivize quality of care, innovation, and investment in technological improvements. Specifically:

1. Section 10(4) (beginning line 682). Although HCR agrees that the point deduction approach is good policy, it is troubling that that an applicant with high Medicaid utilization but a poor operating history would still outscore an applicant with lower Medicaid utilization and none of the quality concerns listed in this Section (assuming equal points on other criteria). Why would the Commission wish to reward low quality operators with more beds simply because they participate in Medicaid? This language sends the wrong message that there is a differential quality standard in Michigan for high Medicaid vs. low Medicaid facilities. The points deducted for triggering these quality conditions should significantly disfavor an applicant with a poor operating history so that they would never be the winning applicant. Accordingly, the points deducted under Section 10(4) should be increased to 25 points.

2. Section 10(5)(beginning line 709). As we noted at the Commission meeting, HCR embraces culture change in all of its facilities. However, all of the current Department-approved culture change programs focus on traditional nursing homes serving long-term residents. At least one Department-approved culture change program should exist for organizations like HCR, which serve a higher percentage of high-acuity, post-hospitalization patients that are admitted on a short-stay basis to receive specialized rehabilitative care.

3. Section 10(6) (beginning line 716). HCR disagrees with the revision to the points awarded for applicants willing to put 20% or more cash into the proposed project. High debt projects cost the State of Michigan additional money because the Michigan Medicaid program reimburses interest incurred on debt as part of reimbursable “property tax/interest expense/lease” costs. In this challenging fiscal environment, the Commission should be promoting policies that reduce the costs to the Michigan Medicaid program – not policies that maintain high Medicaid costs or that increase such costs. Numerous national studies over the past 10 years have shown a direct correlation between under-funded nursing homes and poor quality. An applicant with the ability to fund a project is more likely to implement a successful CON application in a timely manner. Thus, including 10 points or more for 20% cash is good policy for quality reasons and will ensure that “financially fit” applicants are favored.

For the same reasons, HCR supports language in Section 10(11) (beginning line 735) that awards points for audited financial statements, although this should be consistent with current MDCH policy of also allowing an applicant to submit the audited financial statements of a corporate affiliate (parent) that will fund all or a portion of the proposed project. The Commission would further strengthen the “financial fitness” requirements in comparative review if additional points were awarded for positive cash flow. Michigan standards should include at least basic financial review criteria so the Department can evaluate the applicant’s ability to successfully implement the proposed project. Also, these requirements would simply mirror what commercial lenders require to fund a proposed project once a CON is awarded. Audited financial statements and percentage of cash are straightforward criteria that should have considerable point allocations with at least 10 points for the submission of audited financial statement demonstrating positive cash flow. If the comparative review criteria seek to reward the "gold standard" project, then it seems that the most financially fit application should be favored in the points.

4. Section 10(8) (beginning line 727). The Commission should consider language that will improve the nursing home environment for the most residents possible. Although private rooms are desirable, they are expensive to build and expensive for private-pay residents to occupy, which means that seniors exhaust their private resources more quickly before qualifying for government benefits/Medicaid. Medicare and Medicaid do not pay for private rooms without special approval. By having showers in all resident rooms, residents would be spared the indignity of being wrapped in a sheet and wheeled down the public hallway. HCR believes the

additional financial commitment to build in-room showers is well worth the investment and urges the Commission to award 10 points for applicants proposing construction of showers in all semi-private and private rooms in the proposed project. This model would benefit all residents in the facility – not just those that could afford a private room.

5. Section 10(15) (beginning line 748). HCR commends the Department and Commission for including new criteria to reward proposed technology features that would enhance the functionality of the facility and provide life-enrichment for residents. This language is progressive and consistent with national trends toward electronic health records. However, given there is a direct increase in capital costs associated with these improvements, the total points awarded under this Section should be increased to 8 points, with such division of those points among the four categories as determined by the Commission.

6. HCR also noted the need for a technical correction in the proposed language as follows:

- Line 747-748: To avoid penalizing applicants that have already eliminated 3 or 4 bed wards or that never had them, the language should restore the phrase “OR PROPOSED.” The point of this language should be to award points if the nursing home does not have 3 or 4 beds wards once the CON is implemented.

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**Aging Services of Michigan  
Comments on Proposed Revisions to CON Review Standards  
Nursing Home and Hospital Long-Term-Care Unit Beds  
October 26, 2010**

Aging Services of Michigan, representing more than 230 mission-based, not-for-profit organizations statewide, submits the following comments on proposed revisions to the Certificate of Need (CON) Review Standards for Nursing Home and Hospital Long-Term-Care Unit Beds.

We believe that it is important to ensure that the CON Standards clearly work to reward quality providers and discourage highly leveraged acquisitions, while encouraging only the most financially stable providers to succeed in the application process. It is critical that the standards work to protect consumers in a meaningful way.

To accomplish these goals, we ask that the Commission address the following four sections of the CON Standards:

1. **Section 10(4).** Aging Services of Michigan requests that the process include a minimum of a 25-point deduction for chronically poor performers.

***Rationale:***

Allowing providers to offset poor performance by establishing a high percentage of Medicaid certified beds simply perpetuates the substandard quality of care that often exists in high Medicaid homes. Aging Services of Michigan supports the point deduction approach that better protects the consumer and sends the message that Michigan will not accept poor quality in its nursing homes.

2. **Section 10(6).** Aging Services of Michigan opposes the reduction of awarded points (from 10 to 5) for applicants who are willing to invest at least 20% cash into a proposed project.

***Rationale:***

Because nursing homes can be an investment opportunity for a number of different kinds of investors, it is important to ensure that prospective providers demonstrate a commitment to the consumer and the community. The process should encourage socially accountable organizations who commit at least 20% of the needed funding for a project, while decreasing the amount of potential Medicaid reimbursement to support interest payments on provider debt. The Commission should promote policies that reduce interest costs to the Michigan Medicaid program - not policies that encourage highly leveraged acquisitions.

3. **Section 10(11).** Aging Services of Michigan supports awarding additional points to providers who have submitted audited applicant (and corporate affiliate) financial statements along with positive cash flow projections.

***Rationale:***

At a minimum, Michigan standards should include basic financial review criteria so the Department can evaluate applicant ability to successfully implement the proposed project and ensure consumer protection. Audited financial statements and percentage of cash are straightforward criteria and these should have considerable point allocations. Many of our peer states require the submission of audited financial statements or a feasibility study by an independent accounting firm.

4. **Section 10(15).** Aging Services of Michigan supports increased point allocations for the use of technology addressed in this section.

***Rationale:***

Given the steady evolution of technology and recognition by the Centers for Medicare and Medicaid Services that electronic capabilities can improve quality and reduce operational costs, the CON process should provide incentives for projects making such investments.

Aging Services remains committed to the inclusion of quality outcomes in both the CON application process as well as the comparative review standards. Thank you for considering Aging Services of Michigan's concerns and suggestions. Please do not hesitate to call me with any questions or concerns.

**Stephanie Shooks Winslow  
Aging Services of Michigan  
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**Health Care Association of Michigan  
Certificate of Need Comments  
Nursing Facility and Hospital Long Term Care Units  
Revisions to Proposed Standards**

The Health Care Association of Michigan would like to thank the CON staff for their efforts over the summer and fall to listen to provider concerns and incorporate them into the revised standards. HCAM is in agreement with the general direction of the standards to create a better comparative review process.

As we stated at the public hearing on October 26 we do have a few concerns with some of the language and would like to provide comments on them at this time.

Section 2 Definitions

Line 113 – (W) Occupancy rate – the definition seems to be missing one word available. It would read: “Occupancy rate” means the percentage which expresses the ratio of the actual number of patient days of care divided by the total number of **available** patient days.

Section 9 Requirements for approval to acquire.....

Line 538 1(f) The standard changes to “approved by the Department”, where and when will the criteria for approval, list of approved programs and how to get a program approved be provided to CON applicants or others interested parties?

Section 10 Review standards for comparative review

Lines 709 – 714 (5) The reference to approved program - where and when will the criteria for approval, list of approved programs and how to get a program approved be provided to CON applicants or others interested parties?

Lines 727 – 730 (9) some facilities are providing a greater convenience for residents by designs that incorporate showers in every room be they private or semi private. The table of points should be adjusted to include recognition for a facility that provides a shower in every room; at least 10 points could be awarded for this feature.

Line 735 – Audited financial statements will not assure the viability of a project, are costly and favors the large national organizations that need these types of statements for stockholders and other financial purposes. Due to the limited or no value these statements have in the CON process HCAM does not support this element of the standards. HCAM has consistently through out this process disagreed with any points given for audited statements.

**Health Care Association of Michigan  
Certificate of Need Comments  
Nursing Facility and Hospital Long Term Care Units  
Revisions to Proposed Standards**

Line 741 – The elimination of all 3 and 4 bed wards is commendable and moves the profession in the direction to meeting consumer desires. How would a facility receive these points if they had eliminated all of their wards prior to filing for a CON? It seems that if that has occurred then they should also be entitled to the points.

Line 748 – HCAM would like to again express their appreciation of the department's recognition of technology innovations as part of the standards. The changes in technology that can enhance care and the quality of life for those individuals in need of 24 hour nursing care needs to be encouraged and value shown for these efforts. Many of these innovations are costly and the points awarded seem extremely small in comparison. HCAM would suggest that this area of innovation should receive equal recognition to culture change models. In fact the technology is part of that movement in creating a better environment for residents.

Thank you for providing HCAM with the opportunity to comment on the proposed standards. If you should have any questions please contact Pat Anderson at 627-1561 or email [patanderson@hcam.org](mailto:patanderson@hcam.org).

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6. Testimony: My name is Steven Szelag and I am a Strategic Planner at the University of Michigan Health System (UMHS). UMHS wishes to take this opportunity today to offer comments pertaining to the Certificate of Need (CoN) review standards for Magnetic Resonance Imaging (MRI) Services.

UMHS strongly supports the continued regulation of MRI services, and has no objections to the proposed changes published for this public hearing. However, we do have some additional comments on issues identified only recently, during the writing of our pending CoN application for Intra-Operative MRI (IMRI) services. In 2008 the IMRI provisions were added to the standards as a pilot in Section 10. Section 10 governs the initiation, replacement, and acquisition of a hospital based IMRI service, but will expire and will not be applicable to any application which has not been submitted by December 31, 2010.

UMHS is concerned because IMRI is an essential technology in the surgical care of both children and adults, and once Section 10 expires, the MRI standards will again have no provisions setting appropriate volumes and conditions for the for the initiation, replacement, relocation, acquisition and expansion of an IMRI unit and/or service.

Even though we have yet to activate our IMRI unit, we feel that it is essential to have a continuing provision in place to govern IMRI services, both for pediatric and adult applications.

UMHS understands that the CoN Commission and Department are going to be extremely busy during calendar year 2011 with a multitude of other standards up for review. However, UMHS is requesting that the Commission convene a special workgroup for IMRI next year to consider the issues we have addressed in this testimony.

Thank you for according us the opportunity to make this statement today.

7. Testimony:

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**Comments on Proposed Language for the NH/LTCU Standards**  
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Dear Members of the Certificate of Need Commission:

Thank you for the opportunity to comment on the proposed language for the NH/LTCU Standards. I think the Workgroup convened by the Department worked well together and significant progress has been made. Below are my comments on parts of the Comparative Review (Section 10).

**Section 10 (2) (a)**

While Medicaid certification is important and given appropriate points in 10 (3) (b), it is not a guarantee of access to beds by persons using Medicaid. I would like to see the original number of points restored (from the “Current” column) for actual Medicaid days.

**Section 10 (4)**

For me, this is probably the most exciting change to the Standards. I know that deductions are not the norm in these Standards but feel deducting points in this Section is an appropriate reflection of the values held in the advocacy community about quality. I would like to see the number of points deducted in this section equal the total amount of points a facility can receive for Medicaid certification and utilization.

**Section 10 (5)**

DCH just gets better and better about recognizing the need for culture change in LTC facilities. I like that this language was improved upon from the language in the current Standards and, in fact, strengthened.

**Section 10 (6)**

I was surprised to see the points for “Applicant's Cash” decreased after the amount of discussion we had about measuring financial viability of the applicant. While the amount of cash on hand is not the only indicator of viability, it is at least one indicator. I would like to see the points restored in this Section to the higher levels.

**Sections 10 (7) and (8)**

I am glad the Department retained the language about sprinklers and added the language on air conditioning.

**Section 10 (9)**

During workgroup discussions, I thought there had been agreement on the need to recognize the inclusion of a private shower in semi-private rooms. I am not sure what happened to the language but feel points should be awarded for efforts made in improving semi-private rooms as well.

**Section 10 (10)**

I would like to see the number of beds lowered to 120.

**Section 10 (11)**

I agree completely with this Section.

**Section 10 (12)**

No comment on this section.

**Section 10 (13)**

I love the intent of this Section and the rewarding of applicants who do not have 3 and/or 4 bed wards. The language needs to be broader and award points for both applicants that eliminate these wards as well as applicants who do not have these wards to eliminate. The goal is for there to be no 3 and/or 4 bed wards regardless of whether they are recently eliminated or had never existed.

**The rest of the Sections**

No additional comments on these except to say I feel they are at the appropriate number of points.

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November 2, 2010

Edward B. Goldman, Chair  
Certificate of Need Commission  
c/o Michigan Department of Community Health  
Certificate of Need Policy Section  
Capitol View Building, 201 Townsend Street  
Lansing, MI 48913

Dear Commissioner Goldman,

This letter is written as formal testimony for the CON Review Standards for Nursing Home and HLTCU Beds Standards. Spectrum Health appreciates the opportunity to present our comment on the current CON Standards for Nursing Home and HLTCU Beds Standards.

Spectrum Health is appreciative of the hard work of the Nursing Home Standards work group however; we have some concerns about the provisions proposed to address the comparative review issues.

**Percentage of Medicaid Days:**

We recommend that the language in the Percentage of Medicaid Patient Days section stating:

(ii) “For a new nursing home/HLTCU, the proposed percentage of [the nursing home/HLTCU’s](#) patient days of care to be reimbursed by Medicaid in the second 12 months of operation following project completion, [and annually, thereafter, for at least seven years.](#)”

This language should be revised to say only “annually, thereafter.” This change would better ensure the applicant’s intention of future Medicaid participation, past the minimum requirement of seven years.

**Compliance Action:**

(5) “A qualifying project will be awarded 10 points if the applicant PROVIDES DOCUMENTATION THAT IT PARTICIPATES or FIVE (5) POINTS IF IT PROPOSES TO participate in a culture change model, which contains person centered care, ongoing staff training, and measurements of outcomes.”

We recommend that the word “participates” is replaced with “demonstrates”. This change will better reflect the intention of the applicant to provide actual documentation of participation in a culture change model and therefore worthy of the points associated with that participation.

**Applicant’s Cash:**

We are recommending that the original point allocation be reinstated. The applicant’s cash on hand normally is a good reflection of the level of care provided to the residents. Typically a nursing home with adequate cash reserves is able to provide consistently high quality, safe care because they have the cash required for the necessary resources.

**Facility Design:**

We are recommending the language requiring that the proposed project have:

“100% PRIVATE ROOMS WITH ADJOINING SINK, TOILET AND SHOWER”

This language should be changed from “100%” to 80%. It is very difficult for older, “land-locked” nursing homes to make a change to 100% private rooms and bathrooms and therefore would always be disadvantaged in the case of a comparative review.

Spectrum Health appreciates the opportunity to present our views on the proposed language for the CON Standards for nursing home beds, and we look forward to the opportunity to develop a fair and objective remedy to the concerns we have raised.