



Diona Mullins
Policy Advisor
Office of Health Policy
275 E. Main St., 4W-E
Frankfort, KY 40621

December 8, 2014

RE: Request for Input on Certificate of Need Modernization

Dear Ms. Mullins:

These comments are being submitted on behalf of Baptist Health, whose corporate offices are located at 2701 Eastpoint Parkway, Louisville, Kentucky, in response to the Special Memorandum issued by the Cabinet for Health and Family Services, Office of Health Policy on October 8, 2014 entitled "Certificate of Need Modernization: Core Principles, Request for Stakeholder Input."

Baptist Health appreciates the opportunity to provide input on modernizing the Certificate of Need (CON) process in Kentucky in light of recent changes in the healthcare industry, most significantly the passage of the Affordable Care Act (ACA). Baptist Health believes that it can provide meaningful input on the modernization of the CON process because of the great breadth of the healthcare services that it provides to the people of the Commonwealth. Baptist Health manages or operates eight hospitals and 200 outpatient locations in Kentucky. Baptist Health's outpatient locations include diagnostic centers, urgent care centers, and express care clinics. Baptist Health facilities experience more than 94,000 discharges and 850,000 outpatient visits per year. In addition, Baptist Health operates home care services in 36 counties. Its service area covers 83 of Kentucky's 120 counties.

Drawing on its experience, Baptist Health looks forward to working with the Cabinet to identify ways to improve the CON process to support the core principles outlined in the Cabinet's memorandum. Baptist Health believes that the core principles set forth by the Cabinet are laudable goals. However, Baptist Health must urge caution as the Cabinet seeks to make changes in the CON process because the CON program has provided stabilization for Kentucky providers at a time of rapid change within the healthcare industry. Baptist Health does not believe that any of the core principles can be achieved through the elimination of the CON process. In fact, elimination of the CON process will inevitably lead to the proliferation of unnecessary or duplicative healthcare services and would ultimately be detrimental to the core principles that the Cabinet now seeks to promote.

As a non-profit institution with the mission of improving the health of all Kentuckians, Baptist Health, like other non-profit providers, often serves as a safety net for those in Kentucky who

have a limited ability to pay for healthcare services. While in the abstract it may seem that more competition is always good for the consumer, unregulated competition in the healthcare industry can actually drive up costs and reduce access for those who cannot pay. When for-profit competitors enter the healthcare market, they usually do not accept Medicaid members or the uninsured. Such for-profit competitors tend to siphon off healthier, better insured patients from non-profit providers while leaving the Medicaid members and the uninsured without access. Such reduction in revenue and volume at hospitals can quickly threaten their survival and lead to less access to quality care for all Kentuckians.

The General Assembly first enacted the Kentucky CON statutes in 1972 to improve the quality of healthcare services and increase access to them through the reduction of unnecessary and duplicative services. In 1974, the National Health Planning Resources Development Act required every state to adopt a health planning structure and CON review criteria. As a result, the Kentucky CON program and the State Health Plan criteria developed to parallel national standards. In the 1980s, Congress continually relaxed the federal mandate for CON review and then repealed the requirement completely in 1987. Since that time, 14 states have eliminated their CON programs, and 36 states, along with Puerto Rico and the District of Columbia, have maintained their programs, although they differ significantly in scope.

Today, the Kentucky CON program remains a valuable tool in Kentucky's ongoing efforts to improve quality and access to care by preventing the proliferation of unnecessary and duplicative healthcare services. There is the misconception by some in Kentucky that the implementation of Medicaid managed care has reduced or eliminated the need for the CON process because managed care has a similar goal of eliminating unnecessary services, but Baptist Health's experience is that just the opposite is true. It is more important than ever that the CON process protect providers from unfair competition from for-profit entities that do not provide care for Kentucky's Medicaid population or the uninsured because Medicaid managed care only affects those providers that participate in the program. In the managed care era, the CON process continues to serve one of its most important roles, which is to allow providers to assume risk in a responsible manner by ensuring that adequate volume exists to support large capital investments in the long term.

Although Baptist Health believes that payment reform may be the most effective method for achieving many of the core principles identified by the Cabinet, some modernization of the CON process may help foster these important objectives. Baptist Health generally agrees and supports the comments submitted by the Kentucky Hospital Association ("KHA"), but writes separately to add additional comments and express its willingness to work with the Cabinet in furtherance of the worthwhile goals it has identified in its memorandum. Baptist Health submits for consideration the following specific comments and suggestions for each core principle identified by the Cabinet:

- *Supporting the Evolution of Care Delivery.* The trend is to move from an acute/inpatient model to an outpatient-centric model. The CON already allows for this transition for the most part to add outpatient services that are appropriate and needed.

Suggestion: Baptist Health suggests that, to support the evolution of care delivery,

the CON process should allow established health systems and Accountable Care Organizations (“ACOs”) increased flexibility to expand their limited care clinics and home and community-based services. Such enhanced flexibility will allow health systems and ACOs to effectively and efficiently expand the outpatient services available to their patients. These expanded outpatient services will support many of the core principles such as improving access to care and incentivizing the development of a full continuum of care without compromising quality. Baptist Health believes that expanding the permissible scope of services for limited care clinics to include management of chronic conditions through a treatment plan outlined by a physician will further the goals of population health management, affordability, and access to care. Likewise, allowing established health systems and ACOs to expand home and community-based services will provide greater access to care and better management of chronic conditions for at-risk patients while potentially avoiding the need for more costly inpatient care. Access to outpatient services may be improved through the use of telemonitoring, nurse home visits, and expanded home therapy options. Further, Baptist Health believes that home care services must be expanded to allow providers to offer such services to all consumers, regardless of whether patients are home bound. This expansion will further improve access to quality and efficient care for all Kentuckians. Baptist Health cautions the Cabinet that for-profit home care agencies that seek to solely establish home care services should not be given the same flexibility because these types of providers cannot enhance the availability of the full continuum of care in the same manner as health systems and ACOs can.

- *Incentivizing Development of a Full Continuum of Care.* Better care, increased value and improved population health depend on an integrated continuum of care in which providers communicate with each other and ensure that patients receive timely, coordinated care in an appropriate setting.

Suggestion: Payment models have evolved at a rapid rate in recent years in response to the increased emphasis on the continuum of care, and the CON process has not hindered the development of Baptist Health’s partnerships in its service areas. In fact, as providers have strived to develop a full continuum of care, the CON process in Kentucky has been a stabilizing force to manage quality and fraud issues that have been a concern in unregulated states. Any modernization of the CON process should build on the CON’s positive aspects by accommodating the special needs of ACOs and similar collaborative efforts of providers.

- *Incentivizing Quality.* Healthcare is rapidly moving toward adoption of objective quality metrics. The CON program could seek to support those providers that demonstrate attainment of robust quality indicators by incorporating these standards into the State Health Plan.

Suggestion: Baptist Health supports the addition of more quality metrics as part of the review process for many of the services included in the State Health Plan.

Baptist Health believes that the addition of quality metrics will help ensure that providers entering the market are committed to providing long-term, high quality healthcare to all residents of the Commonwealth.

- *Improving Access to Care.* For a number of reasons, Medicaid members have, on average, a more challenging path toward access to care.

Suggestion: As stated above, Baptist Health believes that the expansion of limited care clinics and home and community-based services will provide greater access to care as they can often provide services at times and locations more convenient for consumers. To ensure that Medicaid members are not excluded from these expanded outpatient services, Baptist Health suggests that the CON process require a demonstrated level of care to be provided to Medicaid or uninsured patients. To ensure the accountability of new providers, an annual licensure process could be instituted to assure compliance.

- *Improving Value of Care.* As healthcare transitions from a fee-for-service model to a value-based purchasing framework, payers will continue to seek evidence of value in health services.

Suggestion: The CON application process already requires the disclosure of proposed pricing or charges as part of the financial feasibility assessment of a project. Additionally, Baptist Health is willing to work with the Cabinet to develop other methods to educate consumers on healthcare pricing, including how to compare rates and ask the right questions regarding healthcare costs.

- *Promoting Adoption of Efficient Technology.* Increased adoption of technologies such as electronic medical records, participation in information sharing platforms such as the Kentucky Health Information Exchange, and participation in large-scale data projects such as an All Payer Claims Database are critical elements of a modernized, higher quality and more efficient health system.

Suggestion: Most providers are already rapidly adopting these technologies. The CON process could require participation in these technology projects as a part of the approval or licensure process. In addition, the CON process should support the use of new technologies in traditional healthcare settings, such as telehealth and eICU.

- *Exempting Services for which CON is no longer necessary.* Kentucky regulates via CON many services that even CON states exempt.

Suggestion: Baptist Health believes that the CON process still plays an important role in ensuring the quality and availability of most of the services that are currently subject to CON review, and Kentucky is not more restrictive than many other CON states. In fact, data compiled by the American Health Planning Association shows that Kentucky is in the middle of the pack for the number of services reviewed through the full CON process as compared to other states. It may be beneficial to

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remove from the CON process diagnostic modalities that are now considered to be routine diagnostic capabilities, such as MRI and PET, but Baptist Health believes that the vast majority of services should remain regulated. In particular, of those services recommended for removal by the Deloitte study, Ambulatory Surgery Centers (“ASCs”) need to remain subject to the CON process to avoid the proliferation of unnecessary services. Surveys conducted through the KHA indicate that there is significant unutilized outpatient surgery capacity in Kentucky today. Additionally, subjecting ASCs to the CON process protects hospitals’ surgery volumes, and such protection is necessary to ensure that hospitals can continue to provide the full array of services they offer to the community. Hospitals provide a broader array of services than ASCs, including emergency services and 24-hour care for all individuals, regardless of ability to pay. Surgery is a major economic driver of hospitals and provides an economic safety net for hospitals such that hospitals can continue to provide the broader services.

Thank you for your consideration. Baptist Health will be happy to provide additional input or assistance in the future, and we would be more than happy to meet with the Cabinet. In particular, Baptist Health and the Cabinet share an interest in improving health outcomes for all Kentuckians. We would welcome the chance to collaborate in this area as well.

Sincerely,

A handwritten signature in black ink that reads "Andrew Sears". The signature is written in a cursive, flowing style.

Andrew Sears
Chief Strategy and Marketing Officer