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## **Joy Heath's Comments in Opposition to Proposed Policy TE-4** **Offered at July 10, 2020 Public Hearing**

Good Afternoon. My name is Joy Heath. I'm a lawyer with Williams Mullen, all my clients are health care providers and I've worked on CON matters for, well let's just say, several decades.

Ladies and Gentlemen of the SHCC, thank you for your service and for being here today. Later this year, you'll be asked to vote on the content for next year's State Plan. You'll vote to approve data, standard methodologies and resulting Need Determinations. This is important work that supports our State's CON Law in ensuring that health care capabilities are only developed where there is a need based on population, utilization and the already existing inventories.

One vote you will be asked to enter is on a Proposed Policy called TE-4, a policy with "statewide effect." On this, we urge you to vote no.

Proposed Policy TE-4 is not a Proposed Policy any Petitioner asked the SHCC to include in the Plan. We really don't know who specifically wrote this Policy but it was first introduced by one of the staff planners after the close of the Comment period – no industry participants had a chance to weigh in on whether this Proposed Policy was well-written, was a good idea or whether it was not. I attended virtually the meeting at which the Policy was proposed; after it was presented, I don't recall any Committee discussion on the wisdom of the Policy and I do recall most of the Committee recused themselves. Only three votes were cast to propose this Policy. So, as a threshold matter, please don't assume you should vote for this Policy because it was carefully developed by a Committee of experts – that's simply not how we got here with this Policy.

What is Proposed Policy TE-4? If you read its title it uses the word "Substitution" suggesting the Policy will allow a provider to be awarded a CON to acquire their own new Fixed or Mobile MRI scanner if the provider already receives MRI service from an unrelated Vendor under a contract arrangement. You may think, well, maybe that's a good idea because I've heard it can be expensive for providers to get MRI service through a contract Vendor.

What's not made obvious by the title but what you should know is this: The CON approvals that would flow from this policy won't substitute or replace one MRI scanner with another at all.

If a provider uses Policy TE-4 to acquire a scanner, the contract scanner serving that community will still be in the State inventory and will continue to operate. What will

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happen is where there was one scanner, the contract scanner, there will then be two scanners, the contract scanner and the newly CON-approved scanner.

Contrary to what we're all here about – planning to properly allocate health care resources – Proposed Policy TE-4 can be used in Service Areas where the standard methodology shows no need for any new scanners. In fact, that's the only time it can be used. But what the Policy allows is exactly that, another new scanner in a Service Area without a need for a new scanner.

To do this, the Policy ignores all data on how many scanners already serve the area, how many scans are being done, and it doesn't even allow for competing CON proposals nor does it require projections for the future use of any scanners in the area other than the ones to be owned by the Applicant.

It just allows a so-called "Substitution" which fundamentally isn't a substitution at all because the contract scanner will still be operational after the new scanner is approved. Friends, this is the opposite of good health planning.

In some instances, it may make sense to allow CON approvals even where the methodology shows no need. For that, we don't need a Policy TE-4. If a provider wants to argue it can more efficiently serve its community with its own scanner instead of a contract scanner, there's already a mechanism for that – the provider can Petition for a special need adjustment, handled on a case by case basis. If it seems appropriate to allow a new scanner in a particular Service Area, a Need can be included in the State Plan and anyone can apply in a competitive CON review.

As I think you can now see, what really doesn't work is a statewide Policy that simply allows individual providers using contract MRI services to, in name only, substitute those with their own scanners.

In fact, doing so could potentially introduce not just a few but a multitude of new scanners on top of those already operated on a contract basis throughout the State. Think about it – beyond those who have contracts now, any small hospital with a sufficiently high Fixed MRI volume could enter a future MRI contract just long enough to use TE-4 to secure a Mobile MRI CON and jump in as a new Mobile provider. An earlier speaker from Alliance talked about what it really takes to successfully operate a Mobile MRI service and why allowing an influx of new Mobile MRI providers is a cause for concern.

During the summer, you'll hear and read more about specific issues with how TE-4 came about, significant legal problems with the language of the Policy and a host of reasons you should vote against it.

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For now, recognize this: This Policy is neither logical nor well crafted; it is not a by-product of careful study with industry input. It's a mistake and we urge you to vote no on Proposed Policy TE-4 at the upcoming SHCC meeting.

Again, thank you for your time.