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Anderson Shackelford's Comments in Opposition to Proposed Policy TE-4 Offered at July 21, 2020 Public Hearing

Good Afternoon. My name is Anderson Shackelford of the law firm Williams Mullen, speaking in opposition to Proposed Policy TE-4 again today.

Let me begin with a quote from the State Medical Facilities Plan:

“The **major objective** of the Plan is to provide individuals, institutions, state and local government agencies, and community leadership with policies and projections of need to guide local planning for specific health care facilities and services.”

2020 SMFP, p. 1, *Purpose* (emphasis supplied).

We appreciate the participation of our SHCC members from the North Carolina House of Representatives and Senate, from both urban and rural County Governments, as well as At-Large members, representatives of large and small Business and Industry and, of course, those representing various segments of our health care delivery system.

When you are asked to take formal action on Proposed Policy TE-4, for the reasons I'll outline today, I urge you to vote to ensure this Proposed Policy is not included in the 2021 Plan recommended for the Governor's approval.

First, Proposed Policy TE-4 departs from the Standard Methodology. The Proposed Policy does not consider capacity and utilization to determine need. Instead, it would allow providers using an MRI vendor contract to be CON approved in areas ***without need***. These CON approvals would be issued in non-competitive CON Reviews and authorize new scanners ***in addition*** to the vendor MRIs serving host sites across our State. No rationale has been articulated to support this departure from the Standard Methodology.

Second, Proposed Policy TE-4 is unnecessary. If a provider does believe unique or special circumstances warrant a departure from the Standard Methodology, it already has a mechanism to seek an adjusted need determination. The “blanket” approach of Proposed Policy TE-4 should not supplant the adjusted need process that already exists and works well.

Third, Proposed Policy TE-4 is likely to proliferate MRIs. There are no limits on repeat CON Applications under this Proposed Policy and no restrictions on the new scanners that can be approved in 2021 or later years. Only one year of MRI volumes

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are needed to qualify to apply and projections are only required for the scanners proposed, not for any of the other scanners that will operate after a CON is issued. Nothing stops a provider from taking a day of contract service to qualify to apply per the Proposed Policy, leading to over-supply and under-utilization.

Fourth, Proposed Policy TE-4 did not follow the State Plan process. Our Government representatives know first-hand the importance of adhering to defined process. It is critical that no bill becomes a law without following the requirements. Likewise, no policy should be included in the State Plan absent proper adherence to the process. The Plan is a quote-unquote “key resource” only if it contains policies developed after industry comment and public deliberation. Proposed Policy TE-4 was never proposed in a timely-filed petition containing the required showings. Instead, Proposed Policy TE-4 was appended to a staff Report and only revealed *after* the close of the comment period, meaning the votes taken to recommend the Proposed Policy were cast without any industry input or public deliberation.

Fifth, problems with Proposed Policy TE-4 cannot be remedied now. Proposed Policy TE-4 uses undefined and poorly articulated terms and sets standards different from those in governing CON regulations. Yet, under the State Plan process, any proposal for a statewide policy change must be made by March 4. The time has long passed to re-write or propose a new Proposed Policy TE-4 or -5 in this planning year. Interested parties are open to dialogue and efforts to formulate sound policy but that cannot happen with this Policy this year.

Finally, including a policy under these circumstances is dangerous precedent. Those of you representing other facets of our health care system rely on the State Plan to base need determinations on data. And you count on your right to comment on new policies. Allowing this Proposed Policy would set the stage for other policies to follow, any of which could impact other health care offerings.

When the time arrives, we respectfully ask for your vote to keep Proposed Policy TE-4 out of the 2021 Plan.