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Anderson Shackelford's Comments in Opposition to Proposed Policy TE-4 Offered at July 29, 2020 Public Hearing

I'm Anderson Shackelford, a health care attorney with the law firm Williams Mullen, and I'd like to offer some clarification today on Proposed Policy TE-4.

In the last public hearing, one commenter led off with the sweeping assertion that the SHCC and Agency have full authority to modify any part of the Proposed Plan at any time prior to sending it to the Governor. It even went as far as saying that it had consulted its own CON attorney who quote-unquote, "assured [them] that the opinion of the Alliance lawyers is wrong and the SHCC has the right to modify this policy as they please."

Ladies and gentlemen, this is a strawman argument. We all know the SHCC is charged with acting on petitions by its last meeting of the planning year. But what we also know – and which we've correctly noted in our remarks – is that Chapter 2 of the Plan also states that petitions for statewide policy changes are to be filed by the March deadline and addressed at the outset of the year.

Chapter 2 provides, and I quote: ***"These types of changes will need to be considered in the first four months of the calendar year."*** 2020 SMFP, p. 7 (emphasis supplied).

This framework is in place for good reason. Its objective is to iron out statewide policy matters at the beginning of year. This makes sense because those policies impact development of the remainder of the Plan and can determine whether a provider resolves to file a summer petition for an adjusted need determination.

This process has worked well for a long time, and we urge the SHCC not to depart from it now.

Indeed, why even have Chapter 2 of the Plan if it is going to be disregarded, and statewide policies can be altered or proposed at any point during the year?

Consider how Proposed Policy TE-4 came to be before us:

1. The Agency denied the only two timely-filed petitions for statewide change, but then proposed its own version of Policy TE-4 for the first time after the close of the comment period.
2. The Technology and Equipment Committee recommended approval of Proposed Policy TE-4 without receipt of comments and without any public deliberation.
3. Alliance asked the Committee to read and consider its comments on Proposed Policy TE-4 and take a new vote at the Committee's May meeting but was told to wait until the summer public hearings.

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4. The SHCC then voted to adopt the Committee's recommendation in June, again without public discussion or receipt of any comments.

So here we are, discussing a Proposed Policy of statewide effect in July when we should have been talking about it in April per Chapter 2.

Later today, we will be filing a Petition to remove Proposed Policy TE-4 from the Plan. Proposed Policy TE-4 is simply a bad policy that would eliminate competition from the CON process, unnecessarily duplicate services, and proliferate scanners in markets where they aren't needed, among a host of other problems. But deviating from Chapter 2 would affect far more than Proposed Policy TE-4.

Chapter 2 governs the process through which the public can be heard on development of the document that will dictate their growth and strategy for the ensuing year. If the SHCC chooses to disregard Chapter 2's process, members of the public are divested of the opportunity to participate in developing the Plan to which they are beholden. We call for the SHCC, as the regulator, to engage in productive, deliberative dialogue with those it regulates.

If for nothing else than the detrimental future consequences dispensing with Chapter 2 of the Plan would wreak, we urge you to set aside Proposed Policy TE-4.