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*North Carolina Hospital Association*

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## **MEMORANDUM**

**TO:** Medical Facilities Planning Section  
NC Division of Health Service Regulation

**FROM:** Mike Vicario, Vice President of Regulatory Affairs  
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**SUBJECT:** Comment/Proposed Policy GEN-4

Policy GEN-4 addresses energy efficiency and sustainable building design, and is included in the Proposed 2010 State Medical facilities Plan. Several alternative versions of the policy were discussed in a July 26, 2010 meeting with NCHA hospitals, and have since been posted on the Medical Facilities Planning Section website. Those three alternatives include different levels of detail, but address the following NCHA concerns while conveying improvements that will result in a more effective Policy GEN-4.

1. Policy requirements for GEN-4 should be based on a set of standards that are recognized as appropriate for the health care industry and that are achievable by an applicant for a certificate of need. CON applicants in competitive reviews should not be evaluated based on reaching “higher” levels of compliance through the Certificate of Need process. CON applicants should be made aware of the standards they are expected to meet, and document their commitment to comply with standards on the Certificate of Need application form. Once awarded a certificate, further detail can be addressed in the DHSR Construction Section review.
2. Policy GEN-4 should apply to a “health service facility” as defined § 131E-176 (9)(b). The policy as proposed could include minor renovation projects as well as those involving medical equipment and services. Renovation projects may be very minor in nature and not impact energy usage, and new equipment may fall under the requirement due to its high cost. Medical equipment, new services and minor projects that do not involve energy use should not be required to comply with policies related to energy efficiency and sustainability. The SHCC should raise the threshold to \$5 million, which would exclude most of these projects.
3. Plans for projects that are awarded a CON (or that are exempted) are ultimately reviewed in great detail by the DHSR Construction Section. The Construction Section has a staff of

architects and engineers, and is better qualified to apply policies and regulations pertaining to energy savings and sustainability when the plans for an approved project are being developed and submitted. However, any rulemaking changes pertaining to the Construction Section are currently promulgated through the Medical Care Commission and the State Health Coordinating Council has very limited authority. Therefore, the SHCC may wish to consider recommending that the Medical Care Commission administer any FEES regulation through the North Carolina Licensure Code and the DHSR Construction Section.

4. Similarly, it does not appear that the authority exists under the law to require projects that are “exempted” from CON under 131E-184 to comply with SMFP Policy GEN-4. Nevertheless, some of the projects that are “exempted” from the CON law might be pertinent to achieving energy and water savings. This could include Medical Office Buildings, Parking Decks, (HVAC) heating and cooling systems, and elevators. The SHCC and the DHSR may want to request guidance from the Office of the Attorney General regarding the application of the policy to these types of projects.
5. Energy efficiency and sustainability standards that are in place for non health care settings may not be applicable to health care, as facilities are always open, and because of the high risk factors involved in serving a medically compromised population. Demonstration of compliance with existing standards for energy efficiency and sustainability that are sponsored and recognized as appropriate by the health care industry should be considered for use in policy development.
6. Policy GEN-4 in the Proposed SMFP includes a requirement to provide historic energy and water consumption expenses for three years. The group has discussed the complexities of reporting and comparing usage data for 3 years. (ie. some facilities may include additional buildings on their metering systems, facilities may or may not have in-house laundry, improvements in patient care may involve more energy usage). These kinds of issues could complicate the development of any reporting standard if it were developed through the rule-making process. We recommend using the CON application form to collect data rather than creating a CON regulation. The CON Section has the authority to update and revise the form to collect data in a manner that does not require a rulemaking process, public hearings, or statutory changes. This would give the applicant and the CON Section flexibility while holding to the reporting requirement in the proposed Policy GEN-4.
7. NCHA recommends that item #3 be removed from the Policy. Item #3 requires a pre-filing conference that includes an engineer and architect, as well as various representatives from the Division. This conference would require a significant commitment of time and travel expenses on behalf of the provider and its consultants, which may be located far from the Raleigh area. The CON application is not a final construction planning document, nor is approval guaranteed. Pre-application conferences would be especially impractical and

costly for smaller hospitals, and would be more valuable for all hospitals if they were an option for those that have received a Certificate of Need.

8. CON application reviews may be highly competitive and result in disapprovals. Capital and operating costs are a major component of the CON statutory criteria. Any return on investment for GEN-4 related improvements may be lengthy and could represent potential conflicts with these criteria. Applicants should not be required to produce more expensive and detailed architectural drawings and renderings as part of the Certificate of Need application, but instead after the CON has been awarded.
9. Policy 1(a) requires quantified annual reduction in energy and water use. Projects involving square footage expansions or additional beds will include more space and/or services, and may not be able to show an absolute reduction in energy and water use. The Policy should focus on improvement measures that are practical and achievable for the project being reviewed.

Thank you for consideration of our comments. We are happy to discuss these recommendations further with you and the FEES Workgroup as it continues its deliberations on Policy GEN-4 in the 2011 SMFP.