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FROM: David J. French
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COMMENT: Opposition to the Proposed Policy TE-4

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My name is David French and I am a healthcare consultant speaking in opposition to Proposed Policy TE-4.

First, Proposed Policy TE-4 addresses a nonexistent problem with a harmful solution that will create excess MRI capacity and undermine the standard MRI need methodology. Despite the many underutilized mobile MRI units throughout the State, this Policy sets no limit on how many additional MRI scanners it could approve. Whether it would be two scanners per year or ten per year, adding these additional MRI units would delay the standard MRI methodology from identifying legitimate MRI need determinations open to all CON applicants. Any potential benefit of Policy TE-4 is far outweighed by the overall detriment the Policy will cause for numerous potential CON applicants for many years.

Secondly, the concept of “qualified applicant” is a poorly constructed attempt to identify providers who are supposedly unable to apply for MRI CON approvals. The premise of this concept is false because existing providers with agreements for MRI scanners have had numerous opportunities to apply for CON approvals to obtain their own MRI scanners. For example, in the most recent Wake County MRI review, Raleigh Radiology in Cary was approved to acquire a fixed MRI scanner.

Previously, other providers with high volume vendor-provided MRIs have also obtained CON-approved fixed or mobile MRI scanners. And, according to the Draft 2021 State Medical Facilities Plan, there will be multiple opportunities for MRI CON applications to be submitted in Wake, Mecklenburg and other counties. In fact, anyone can petition now for an adjusted need determination to apply for an MRI in any County in the State. Thus, there is really no such thing as a provider “unable to apply” for an MRI CON in North Carolina. Consequently, the concept of “qualified applicants” in Policy TE-4 is ill conceived.

The third issue relates to outdated and incomplete information in the Agency Report prepared in response to the two petitions submitted this spring. The Agency Report proposed Policy TE-4 as a new policy even though neither of the petitioners, Raleigh Radiology nor Carolina Neurosurgery and Spine, claimed any lack of opportunity to submit MRI CON applications. The Agency Report failed to disclose that Raleigh Radiology already had CON applications under review at the time of the Agency Report in April. Thus, Raleigh Radiology did not need Policy TE-4 to submit its recently successful CON application in Wake County. The other petitioner, Carolina Neurosurgery and Spine, chooses to contract for some vendor capacity although it already has both a CON-approved fixed MRI scanner and a CON-approved mobile MRI scanner. Furthermore, the Agency Report inaccurately listed Pinehurst Surgical Center as a potential “qualified applicant.” This is erroneous because this fixed MRI was actually a jointly-held CON with co-applicants Pinehurst Surgical Clinic and Alliance Healthcare Services. Since the Agency Report, this CON and MRI scanner have become solely owned by Pinehurst Surgical Center. Therefore, Pinehurst Surgical Center has now acquired its own fixed MRI without Policy TE-4. Other providers listed in the Agency Report that choose to use contract vendors already have their own fixed or mobile MRI scanners. The Agency Report omits the fact that the number of underutilized

mobile MRI scanners far exceeds the number of highly utilized scanners. These include Alliance MRI units as well as at least a dozen mobile MRI scanners owned and operated by others. The data in the Agency Report does not match the 2020 SMFP and appears unreliable.

And fourth, I don't think you have all the relevant facts. You should know that CON-approved mobile MRI scanners already have flexibility to add new host sites and serve new geographic areas by simply obtaining a letter of no review. You should also know that many years ago, some providers obtained settlement agreements to acquire mobile MRI scanners through the CON appeals process for fixed MRI applications. Proposed Policy TE-4 would create a new CON ambiguity that would encourage more CON appeals in hopes of obtaining mobile MRI scanners through settlement. Perhaps these facts will be useful in trying to anticipate the unintended and harmful consequences of Proposed Policy TE-4.

In conclusion, I encourage you to vote to exclude Proposed Policy TE-4 from the 2021 State Medical Facilities Plan because this policy is unnecessary and damaging. Thank you for your consideration. I would be glad to answer questions.