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Joy Heath's Comments in Opposition to Proposed Policy TE-4 Offered at July 14, 2020 Public Hearing

Good Afternoon. I'm Joy Heath.

Based on the chronology Mr. Shackelford has shared, it should be easy to see that the typical State Plan process was not followed here.

The State Plan describes specific showings and evidence that must be included in any Petition asking for a statewide policy change.

There was no Petition filed to advocate for Policy TE-4 so from the start, we're lacking fundamental information.

The Agency Report does not address Policy TE-4 – it uses only one sentence, the last sentence of the Report, to introduce the attached Policy TE-4.

Proposed Policy TE-4 was revealed for the first time **after** the close of the Comment period for policies with statewide effect.

Chapter 2 of the State Plan indicates that these types of changes “**need to be considered in the first four months of the calendar year.**”

The framework in Chapter 2 allows statewide policy changes to be:

- ✓ proposed by March 4,
- ✓ with a time for Comments through March 18,
- ✓ followed by a vote of the applicable Committee in April.

The Comment period is the operative mechanism to allow for Comments **before** the Committee votes to recommend a new policy to the full SHCC.

The basic idea is to entertain Petitions (which as I mentioned are required to have specific content, various showings and evidence), then entertain Comments, then and only then allow for a vote by the applicable Committee.

The Agency radically departed from the fundamental State Plan framework by itself proposing this TE-4 statewide policy change with no supporting Petition, entertaining no Comments, but nonetheless proceeding to a Committee vote.

Nothing in Chapter 2 of the State Plan specifically authorizes the Agency to itself propose a statewide policy change.

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There is certainly no language in Chapter 2 suggesting that it would be appropriate for the Agency to make such a proposal for the first time after the close of the applicable Comment period such that the Committee and the full SHCC will cast votes on the Proposed Policy without any oral or written input from interested parties.

By refusing to consider Alliance's Comments at the May Committee meeting, the Agency allowed a Committee vote to stand when it was obviously tainted by a failure to allow for receipt and consideration of Comments from interested parties.

Allowing a recommendation to stand in such circumstances defeats the utility of having a Committee process in the first instance.

If the Committee votes to recommend proposed policies not even requested by a Petitioner and does so without any industry input and with no meaningful discussion, the utility of convening such a deliberative body is defeated.

The State Plan Comment process is a recognition that input from the health care industry is not only helpful but critical to sound health planning.

Terminology in a Policy is critically important – Commenters can spot problems such as undefined terms and flag issues such as when the Policy sets different standards than those in the CON Regulations that govern that service.

Comments can be extremely enlightening – I'd invite you to go back and re-read the Comments UNC REX posted on last year's MRI Petition to see an example of valuable input. After UNC REX weighed in, the Committee voted to deny that MRI Petition.

Yet, here, the SHCC voted to adopt the Committee's recommendation in favor of Policy TE-4 even though the Committee's vote was taken without consideration of any Comments, and without any public deliberation on the merits or mechanics of the Proposed Policy.

And, at its June meeting, when the SHCC voted in turn to adopt the Committee's recommendation, it did so without any debate or discussion whatsoever on the particulars of Proposed Policy TE-4 or its implications.

As a result, TE-4 ended up in the Proposed Plan on the vote of only three Committee members, Drs. Ullrich and Perry and Commissioner McKoy.

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Put simply, Proposed Policy TE-4 has not followed the intended path. It would be a dangerous precedent to allow a Policy to find its way into our State Plan in such a way.

The process we have exists for good reasons – we encourage you to recognize that Policy TE-4 is a departure from what we expect to see as the appropriate course of healthcare planning in North Carolina.

There is no way to un-ring the bell here and remedy what went wrong in this situation.

If there truly is an issue that calls for a statewide policy change, let a Petitioner make a proposal and let industry participants comment and let the Committee engage in meaningful public deliberation before votes are taken and recommendations are made to the full SHCC.

For now, we encourage you to vote no on Proposed Policy TE-4.