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Joy Heath's Comments in Opposition to Proposed Policy TE-4 Offered at July 17, 2020 Public Hearing

Good Afternoon. My name is Joy Heath.

Thank you so much for your participation here today and for allowing me to comment on the unintended consequences of Proposed Policy TE-4.

Proposed Policy TE-4 apparently intends to allow for replacement of contract scanners with provider-owned scanners.

Yet, fundamentally, the Policy doesn't accomplish that intent because the contract scanners won't be required to be removed so there will be no replacements or substitutions – there will be *additions*.

And those *additions* occur in Service Areas where the Standard Methodology shows no need for new scanners – in other words, in Service Areas that already have good access to quality service on a sufficient inventory of scanners to meet patient needs based on the volume of procedures being performed.

Our State Plan process already allows providers to apply when there is a Need Determination and to petition for Adjusted Need Determinations based on unique or special reasons. If a provider wishes, it's already permitted to argue in favor of a Need Determination by claiming that owning a scanner will allow it to reduce its costs. Yet, Policy TE-4 bypasses all those processes to, as Mr. Shackelford termed it, offer a “free pass.”

Today, I'll speak to another unintended consequence of Policy TE-4.

Policy TE-4, as it is structured, will make it difficult for anyone to challenge these Agency's decisions to issue CON approvals for new MRI scanners.

Why? Because, if Policy TE-4 were to survive scrutiny and makes its way into the Plan, the CON decisions made under the Plan may be insulated from attack. Typically, in a case over a CON decision, a litigant cannot challenge the Policy under which the decision was issued.

Second, our Court of Appeals has held that a challenger cannot make the required showing of “substantial prejudice” merely because of new competition in its area.

With that, it may be difficult, if not impossible, for existing providers to ever take issue with the MRI CON approvals that could be handed out in the non-competitive reviews envisioned by Policy TE-4.

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We suspect this angle – this unintended consequence – was never properly considered. It should be added to a growing list of valid concerns over Proposed Policy TE-4.

Beyond all of this, now is not the time for Policy TE-4.

Proposed Policy TE-4 was announced in March of this year, early in the days of what we've all endured as the ongoing COVID-19 pandemic.

Since the introduction of Proposed Policy TE-4, much has happened – we've seen healthcare providers experiencing financial hardship and reductions in staff, with many postponing capital purchases.

While bracing for what may lie ahead, providers have so far seen a dramatic decline in overall healthcare utilization for many services.

MRI utilization across North Carolina has experienced a huge decline in recent months and the volumes have not yet rebounded. Many have said we'll never make up the ground that's been lost.

In response to this sharp decline caused by COVID-19, Alliance has cooperated with requests from numerous host sites and decreased the host sites' operational expenses.

Over the next year or more, it will be difficult for existing providers to justify the expense of replacing some existing MRI scanners. The acquisition of additional MRI scanners will likely be delayed. In response to these types of project delays, Alliance will continue to extend mobile MRI services agreements for facilities that need interim services.

Against the backdrop of COVID-19, Proposed Policy TE-4 should be removed from the State Plan.

The Policy stands to facilitate the proliferation of MRI scanners in North Carolina *at the worst possible time.*

Policy TE-4 is not only problematic in its approach and its terms, we can now see that it is completely out of sync with where we are at this challenging time in our State.

For these additional reasons, we urge you to act to exclude the Policy from next year's Plan.