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Joy Heath's Comments in Opposition to Proposed Policy TE-4 **Offered at July 21, 2020 Public Hearing**

Good Afternoon. My name is Joy Heath and I thank you for the chance to address Proposed Policy TE-4 again today.

Much has been said about this Proposed Policy TE-4 through these Summer Hearings and I will do my best to avoid repeating what our participating SHCC members may have heard to this point.

Proposed Policy TE-4, by its title, is intended to allow for a "Substitution" of MRI scanners.

We all have spell-check and thesaurus on our computers. If I type "substitution," the first word that pops up is "replacement." If I type replacement, I get spare, substitute or "substitution."

Yet, "substitution" is not a term used or defined in the CON Law.

The phrase that is used in the CON Law is "replacement equipment."

If one gives prior written notice of its intent to acquire "replacement equipment," under our CON Law, that acquisition is exempt from CON Review.

In other words, if what's contemplated by Proposed Policy TE-4 really did amount to a "substitution" of one MRI scanner for another MRI scanner, it would already be exempt from CON Review as "replacement equipment" under Section 131E-184(a)(7) of the CON Law.

The fundamental problem with Proposed Policy TE-4 is that there will be no true "substitution" of one MRI scanner for another. Under the Proposed Policy, one scanner will not be a "replacement" for the other.

Acquisition of "replacement equipment" is exempt from CON Review, presumably for the very reason that it does not add to the equipment inventory in the State. The entity that wants to replace its equipment does not have to act in response to a need determination for new scanner capacity in its Service Area and the CON Section does not need to review and evaluate a CON application proposing to acquire the equipment precisely because all it will do is serve as a "replacement" for existing equipment.

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If, on the other hand, the acquisition of an MRI is not a “replacement,” it is an acquisition that requires a CON under North Carolina law. The acquisition of an MRI in North Carolina requires a CON, regardless of cost.

The CON Law definition of “replacement equipment” is very specific. That definition requires the entity proposing the replacement to represent that the existing equipment quote-unquote, “will be sold or otherwise disposed of when replaced.”

Here, the existing equipment is the vendor-owned MRI provided via contract. The vendor owns that equipment and it most certainly will not be “sold or otherwise disposed of” if a provider were CON approved to acquire a new scanner under Proposed Policy TE-4.

Inasmuch as the provider does not own the existing scanner, it certainly cannot represent anything about the future sale or disposal of the equipment. Thus, it cannot propose anything that would meet the dictionary definition of a replacement or, for that matter, substitution.

What this all leads us to is the inescapable conclusion that Proposed Policy TE-4 is, by its terms, a fundamentally flawed Policy that should not be a part of what our SHCC recommends to Governor Cooper for his signature.

If there is a concern that providers should have a path under which to propose to move from a vendor arrangement to ownership of an MRI, there already exists a well-recognized path: the petition for an adjusted need. The need identified by such a petition allows for a competitive review and a way to approve the best proposal for our citizens. Considering the processes already in place, Proposed Policy TE-4 addresses a problem that does not exist.

We strongly support the Standard Methodology and the Petition process. With that, our 2021 Plan does not need and should not include Proposed Policy TE-4. While the time has passed for this Proposed Policy, we are willing to engage in productive, appropriately timed dialogue and we welcome the chance to be an active participant in good health planning.

For this year’s Plan, we urge SHCC Members to vote for formal action removing Proposed Policy TE-4.

Thank you for your attention and I’ll be happy to answer any questions.