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## **Anderson Shackelford's Comments in Opposition to Proposed Policy TE-4 Offered at July 8, 2020 Public Hearing**

My name is Anderson Shackelford, and I am an attorney speaking in opposition to Proposed Policy TE-4 on behalf of Alliance Healthcare Services.

Proposed Policy TE-4 is problematic for a litany of reasons, and over the course of the six summer public hearings, we will seek to address each of these issues. My comments today focus on the proposed policy's undermining of the Standard Methodology for MRI need determinations.

For those not familiar with Proposed Policy TE-4, this was a policy the Technology and Equipment Committee drafted earlier this year in response to petitions filed by two separate physician practice groups. These physician practice groups—which currently contract with mobile equipment vendors to provide MRI services to their patients—each petitioned for the creation of a policy that would permit them to file a CON application for their own MRI to replace their contract scanners.

While the Committee recommended that the physician groups' proposals be denied, it nevertheless recommended a policy that catered to the groups' wishes, Proposed Policy TE-4. This policy would allow providers who wish to cancel their vendor service agreements to apply for a CON for their own MRI, even absent a need determination. Proposed Policy TE-4 is fundamentally problematic in that it subverts the Standard Methodology and allows the introduction of additional magnets into Service Areas, where there was no need for additional scanners in the first place. And it does so while insulating applicants from competition.

In the Agency Report recommending adoption of Proposed Policy TE-4, the Technology and Equipment Committee states that it "supports the standard methodology and current policies for MRI equipment." Yet, Proposed Policy TE-4, if adopted, would represent a radical departure from the very methodology and current policies for which the Committee professes support.

Under the Standard Methodology, a need determination for an additional MRI is identified only when the expected volume of scans exceeds the capacity of existing MRIs in the Service Area. This is logical: if there is adequate MRI capacity in the Service Area to accommodate the anticipated volume of scans, there is no reason for more capacity to be developed; this would represent unnecessary duplication of services and potentially result in increased prices for patients.

On the other hand, if there is not enough MRI capacity in a Service Area, the Standard Methodology will identify a need determination, and providers will be free to apply and, if necessary, compete to meet the need. Thus, the Standard

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Methodology is designed to prevent unnecessary duplication of services—a basic aim of the CON Law—while simultaneously fostering competition among providers when a need for an additional MRI is identified.

In contrast, Proposed Policy TE-4 would allow CON Applications to be filed for fixed or mobile MRI scanners even when the Standard Methodology shows no need for an additional magnet. Indeed, Proposed Policy TE-4 would ignore all data on MRI scanners in a Service Area or Mobile MRI Region other than that of the applicant's single contract scanner.

The Proposed Policy would allow CON Applications to be filed by any provider with a contract with a vendor for mobile MRI services if the utilization of its contracted scanner exceeds a stated volume in the prior year. In effect, the proposed policy would allow “qualified applicants” to dispense with the Standard Methodology altogether.

Policy TE-4 would treat similarly situated providers differently. While providers without vendor contracts would be relegated to waiting for a need determination to manifest in the SMFP by operation of the Standard Methodology (or by way of adjusted need determination), every review under Policy TE-4 would be non-competitive. It would allow providers with vendor contracts to apply for their own magnets without fear of competition. There is no reason to insulate providers with vendor contracts from competition, while requiring others to compete.

Proposed Policy TE-4 speaks of replacing vendor scanners. Not so. Importantly, Proposed Policy TE-4 would not require vendors to remove their scanners from the Service Area once they were replaced with a provider-owned scanner. To the contrary, MRI vendors would maintain the lawful right to operate their scanners anywhere they see fit. Obviously, the vendors would not stop using their MRIs merely because one of their partners secured a CON for its own scanner pursuant to the proposed policy. The vendors would simply contract with another provider. Thus, Policy TE-4 would result in a proliferation of scanners in Service Areas where there was no need identified in the first place. Not only would TE-4 result in the unnecessary duplication of MRI scanners, it would likely suppress future need determinations and prevent other providers from filing CON applications for their own scanners.

Proposed Policy TE-4 runs counter to fundamental tenets of North Carolina's health planning process by creating an opportunity to apply for a CON for a new MRI scanner without reference to any of the information relied on in the Standard Methodology, including:

- the total inventory of MRI scanners in the MRI Service Area;

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- the total number of MRI procedures performed by type;
- the total number of procedures per MRI scanner; or
- the planning thresholds for additional MRI scanners for the Service Area.

While the Proposed Policy states an applicant must make projections consistent with the Performance Standards, those Standards only require projections for the scanners which the applicant or related entity owns in the Service Area. In other words, once a so-called “qualified applicant” shows the requisite volume on its contract scanner, to secure a CON for a new scanner, it will never have to make any showings on the historical or projected volumes for any of the MRI scanners that others own and operate in the relevant Service Area. Consequently, a Service Area could have multiple underutilized MRI scanners and Proposed Policy TE-4 would still allow a new scanner to be acquired and located in that Service Area.

By effectively ignoring the Standard Methodology, including all information on the number of scanners and procedures performed in the Service Area, Proposed Policy TE-4 creates an opportunity to apply ***based on one year of data for one scanner in the service area.*** There is no compelling reason to allow providers who contract with a vendor for MRI service to dispense with the Standard Methodology. This is simply not sound health care planning.

A handful of policies across various CON-regulated services/equipment allow providers to deviate from the Standard Methodology, but they only do so to solve a health planning problem. There is no such problem to be solved here.

There is already a mechanism in place to account for special circumstances providers might experience: petitioning for an adjusted need determination. That mechanism, unlike Policy TE-4, allows for a case-by-case determination of the propriety of deviating from the Standard Methodology and, if the SHCC sees fit to identify an extra-methodology-driven need determination, contemplates providers competing to meet the need.

The proposed policy would, without justification, create a wholesale exception to the Standard Methodology that would swallow the rule. For that reason, we ask that the SHCC vote not to adopt Proposed Policy TE-4.