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

Good Afternoon. My name is Anderson Shackelford, speaking in opposition to Proposed Policy TE-4, titled Substitution of Vendor Owned MRI Scanner for Provider Owned MRI Scanner.

Those who have joined us for prior hearings have heard about TE-4 but allow me to briefly recap four points for those new to the discussion:

First, Proposed Policy TE-4 departs from the Standard Methodology. TE-4 would allow CON approvals in Service Areas where there is no Need Determination under the Standard Methodology. The Standard Methodology makes planning decisions using the inventory of scanners in each MRI service area and the total number of procedures performed and it allows no more than one MRI Need Determination in any one service area per year. The Proposed Policy departs from the fundamentals of the Standard Methodology and contains no restrictions.

Second, Proposed Policy TE-4 is a "Free Pass" Policy. The Proposed Policy does not require showings of unique or special circumstances like those typically presented in an adjusted need Petition. All TE-4 reviews will be non-competitive. The applicant need only show one year of qualifying volume on its Fixed contract scanner to apply for a Fixed MRI or combined volume on multiple sites to apply for a Mobile MRI. The only projections required are for the scanner the applicant proposes to add to the service area, without regard for other underutilized units.

Third, Proposed Policy TE-4 does not Substitute one MRI for another. Although the Proposed Policy is labeled "Substitution," vendors can and will continue use of their contract scanners after CON approvals are handed out for new scanners. Thus, the Policy will *add* to the inventory of scanners operating in North Carolina – it won't require one MRI to be deleted for another MRI to be added.

Fourth, Proposed Policy TE-4's terms are flawed. Proposed Policy TE-4 uses standards that depart from duly adopted CON Regulations. Policy terms like "vendor," "provider" and "unrelated person" are all undefined in the CON Law. The Proposed Policy speaks of units that are "not moved" but doesn't say for how long. The Policy as worded is an open invitation to legal challenges.

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And, today, I want to emphasize the following points:

The deadline to propose Statewide Policy changes has passed. The deadline for proposals to change Statewide policy is March 4 and any such proposals must be considered in the first four months of the health planning year. The only reason we are discussing Proposed Policy TE-4 now is because the Policy was first revealed *after* the intended Comment period closed. The time to re-write the Policy or propose amendments has long since passed.

Commenters cannot suggest new Policies now. In an apparent recognition of the flaws in Proposed Policy TE-4, it has been suggested the Policy was introduced to quote-unquote, “start a dialogue” on MRI issues, and several commenters have called the Policy quote-unquote, “a good start.” In fact, this week, for the first time, it was suggested that Policy TE-4 should be amended to focus on fixed MRI with a companion Policy TE-5 to address mobile MRI. For our 2021 State Plan, the time to propose policies of statewide effect ended in early March.

Good people work hard each year to develop our State Plan using a process that’s well-defined and worthy of our compliance. We don’t really know all of what happened here, but we know Proposed Policy TE-4 was first proposed *after* the close of the Comment period and passed along, without any discussion, on the votes of only three Committee members. A request to hear Comments and have a new vote in May was refused.

Issues with this Proposed Policy appear both on a fundamental level and in the mechanics of the Policy itself.

Good people are willing and able to discuss the policies that govern MRI scanners in North Carolina but what we believe should be abundantly clear to everyone as of now:

**Proposed Policy TE-4 is not properly included in the 2021 Plan -
Members of the SHCC should ensure that it is not.**

Later this summer, you will have an opportunity to take formal action with respect to Proposed Policy TE-4. When that time comes, we urge you to stop Proposed Policy TE-4.