NCN | NORTH CAROLINA NEPHROLOGY, P.A.

March 9, 2023

Acute Care Services Committee Staff
Department of Health and Human Services
Division of Health Service Regulation
Healthcare Planning
809 Ruggles Drive
Edgerton Building
Raleigh, NC 27603

Dear Acute Care Services Committee,

We are writing regarding the "Long Term Care Management Services, LLC d/b/a Liberty Healthcare and Rehabilitation Services ("Liberty") request for a Policy to be added to the 2024 State Medical Facilities Plan ("SMFP"), Policy ESRD-4, which will allow for the development or expansion of a kidney disease treatment center at skilled nursing facilities across the state."

We have reviewed the request by "Liberty" to allow them (and other companies) to add dialysis stations to multiple skilled nursing facilities across the state without the standard CON need-based oversight. As a group of Board-Certified Nephrologists who provide care to patients with ESRD in Wake, Harnett, Johnston, Wilson, and Franklin Counties of North Carolina, we are writing to highlight the following concerns:

1) "Liberty" suggests that the "[State Health Coordinating Council] SHCC set precedent when creating Policy ESRD-3" which enables "any hospital to offer outpatient dialysis services to patients who are not appropriate for community-based facilities". However, "Liberty" makes no effort to identify how "Liberty" has or would provide care for such a dialysis population. This is likely because nursing facilities would not provide care to patient those populations in question. As the SHCC is aware, acute care hospitals face much higher standards compared to nursing facilities (i.e. EMTALA). Thus, we feel that there no precedent has been established to support "Liberty's" initial argument.

2) "Liberty" states that their proposal is consistent with the three Basic Principles governing the development of the North Carolina State Medical Facilities Plan: (i) Safety and Quality, (ii) Access and (iii) Value.

    a. Regarding (i) Safety and Quality, "Liberty" describes "well-known risks attendant to frequent travel from nursing homes to community-based dialysis centers" including "infections; bodily wear-and-tear; and van or ambulance accidents." In our decades of experience, these risks are no greater for nursing facility patients than those of the community dialysis population. Thus, we feel the proposal will not significantly impact safety for the intended patient population. In addition, a significant number of ESRD nursing facility patients undergo short-term stays, then return home. Changing dialysis "units" multiple times during post-acute care contributes to fracturing the continuity of care, especially when the dialysis unit often functions as the hub for continuity of care. This fractured experience reduces the quality of care for dialysis patients, leading to worse outcomes.

b. Regarding (ii) Access, the SMFP states "the first priority is to ameliorate economic barriers." "Liberty" and other nursing facilities in North Carolina typically refuse to admit uninsured, underinsured, or undocumented patients with ESRD. Thus, this proposal fails to demonstrate how "Liberty" would improve access for the most vulnerable North Carolinians.

c. Regarding (iii) Value, "Liberty" purports their "innovation" would "help build a stronger relationship with hospital and dialysis partners (through referrals of high acuity residents), while also eliminating the associated high transportation costs." The described business model is beneficial to "Liberty" but not to the State of North Carolina or its taxpayers. Transportation costs of nursing facility patients are included in the payment such facilities receive from payers. These costs are not born by the state or federal insurance programs. Thus, the proposal only serves to improve the profit margin of nursing facilities, while failing to impact the overall cost of care to the system. No "Value" would be added.

3) The proposed "Policy ESRD-4" would allow nursing facilities to "apply for certificate of need without a county or facility need determination" and subsequently build a freestanding dialysis facility "proximate to the nursing home building". The stations housed in such a facility would be "excluded from the inventory" reported in the SMFP. We are quite concerned that the Policy ESRD-4 that "Liberty" has submitted fails to delineate the patient population to be served by such facilities. Thus, a freestanding dialysis unit "proximate to the nursing home building" could provide outpatient dialysis to non-residents of the nursing facility, thereby circumventing the need determinations that must be satisfied by all other outpatient dialysis providers under CON law.

4) As our letter in 2022 stated, by the appropriate use of CON at the county level and partnering with local dialysis providers' home therapy programs, there already exists the ability to provide hemodialysis at skilled nursing facilities. The only requirement is the formation of agreements between dialysis providers and skilled nursing facilities, thereby creating programs where licensed dialysis nurses administer on-site treatments to patients at those nursing facilities. Thus, the only "new" service outlined in this proposal is the elimination of CON on a statewide level in order to improve the profitability of nursing facilities.

5) Our final concern is the lack of coordination of this proposal with the nephrologists who are currently caring for these patients. CMS requires that all dialysis facilities/programs have a board-certified nephrologist to serve as medical director yet there is no clear mention of this in the proposal. The patient population "Liberty" describes is sicker than the general ESRD population and in need of closer monitoring from their nephrology providers. These patients should be seen weekly by nephrology providers. The decentralization of severely ill patients into units with small numbers of patients scattered in multiple area nursing homes would create a significant burden on nephrology practices. This burden would negatively impact the nephrologists' ability to maintain the delivery of high quality ESRD care.

Based on our decades of experience in dialysis care, and with skilled nursing facilities, it is our view that the proposal by "Liberty" represents an attempt to subvert CON across the state, with intentions that seem to be more focused on improving the bottom line, rather than improving the quality of care for ESRD patients. As a result, we strongly recommend that the Acute Care Services Committee deny the proposed Policy ESRD-4.

Thank you,

Eric W. Raasch MD, and the Board of Directors
North Carolina Nephrology, PA