



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

MINUTES OF PUBLIC HEARING
NOVEMBER 29, 2017
10:00 A.M.

Division Staff Present:

Nadine Pfeiffer, Rule-making Coordinator
Diana Barbry, Rule-making Assistant
Lisa Pittman, Assistant Chief, Certificate of Need

Others Present:

Nancy Bres Martin, NBMHPA
Mike Vicario, NCHA

1. Purpose of Hearing

The purpose of this public hearing was to solicit verbal and/or written comments from the public on the proposed temporary amendments of the Certificate of Need rules due to the 2018 State Medical Facilities Plan (SMFP), specifically: 10A NCAC 14C .2101 and .2103.

2. Hearing Summary

The public hearing was opened by Nadine Pfeiffer at 10:00 a.m. Attending were representatives from the provider and consultant community. One oral comment was recorded. A summary of this comment is as follows:

Nancy Bres Martin from NBMHPA stated that she was an independent consultant working in healthcare planning and Certificate of Need in NC. She has been in the field for many years and wanted to speak in regards to the surgical services and operating rooms proposed rule changes. She stated that her concern about the rules is that as drafted, they reference back to the operating

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room need methodology in the current SMFP at the time of the rules review, the 2018, for the purpose of this set of rules. The SMFP has always been the determinative need for a CON application. That is defined and referenced in the CON statutes, however an applicant has always had an opportunity to justify their individual need for operating rooms, in this case, using different methodologies. The SMFP is put together at this point based on 2016 data that was reported in the 2017 licensure renewal application. So a determination is made in 2018 based on data that is two years old.

There are parts of the methodology Ms. Bres Martin agreed that need to be included in the rules such as detail about the time per case and about the operating hours; however, encompassing the whole methodology makes it such that an applicant has to use exactly what is in the SMFP. In that particular case it makes it very cumbersome for an applicant in the 2018 SMFP to show need. But because of increases in volumes and new doctors coming on board, the actual growth rate is very different from the population rate, which is now specified as the only growth rate that is applicable, because the methodology is encompassed in whole. That is a problem Ms. Bres Martin identified.

Ms. Bres Martin continued by saying that nobody can be approved except those applicants who have been defined as having a need in the SMFP. She did not see how the agency could justify it because it is being reviewed and approved on data that is two years old, including growth rates. Or the growth rate may be just limited to population.

Ms. Bres Martin proposed to put a definition in the definitions section in the rules about the need methodology in the SMFP and then exempt a couple of sections out of the need methodology. In looking at Chapter Six of the SMFP, the need methodology for operating rooms, most of steps can be included in the rule by reference. However, in looking at adjusted case times, which is Step 3, for the annual licensure renewal used in the SMFP, the state and the agency and the state would have another license renewal application. She is suggesting to pull this section out and say "or the most current."

Ms. Bres Martin stated there was a section in the need methodology for case times that says "if your case time is ten percent or more greater then you are using the previous year's case time plus ten percent" and then all opportunities for case times to be higher in reality. She believes there is an opportunity to say that, unless that is explained in the current licensure renewal application. She gave an example of one hospital receiving a special need determination in 2017 for the 2018 SMFP because they are now a teaching hospital. She believes there is a time issue with accepting the methodology per se as is.

Ms. Bres Martin believes defining "operating room need methodology with exceptions" in the definitions may be the easiest way to address the issue because the performance standards in the rules it is referenced in almost every rule.

Ms. Bres Martin stated that another issue she had with the rules is about the growth rate. In Chapter Six of the Plan, Step 5(d) and (e) specifically reference that you expected to increase or decrease in direct proportion to the change in the general population of the operating room service area, calculate the growth factor between the service areas projected population between the data year 2016 and the target year for the projections 2020. She stated that we are in 2018 using a growth rate from 2016 – 2020 versus a growth rate from 2018 to 2022. This is a population growth rate. There is no opportunity to justify your need for operating rooms based upon your own internal growth.

Ms. Bres Martin stated that historically the CON Section has accepted a variety of methodologies, some based upon individual physician projections of need, some based upon the historical growth rate for the facility, and some based upon the additions of new surgeons. There are a variety of things that can impact the need for operating rooms in a facility. She disagrees with using this methodology and specifically not providing an opportunity to use another growth rate.

Ms. Bres Martin stated that it was unclear how a new facility could be projected referencing the specific methodology because a new provider does not have an existing volume and everything in this methodology is based upon existing volume. She stated that this issue would need to be addressed.

Ms. Bres Martin did not see anything in the rules that would apply to specifically to the provision of facilities who have a special need determination. The special need determination is based upon inflating case times and only one operating room which encompasses the Operating Room Methodology in toto for two operating rooms at a minimum and case times that are from 2016. She stated that if there are special need determinations, it is because the methodology did not work for them.

3. Adjournment

These comments will be taken into consideration by the Agency. The hearing was adjourned at 10:13 a.m.

Respectfully Submitted,



Nadine Pfeiffer, Rule-making Coordinator
December 4, 2017

