

TO: Healthcare Planning and Certificate of Need Section, DHSR
2704 Mail Service Center
Raleigh, North Carolina 27699-2704
DHSR.SMFP.Petitions-Comments@dhhs.nc.gov

FROM: David J. French
Strategic Healthcare Consultants
djfrench45@gmail.com

COMMENT: Opposition to the Proposed Policy TE-4

DATE: July 21, 2020

Good afternoon. My name is David French. I am a healthcare consultant speaking in opposition to Proposed Policy TE-4 which departs from the Standard Methodology and would create unnecessary duplication of healthcare services.

State Health Coordinating Council (“SHCC”) Members are instructed to comply with Executive Order 46 which states:

WHEREAS, it is important that the [SHCC] exercise its advisory authority in a transparent manner so that the Governor and citizens have full knowledge of the professional and economic interests [that] members of the [SHCC] represent;

“No member [of the SHCC] ... may confer with any DHHS employee regarding any proposed provision of the SMFP ... except in public meetings conducted by DHHS or [the SHCC].”

Some members of the SHCC may be uncertain regarding potential ethical conflicts with Proposed Policy TE-4 due to the undefined phrases that include provider, vendor, and unrelated person. Due to these undefined phrases, it may be impossible to determine what healthcare organizations would be “qualified applicants.” There are at least 10 healthcare organizations with fixed MRI, mobile MRI and/or contracted services for MRI scanners that also have some type of business, financial or employment relationship with SHCC members. These include:

Charlotte Radiology / Carolinas Imaging Services
Duke University Health System
EmergeOrtho
Greensboro Imaging
Novant Health
OrthoCarolina
Sentara Medical Center
UNC Rex Healthcare
Vidant Health
Wake Radiology

In accordance with instructions outlined during the Public Hearings, I emailed the Healthcare Planning Staff to ask that the following data regarding Proposed Policy TE-4 be made public:

- The names and addresses of persons who participated in drafting Proposed Policy TE-4;
- A current list of Proposed Policy TE-4 “qualified applicants” for the 2021 State Plan; and
- The MRI Inventory Forms for scanners that “should be treated as fixed” under Proposed Policy TE-4.

Proposed Policy TE-4 relies on false categories with the undefined phrases of “Vendor Owned MRI” and “Provider Owned MRI scanners.” No one has explained how to determine which healthcare organizations are vendors or providers. This information is not listed in the SMFP, the License Renewal Applications Forms, or the MRI Equipment Inventory Forms. The current version of the CON application form for Acute Care Services and Medical Equipment contains no definitions for provider or vendor or the phrases “Provider Owned” or “Vendor Owned” MRI scanners.

The CON Law and the application form also do not define “unrelated persons.” Two possible meanings occur to me: The first is that this phrase means persons not related by marriage or blood. The second meaning is persons who have no previous business relationship.

I can’t decide if the phrase “unrelated persons” included in Proposed Policy TE-4 makes any sense because if someone has an existing written contract with another party, then that agreement would cause the parties to have an existing business relationship. What if the agreement includes an option to purchase certain equipment in the future?

Like the situation of radiologists and hospitals who have agreements to define their business relationships, it would not make sense to claim that these parties are “unrelated persons” without knowing the terms of the agreements. Also, it seems like a bad idea to adopt a Policy that requires the State to interpret private agreements.

Proposed Policy TE-4 would set a precedent which could be adapted for other contract service arrangements that could include Hospice Home Care, Mobile Cardiac Catheterization, Mobile Lithotripsy, Long Term Care Hospital Beds or other CON regulated services.

Consider the following example for Hospice Home Care:

A “qualified applicant” could be a continuing care retirement community, a long-term care facility or a hospital that has a hospice services agreement with an “unrelated entity” that could be referred to as a “Vendor Owned Hospice.” A new Policy could allow CON applications by the “qualified applicant” to substitute its own “Provider Owned Hospice” for the service of the “Vendor.” Wouldn’t you agree that this type of substitution Policy that mirrors Proposed Policy TE-4 would undermine the Standard Methodology that defines need for new Hospice Home Care agencies?

In closing, I am hopeful you will carefully analyze all information and vote to exclude Proposed Policy TE-4 from the 2021 SMFP.

Thank you for your consideration.