

WILLIAMS MULLEN

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Joy Heath's Comments in Opposition to Proposed Policy TE-4 Offered at July 29, 2020 Public Hearing

Good Afternoon. My name is Joy Heath, a partner at Williams Mullen.

We all know the SHCC is charged with the responsibility of making its final disposition on all petitions no later than the final SHCC meeting of the calendar year.

This allows the Plan to go to the Governor so we can start all over again in the next calendar year.

We have a longstanding and logical framework in Chapter 2 of the Plan.

It very clearly calls for petitions of statewide impact to be submitted and considered within the first four months of the calendar year. I don't believe there's any lawyer out there who can credibly tell you otherwise.

Without any analysis, the Agency proposed Policy TE-4 after the close of the comment period for statewide policy changes. Alliance tried to weigh in during the April/May timeframe but was refused.

So we have commented this summer, although this is supposed to be the time in which we're hearing about adjusted need requests, not about statewide policy changes.

And, no, our comments this summer don't undo what's gone wrong here.

This Proposed Policy raises a larger issue of how good planning should be done. We've tried to focus our remarks at a higher level because, folks, this is important.

Only two petitions for statewide MRI policy changes were submitted by the March 4 deadline for this Planning year and the Agency recommended denying them both.

The Agency Report recognized that a proposed Policy like TE-4 will not substitute but will **add** unneeded MRI capacity across our State – it will depart from the Standard Methodology to approve new scanners on top of those which will continue to be operated by vendors and will do so in areas without need determinations.

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The Agency Report concluded:

- #1 The Agency does not have “any involvement in [provider/vendor] contracts;”
- #2 The Agency knows vendor scanners will “undoubtedly serve new locations;”
- #3 The Agency believes “impact to the state inventory must be considered;” and
- #4 The Agency realizes new MRIs “reduce the likelihood of future need determinations.”

The Agency Report did not indicate any problem needing a cure through a statewide policy.

The problems the petitioners identified were their own perceived issues with their vendor contracts and a desire to avoid participating in competitive CON reviews, neither of which are valid bases for a statewide policy change.

TE-4 is unnecessary. Providers can already seek adjusted need determinations or file in response to any one of seven MRI need determinations forecasted for 2021.

If you want to know why Proposed Policy TE-4 should not be adopted, you need go no further than the Agency’s own Report. I’d invite you to go back and read it.

Yet, in a final sentence and in contradiction to the content of the Report, the Agency Report put across Proposed Policy TE-4.

So you see where this went off-track. No Agency analysis supporting the Policy or including what you’d expect to see in a Petition advocating a statewide policy change. No Work Group. No Special Committee. We very clearly need to put the brakes on this.

Beyond the problems with its approach, the wording and word choices in Proposed Policy TE-4 are problematic, incorporating undefined terms and failing to align with the requirements of CON regulations.

We don’t know how provider or vendor are defined or what it means for a scanner to not move such that it should be considered fixed. Or if an applicant under this Proposed Policy even needs to meet the CON regulations.

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If the Staff rewrites the Policy now, will we go back and re-do all these Public Hearings? There is no way we can comment on new definitions or a revised version of a Policy we've not yet seen.

I think we can all agree: if this body rewrites Proposed Policy TE-4 now – when there are no more public hearings or any additional comment periods scheduled – no one will have had opportunity to be heard on those new changes.

And, defining terms or changing wording at this point will do nothing to rescue what is ultimately a fundamentally flawed Proposed Policy.

We are ready to engage in productive future dialogue, but we respectfully ask that you use your vote to step back from Proposed Policy TE-4.