

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

SURGICAL SERVICES PUBLIC HEARING
Tuesday, November 8, 2005
Michigan Library and Historical Center
702 West Kalamazoo
Lansing MI

ORAL TESTIMONY

(Hearing scheduled to start at 10:30 a.m.; actual start time was 10:31 a.m.)

MS. ROGERS: Good morning, my name is Brenda Rogers. I am Special Assistant to the Certificate of Need Commission from the Department of Community Health. Chairperson Norma Hagenow has asked the department to conduct today's hearing. We are here today to take testimony concerning potential language revisions to the Certificate of Review Standards for Surgical Services. The proposed CON Review Standards for Surgical Services are being reviewed and modified to require that all volume projections are developed and documented based on only surgical cases performed in an existing operating room.

Please be sure that you have signed the sign-in log. Copies of the proposed changes to the Review Standards can be found on the table. Comment cards can be found on the table, too, and need to be completed if you wish to speak. Please hand your card to me. Additionally, if you have written testimony, provide a copy as well. Please print your name on the sign-in sheet at the podium before you speak. As indicated on the Notice of Public Hearing, written testimony may be provided to the department through November 15th, 2005, at 5:00 p.m.

We will begin the hearing by taking testimony from those of you who wish to speak. The hearing will continue until all testimony has been given, at which time we will adjourn. Today is Tuesday, November 8th, 2005, and we will begin taking testimony. Bob Meeker, Spectrum Health?

MR. MEEKER: I'm still Bob Meeker from Spectrum Health in Grand Rapids. And I'd like to speak, on behalf of Spectrum Health, in support of the proposed changes to the Surgical Services Standards. We think that the changes that are proposed are sorely needed. The current practice, as most everyone is aware, is that office-based procedures or procedure room procedures can be used as evidence of need for additional surgical capacity. And, you know, we think that this represents a distortion of the true need for such facilities. We have -- the commission has been provided data that shows that existing surgical services, at least many of them, are not operating under current volume requirements. And I think that the startling fact that there are -- as many or more CON applications for new surgical facilities have been filed this year than the last six years combined. So I think that this change is needed, it's overdue, and we strongly support the approval of this revision and urge the commission to move it on to the legislature after its meeting on December 13th.

MS. ROGERS: Thank you. Steven Szelag, U of M Health System?

MR. SZELAG: My name is Steven Szelag and I am a Senior Health System Planner at the University of Michigan Health System. The Health System is here today to offer testimony on the proposed changes to the CON Review Standards for Surgery Services.

First of all, as is appropriate, our comments only address the singular item of the revisions being put forth at this time, that of pledging volume requirements for the initiation of new OR services. While there may well be some general overall comments which UMHS may wish to offer on the revisions which are underway, it would appear to be more helpful to offer them at such time as a complete standards revision package is put forth by the CON Commission.

It is our understanding that the proposal being addressed today would require that those surgical case volumes which could be committed by a surgeon to be performed in a new OR must have been performed in a licensed OR only. Thus, it would preclude pledging such case volumes which might have been performed other than in a licensed OR, such as a procedure room. The University of Michigan Health System offers its qualified support for this single change. Thank you for according us the opportunity to address this item.

MS. ROGERS: Thank you. Jon Schram, Holland Surgical Center?

MR. SCHRAM: My name is Jon Schram, and I come today to give testimony before the committee on behalf of a group of physicians from Holland, Michigan, interested in a proposed surgical center. We come before the commission today not to argue the validity or the facts of how the changes -- or how the changes will be made, but come only to ask for fairness. Our group began nearly a year ago to put together a process for the completion of a surgery center. In that time we've come up with a business plan, we've purchased property, and we've hired attorneys and outside sources to assist us in developing a surgery center -- all under the rule that had been previously set -- and completed our application to the Certificate of Need Committee prior to September 1, under a set of rules that had been set previously.

What we are asking is that the commission recognize the fact that we had all of our ducks in a row, as you might say, and all of our application process completed under a set of rules that had been set and had been agreed upon, and are just hopeful that the commission will take that into account as they go through the changes that seem inevitable. The fact that we, in fact, did have all of our application in process and completed during that time frame, and we'll hope that the commission will allow due process to occur and will allow us to have the application that we worked very hard to complete considered under the rules that were set when we placed the application. Thank you.

MS. ROGERS: Thank you. Kevin Kronner, Holland Surgical Center?

MR. KRONNER: Good morning. I'm Kevin Kronner. I represent a group of physicians at the Holland Surgical Center, and I come to give testimony to the commission today, as well. We under that proposed changes to the CON language are likely to be enacted. I'm not arguing for or against that, I'm simply arguing in favor of due process.

Again, we spent considerable amounts of time and money and resources to construct a surgery center -- we've purchased property -- all under the guidelines that were in place prior to the CON Commission Public Hearing date of September 13th. Our application was submitted on September 1st. At that time there was no public notice to any changes, and so I am asking that we be treated fairly under the rules that existed at that time. We certainly respect the CON Commission and their ability to make changes. We're simply asking for -- a fair process be enacted. Thank you.

MS. ROGERS: Thank you. Phillip Winter, Holland Surgical Center?

MR. WINTER: Good morning. My name is Phillips Winter, and I represent the Holland Surgery Center. Today I come before you not to debate the appropriateness of the changes to the CON laws, but just to the appropriateness of the timing of these changes to be applied. The commission certainly knows the guidelines better than I do, and I certainly wouldn't wish to presume that we have better knowledge of what the state needs than they do.

What we do have is a project already in place. We have started a process. We believe that this center will provide our patients with much needed surgical services at a lower cost. A great deal of time, energy and capital has been expended to apply for this Certificate of Need. Further, in submitting this application, we have undertaken a significant risk of our own individual medical practices. This is not just another application to us, it's our livelihood, it's our responsibility to care for our patients. Our application was submitted on September 1st. It's my understanding that these changes to the CON application process were first discussed on September 13th. We applied for a CON in good faith, under existing

rules. We took risks to benefit our patients and our community. And we believe that any retroactive rule changes would violate a sense of fairness and erode confidence in the fairness of the CON application process. If changes to the CON application rules are applied to applications already submitted, you'll be in effect changing the rules in the middle of the game. Our application was submitted on time and has met the standards in place when it was submitted. The retroactive nature of these proposed changes violates the standards of fair play and threatens the integrity of the CON process.

If changes need to be made in the CON process, then make the changes. But do not reverse the rules after we have met the requirements and after we have expended significant and substantial amounts of time and energy and incurred a significant risk to meet these requirements.

Finally, we are concerned that due process is not being followed and that any retroactive changes to the CON application requirements will be unfair to our application. Thank you very much.

MS. ROGERS: Thank you. Barbara Jackson, Economic Alliance of Michigan?

MS. JACKSON: Good morning. I'm Barbara Jackson with the Economic Alliance for Michigan. I'm the regulatory director. I have just brief comments. We do support the proposed changes. We think it's a long overdue fix to kind of a sticky problem, and we support this -- these changes moving forward. Thank you.

MS. ROGERS: Thank you. Julie Greene, representing herself?

MS. GREENE: Well, I'm going to buck the trend. I don't support the change. I'm opposed to the CON separating this issue from the rest of the SAC recommendations, because I do not believe appropriate protocol was followed and that due process within the SAC occurred before the CON Commission tried to push this piece through after an update on the SSSAC progress to date that was presented to the CON Commission. To indicate only procedures done in an OR can be submitted is not in and of itself wrong. It is actually what the CON and SAC failed to do that is more problematic.

You have created a protected class of businesses by ensuring the current facilities existing in the State of Michigan do not have to submit case numbers on a timely basis to the State of Michigan, and the current rule on the table today also does not require the department to publish this number on a timely basis. This lack of attention to the data issue clearly advantages all current facilities to continue to grow by submitting CON's before anyone else has appropriate access to the data.

From an economical point of view, I cannot condone a system that tries to squelch the growth of privately funded businesses whose investors in at least some cases pay more taxes on a percentage of revenue basis than the tax exempt facilities offer in community benefit. This does not appear to be a sound path for the State of Michigan. The entire CON Surgical Services area appears to give little or no credence to a facility's ability to provide community need in terms of quality service and cost by ignoring the compliance issues in current facilities and simply focusing instead on trying to limit new facilities.

I do not think a positive CON vote on this issue on December 13th is in the best interest of the citizens of Michigan without additional data criteria for current facilities. I think the CON Commission needs to back up and look at the entire Surgical Services language together, without pushing through one piece now. Thank you.

MS. ROGERS: Thank you. Those are all the cards that I have. Is there anyone else who wishes to provide testimony regarding the Surgical Services Standards? Hearing none, it is 10:45 and this hearing is adjourned. Thank you for coming today.

(Hearing concluded at approximately 10:47 a.m.)