CON Commission Testimony
Nursing Home and Hospital LTC Unit Standards
Of David G. Stobb
General Counsel, Ciena Healthcare

October 23, 2014

My name is David Stobb and I am General Counsel of Ciena Healthcare. My company is based in Southfield and we manage 34 skilled nursing facilities in Michigan. My company has constructed 11 new skilled nursing facilities in the state over the past 8 years. I am here to provide comment to the most recent changes to the Proposed Amendments to the Review Standards for Nursing Home and Hospital Long Term Care Unit Beds.

I am here to testify in support of the effort made by MDCH in revising the nursing home standards to include a new definition of "Proposed Licensed Site" but I do not agree with the 250 yard radius proposed by the Department because the radius does not accomplish the intent of the revision, that is, to provide holders of approved CONs for new construction projects greatly needed flexibility in identifying the specific location for new construction that will become a site under the CON rules.

I adopt my previous testimony provided before the Commission on 9/25/14 and agree with the testimony provided in this hearing by Patricia Anderson of the Health Care Association of Michigan. In addition to Ms. Anderson's testimony, I add the following:

- While we recommend the adoption of a 3 mile radius instead of a 250 yard radius, we are not suggesting in any way that a provider could replace an existing nursing home within 3 miles of the current site and then add another 3 miles with the definition of Proposed Licensed Site. The Department should draft the definition so that such an outcome is not possible.
- The adoption of the 250 yards from the federal EMTALA statute is not appropriate and is not relevant in any way to nursing homes.
- Keep in mind that new projects are based on bed need. Bed need is determined on a county-wide basis and not any particular area within a county. There is no harm or downside whatsoever in allowing a new project the flexibility of locating within 3 miles of a specific location within the county. After all, new projects are permitted to be located anywhere in the county when the initial CON application is filed.

In conclusion, I support the concept of the new "Proposed Licensed Site" definition but urge this Commission to expand the 250 yard radius to the 3 mile replacement zone radius already in the standards so that the change proposed by the Department can be effective and successful in encouraging construction of new projects.

Thank you.

CON Public Hearing
Nursing Homes and Hospital LTC Units
October 23, 2014

I am Patricia Anderson representing the Health Care Association of Michigan. HCAM represents 300 skilled nursing facility providers across the state including for- profit, not for profit, county medical care facilities and hospital based long term care units. HCAM would like to testify in support of the proposed changes to these standards with exception to the definition of "proposed licensed site". HCAM supports the concept this definition adds to the standards but believes the 250 yards is too restrictive and should be expanded to the same 3-mile limit and other criteria used in defining replacement zone.

The proposed language defining "Proposed Licensed Site" which is lines 127-131 is:

> "Proposed Licensed Site" means the physical location and address (or legal description of property) of the proposed project or within 250 yards of the physical location and address (or legal description of property) and within the same planning area of the proposed project that will be authorized by license and will be listed on the licensee's certificate of licensure."

HCAM understands from information provided by CON staff at the September Commission meeting that the 250 yards is from the EMTALA – Emergency Medical Treatment and Labor Act. EMTALA is a federal law that requires all Medicare-participating hospitals with dedicated EDs (Emergency Department) to provide care to anyone who comes to the ED. CFR Section 489.24 (a)(1)(i) defines the term hospital property as a "hospital campus as defined in 413.65(a), including the parking lot,… including any building owned by the hospital that are within 250 yards of the hospital." It appears this language was extended to the proposed definition of "proposed licensed site" keeping in line with the campus type arrangements for hospital settings. It does not appear to apply to the nursing homes or HLTCU's covered by these standards.

HCAM proposes that "250 yards" be changed to 3 miles similar to the allowance provided in the definition of replacement zone. The replacement zone provides for a three-mile radius as defined in these standards on line 151. Some of the reasons for needing to change a location are: local ordinance changes, wetlands, unsuitable soil to hold structure, environmental contamination and purchase price is unreasonable. All of these reasons can cause an applicant to seek a new location prior to construction which can only be resolved at a distance greater than 250 yards. In fact, many nursing facility construction projects need between 6-8 acres to have adequate space to meet their proposed construction plans.

The flexibility that this definition allows is greatly hindered by the 250 yard restriction on the movement of the location. If the replacement zone three mile radius is used it should be adequate to address problems with the site and still ensure that services are provided to the original population it was intended to serve.

Thank you for considering HCAM's request to adjust the definition of "Proposed Licensed Site" from 250 yards to 3-miles similar to the replacement zone. HCAM would appreciate meeting with MDCH to discuss this matter further.

From: DoNotReply@michigan.gov
To: MDCH-ConWebTeam
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5. Standards: Hospital Beds
6._Testimony: See attached.

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October 30, 2014

Marc D. Keshishian, M.D.
CON Commission Chairperson
Capital View Building
201 Townsend Street
Lansing, MI 48913

Dear Commissioner Keshishian:

On behalf of Henry Ford Health System ("HFHS"), I would like to offer comments on the changes to the Hospital Bed standards approved by the Commission at your September meeting.

HFHS appreciates the work by both the Department and the CON Commission on these proposed changes. Allowing more clearly for hospital-in-hospital inpatient rehab facilities will help to bring high level rehab services closer to home for patients across the state. In addition, the changes to allow replacement of hospital beds across the street from the existing hospital recognize the need to view hospitals more as campuses and less as single solitary buildings and at the same time saves money by removing the requirement that all buildings be physically connected, if operations do not necessitate it.

In talking with the Department since the initial vote on the language in September, we have identified one minor change we would like to request. As currently written it is not clear that a hospital could replace some of their beds to a building constructed with 2 roadways in between, but still within 250 yards. In discussing this with the Department, they have indicated that it was not their intent to limit it to just 1 road as long as it is within 250 yards. The current plan for Henry Ford Hospital would be to build across West Grand Blvd., but also includes a new minor side street in front of the new building. This could be created as a private drive, but there are many advantages and reasons to make it a public roadway. Therefore we are requesting the following change (highlighted in yellow) to the proposed language as it moves forward to final action:

Amend Section 2(kk) as follows:

(kk) "Replace beds" means a change in the location of the licensed hospital, or the replacement of a portion of the licensed beds at the same licensed site, OR THE ONE-TIME REPLACEMENT OF LESS THAN 50% OF THE LICENSED BEDS TO A NEW SITE WITHIN 250 YARDS OF THE BUILDING ON THE LICENSED SITE CONTAINING MORE THAN 50% OF THE LICENSED BEDS, WHICH MAY INCLUDE A NEW SITE ACROSS A HIGHWAY(S) OR STREET(S) AS DEFINED IN MCL 257.20 AND EXCLUDES A NEW SITE ACROSS A LIMITED ACCESS HIGHWAY AS DEFINED IN MCL 257.26. The hospital beds will be in new physical plant space being developed in new construction or in newly acquired space (purchase, lease, donation, etc.) within the replacement zone.

Amend Section 7(2) as follows:

(2) The applicant shall specify whether the proposed project is to replace the licensed hospital to a new site, or to replace a portion of the licensed beds at the existing licensed site, OR THE ONE-TIME REPLACEMENT OF LESS THAN 50% OF THE LICENSED BEDS TO A NEW SITE WITHIN 250 YARDS OF THE BUILDING ON THE LICENSED SITE CONTAINING MORE THAN 50% OF THE LICENSED BEDS, WHICH MAY INCLUDE A NEW SITE ACROSS A HIGHWAY(S) OR STREET(S) AS DEFINED IN MCL 257.20 AND EXCLUDES A NEW SITE ACROSS A LIMITED ACCESS HIGHWAY AS DEFINED IN MCL 257.26

This change in no way allows for the building to be any further away from the main hospital. We appreciate your time in considering this request and all of the time and effort spent on addressing these issues this year. We believe these changes represent positive improvements in public policy and request your continued support as these changes move for final action in December.

Sincerely,

Robert G. Riney