

CERTIFICATE OF NEED (CON) COMMISSION BYLAWS

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ARTICLE I - PREAMBLE

The Michigan CON Commission (Commission) is created in the Michigan Department of Community Health (the Department) and is established under the Michigan Public Health Code, 1978 PA 368, MCL 333.1101, et seq., as amended (the Code). The Bylaws developed by the Commission remain in effect until amended as provided for in Article X.

ARTICLE II - DEFINITIONS

Unless defined in these Bylaws, the terms used in these Bylaws have the meaning ascribed to them in Parts 201 and 222 of the Code.

ARTICLE III - GENERAL PURPOSE

The duties of the Commission are set forth in Section 22215 of the Code. The Commission exercises its duties to promote all of the following:

- A. The availability and accessibility of quality health services at reasonable cost and with reasonable geographic proximity for all people in the state;
- B. Appropriate differential consideration of the health care needs of residents in rural counties in ways that do not compromise the quality and affordability of health care services for those residents; and
- C. Consideration of the impact of a proposed restriction on the acquisition of or availability of covered clinical services on the quality, accessibility, and cost of health services in this state.

ARTICLE IV - MEMBERSHIP OF THE COMMISSION

A. Size and Composition

The Commission consists of 11 members as designated under Section 22211 of the Code.

B. Term of Office

Commission members will serve a term as set forth in Section 22211(3) of the Code.

ARTICLE V - MEETINGS OF THE COMMISSION

A. Quorum, Voting Procedures, and Proxy Votes

1. Section 22213 of the Code defines a quorum for the Commission. With an 11 member Commission, a quorum is 6 of the 11 members appointed and serving.
2. Final action by the Commission shall be only by affirmative vote of a majority of the Commission members appointed and serving. Any action taken in the absence of a quorum is invalid. If the Commission properly notices a meeting under the Open Meetings Act, but lacks a quorum when it actually convenes, the Commission members in attendance may receive reports and comments from the public or from the Department, ask questions, and comment on matters of interest.
3. Commission members cannot assign a proxy.

B. Compliance with Open Meetings Act

The Commission must adhere to the provisions of the Michigan Open Meetings Act, 1976 PA 267, as amended, MCL 15.261, et seq.

C. Governance under Robert's Rules of Order Revised

The Commission's procedural activities are governed by Robert's Rules of Order Newly Revised if they are consistent with state law and these Bylaws.

D. Regular and Special Meetings

1. In September, the Commission must announce the regular meeting dates for the following year. Special meetings may be called as provided for in Section 22213 of the Code.
2. A regular or special meeting of the Commission may be recessed and reconvened consistent with the provisions of the Michigan Open Meetings Act, 1976 PA 267, as amended, MCL 15.261, et seq.

E. Meeting Attendance

1. Commission members are expected to attend all regular and special meetings except on those occasions where good cause exists.

2. When a Commission member will be unable to attend a regular or special meeting, every effort should be made to give advance notice to the Department, which must notify the Commission chairperson or vice-chairperson.
3. The Commission chairperson determines whether good cause exists for the absence of a member from a regular or special meeting of the Commission. When the attendance of the chairperson is under question, the responsibility for determining good cause falls to the Commission vice-chairperson.
4. Pursuant to the Code, the Governor may remove a Commission member from office for failure to attend 3 consecutive meetings in a 1-year period. The Commission chairperson must promptly inform the Governor's office (a) if a member fails to attend the statutory minimum number of consecutive meetings in a 1-year period, and (b) indicate whether good cause existed for such absences.

F. Teleconferencing

Commission members may participate in meetings by teleconferencing consistent with the Open Meetings Act (1976 PA 267, as amended, MCL 15.261. et seq). Upon approval of the Chairperson, Commission members may appear at a meeting via electronic device, including speaker phone or interactive television, provided that a quorum is present at the meeting site and all individuals attending the meeting can hear, and can be heard by, the Commissioner(s) attending via electronic device. Commission members participating in meetings by teleconference cannot use teleconferencing to vote but may speak on matters being considered.

G. Agenda and Background Materials

1. In consultation with the Department and other Commission members, the chairperson must set a tentative agenda for each meeting.
2. No later than 7 days before each meeting, the Department must place the tentative agenda on the appropriate section of the Department's Web site.
3. No later than 5 days before each meeting, the Department must deliver the text for any CON review standards for proposed or final actions and relevant background to each Commissioner (using overnight delivery or Email, as necessary) and post it on the appropriate section of the Department's Web site. At the start of a meeting, the Commission, by unanimous approval, may add CON review standards, that meet statutory requirements for proposed or final action, to the agenda.

ARTICLE VI - OFFICERS AND PROCEDURES FOR ELECTING OFFICERS

A. Election of Chairperson and Vice-Chairperson

On an annual basis, the Commission must elect a chairperson and vice-chairperson for a 1-year term not to exceed 3 consecutive terms. The chairperson and vice-chairperson cannot be members of the same major political party.

B. Procedures for Selecting Officers

1. Any Commission member may nominate officers if the member is appointed and serving and attending the meeting where the selection of officers is to occur.
2. Officers are elected by a majority vote by the Commission members appointed and serving.

C. Responsibilities of Officers

1. The chairperson presides over Commission meetings. In the chairperson's absence, the vice-chairperson presides over the Commission meetings. If neither the chairperson nor vice-chairperson is able to preside over any portion of a meeting, the remaining members of the Commission must select a temporary presiding officer.
2. In the chairperson's absence, the vice-chairperson or the temporary presiding officer will perform the duties designated to the chairperson in the Code and these Bylaws.

D. Filling Vacancies in Officers

1. If the office of chairperson becomes vacant for any reason, the vice-chairperson must vacate the vice-chairperson position and serve as the chairperson for the remaining months of the chairperson's 1-year term.
2. If the office of vice-chairperson becomes vacant for any reason, the Commission must elect a new vice-chairperson by an affirmative vote of a majority of those members appointed and serving, and that person will serve the remaining months of the vice-chairperson's term.
3. If the offices of chairperson and vice-chairperson become vacant simultaneously, the Commission must conduct a special election to fill those

positions. New officers must be elected by an affirmative vote of a majority of those members appointed and serving and they must serve the remaining months of the chairperson's and vice-chairperson's term.

ARTICLE VII – COMMITTEES

A. Standing New Medical Technology Advisory Committee (NEWTAC)

Composition and duties of the NEWTAC are set forth in Section 22241 of the Code.

B. Standard Advisory Committee (SAC)

If the Commission determines it necessary, it may appoint a SAC to assist in the development of proposed CON review standards in accordance with Section 333.22215(1)(I).

1. The Commission must adopt the duties for a SAC. The duties of the SAC must be defined in a written charge. The written charge to the SAC may be adopted by vote of the Commission, or the Commission may instruct the chairperson to write the charge, consistent with the language adopted by the Commission.
2. The term of any SAC expires 6 months from the first meeting of the SAC or at an earlier date as specified by the Commission.
3. The chairperson appoints the members of a SAC consistent with statutory requirements and the criteria outlined in this subpart.
 - a. The Department determines whether a candidate for a SAC meets the following criteria:
 - i. The candidate has not served on more than 2 SACs within any 2-year period.
 - ii. The candidate is not a lobbyist registered under 1978 PA 472, MCL 4.411 TO 4.431.
 - iii. The candidate is not affiliated with a program with a Letter of Intent (LOI) or a pending application in the CON process related to the standard(s) being reviewed.
 - b. A SAC consists of a 2/3 majority of experts with professional competence in the subject matter of the proposed standard. The

Department determines whether a candidate seeking to be appointed as an expert to a SAC meets the following criteria:

- i. The candidate is a clinician, e.g., doctor, nurse, or other health care professional, who has specific education, training, and experience in the service being considered; or the candidate is a representative of an organization concerned with licensed health facilities, e.g., administrator or a specialist in the subject matter of the standard being reviewed, who have specific education, training, and experience in the service being considered.
 - ii. Professional competence demonstrated by relevant professional activity over a majority of the last five years.
- c. A SAC includes representatives of health care provider organizations concerned with licensed health facilities or licensed health professions, as well as representatives of organizations concerned with health care consumers, and the purchasers and payers of health care services.
 - d. Only one employee, director, or officer of any one health system, either directly or through the subsidiaries of a system can be appointed as a member of the same SAC. For purposes of these Bylaws, "health system" means facilities where health care is provided and includes without limitation hospitals, nursing homes, county medical care facilities, home health agencies, hospices, out-patient surgical facilities, laboratories, rural health clinics, freestanding surgical units, ambulatory surgical units, and end stage renal disease and dialysis facilities.
4. The Commission chairperson appoints the chairperson of a SAC.

C. Members of the NEWTAC and a SAC are subject to the following provisions:

1. Conflicts of interest consistent with Article IX of these Bylaws.
2. Teleconferencing consistent with Article V(F) of these Bylaws.
3. Michigan Open Meetings Act, 1976 PA 267, as amended, MCL 15.261, et seq.

ARTICLE VIII - PROCEDURE AND LEGAL COUNSEL

- A. The presiding officer will use the laws of the State, these Bylaws, and Robert's Rules of Order Newly Revised to resolve any question arising concerning procedure at a meeting of the Commission.

- B. The Attorney General of the State of Michigan, or the duly designated Assistant Attorney General, serves as legal counsel to the Commission.

ARTICLE IX - STANDARDS OF CONDUCT BY COMMISSION MEMBERS AND CONFLICT OF INTEREST PROVISIONS

- A. Commission members are subject to the provisions of:

1. 1968 PA 317, MCL 15.321 to 15.330 (contracts of public servants with public entities);
2. 1973 PA 196, MCL 15.341 to 15.348 (code of ethics for public officers and employees); and
3. 1978 PA 472, MCL 4.411 to 4.431, (lobbyists and lobbying regulation).

- B. Definition - Conflict of Interest

1. Under the State Ethics Act, 1973 PA 196, MCL 15.341, et seq, and in accordance with the Advisory Opinion of the State Board of Ethics of November 5, 2004, a conflict of interest for Commission members exists when the individual member has a financial or personal interest in a matter under consideration by the Commission. The personal interest of a Commission member includes the interest of the member's employer, even though the member may not receive monetary or pecuniary remuneration as a result of an adopted CON review standard.
2. A Commission member does not violate the State Ethics Act if the member abstains from deliberating and voting upon the matter in which the member's personal interest is involved.
3. A Commission member may deliberate and vote on matters of general applicability that do not exclusively benefit certain health care facilities or providers who employ the Commission member, even if the matter involves the member's employer or those for whom the member's employer does work.
4. Deliberating includes all discussions of the pertinent subject matter, even before a motion being made.

C. Procedures - Conflict of Interest

1. A Commission member must disclose any potential conflict of interest after the start of a meeting, when the Commission begins to consider a substantive matter, or, where consideration has already commenced, when a conflict or potential conflict of interest becomes apparent to the member.
2. After a meeting is called to order and the agenda reviewed, the chairperson must inquire whether any Commission member has a conflict or potential conflict of interest with regard to any matters on the agenda.
3. A Commission member who is disqualified from deliberating and voting on a matter under consideration due to a conflict of interest may not be counted to establish a quorum regarding that particular matter.
4. Where a Commission member has not discerned any conflict of interest, any other Commission member may raise a concern whether another member has a conflict of interest on a matter. If a second member joins in the concern, the Commission must discuss and vote on whether the member has a conflict of interest before continuing discussion or taking any action on the matter under consideration. The question of conflict of interest is settled by an affirmative vote of a majority of those Commission members appointed and serving, excluding the member or members in question.
5. The minutes of the meeting must reflect when a conflict of interest had been determined and that an abstention from deliberation and voting had occurred.

ARTICLE X - AMENDMENTS OF BYLAWS

- A. Any amendments to these Bylaws must be proposed by the Commission or presented in writing to the Commission by the Department at least 30 days in advance of the meeting where final action is scheduled to be taken.
- B. Amendments to the Bylaws become effective upon approval or on a later date if specified within the amendments.