

STATE OF MICHIGAN  
DEPARTMENT OF COMMUNITY HEALTH  
CERTIFICATE OF NEED

PUBLIC HEARING  
REVIEW STANDARDS FOR AIR AMBULANCE; CT SERVICES;  
NICU; NURSING HOME AND HOSPITAL LONG-TERM CARE  
UNIT BEDS AND ADDENDUM FOR SPECIAL POPULATION  
GROUPS; AND URINARY EXTRACORPOREAL SHOCK  
WAVE LITHOTRIPSY SERVICES/UNITS STANDARDS

BEFORE ANDREA MOORE, DEPARTMENT TECHNICIAN TO CON COMMISSION  
201 Townsend Street, Lansing, Michigan  
Tuesday, October 20, 2009, 9:00 a.m.

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## TABLE OF CONTENTS

### PAGE

Opening Statement by Ms. Moore	3
Statement by Ms. Phyllis Adams	5
Statement by Ms. Betty Guy	8
Closing Statement by Ms. Moore	9

Lansing, Michigan

Thursday, July 23, 2009 - 9:04 a.m.

**MS. MOORE:** Good morning. I am Andrea Moore, Department Technician to the Certificate of Need Commission from the CON Health Policy Section of the Department of Community Health. Chairperson Ed Goldman has directed the Department to conduct today's hearing. Comment cards can be found on the back table and need to be completed if you wish to provide testimony. Please be sure that you have signed into the sign-in log. This is the annual public hearing to determine, if any, changes need to be made to the standards scheduled for review: Air Ambulance Services, CT Services, NICU, Nursing Home and Hospital Long-Term Care Unit Beds and the Addendum for Special Population Groups, and Lithotripsy Services/Units Standards are scheduled for Commission review in 2010. The 3-year review schedule for all standards is listed on the second page of the Commission Work Plan which can be found at [www.michigan.gov/con](http://www.michigan.gov/con).

If you wish to speak on any of these scheduled standards, please turn in your comment card to me. Additionally, if you have written testimony, please provide a copy. Just as a reminder, all cell phones and pagers need to be turned off or set to vibrate during this hearing. As indicated on the Notice of Public Hearing, written testimony may be provided to the Department via our website at [www.michigan.gov/con](http://www.michigan.gov/con) through Tuesday, October 27th, 2009, at 5:00 p.m.

Today is Tuesday, October 20th, 2009. We will begin the hearing by taking testimony in the following order: Air Ambulance, CT Services, NICU, Nursing Home, and finally Litho. The hearing will continue until all testimony has been given, at which time we will adjourn. Is there anybody interested in speaking on Air Ambulance?

**ALL:** (No response)

**MS. MOORE:** Seeing none, we'll move to CT. Is anyone interested in providing testimony on CT?

**ALL:** (No response)

**MS. MOORE:** Seeing none, we'll move to NICU. Is there anyone interested in NICU?

**ALL:** (No response)

**MS. MOORE:** Seeing none, Nursing Home. I have Phyllis Adams from Dykema Gossett.

**MS. ADAMS:** Good morning. I'm Phyllis Adams, a health care attorney at Dykema Gossett. I was asked by HCR Manor Care to read the following testimony on the CON review standards for nursing home and hospital long-term care unit beds, which addresses whether the CON Commission should review these standards for potential revisions. HCR Manor Care is a national long-term care provider, with 28 nursing home facilities in Michigan. HCR supports reopening of the CON standards for nursing home and hospital long-term care unit beds on a limited basis to address the following issues.

First, HCR supports revisions to the comparative review criteria in the current CON standards. These criteria received limited attention by the Standard Advisory Committee during the most recent revisions. The current criteria are insufficient to distinguish among the most qualified applicants for nursing home beds. More importantly, these criteria could be improved significantly to include standards that favor and incentivize innovation, quality of care, and investment in technological improvements for nursing home facilities. The comparative review criteria could be a valuable way to raise the bar for new nursing homes or nursing home expansions in Michigan.

Second, HCR supports limited revisions to the high occupancy language in section 6(1)(d)(ii) of the standards. Some appropriate changes were made to this section during the last revisions effective in June 2008. These changes allow a facility to qualify for high occupancy without being tied to all other nursing homes in the planning area and allow the applicant's occupancy rate to be averaged over the most recent 12 quarters of operation. However, even with these revisions, the high occupancy exception is still nearly impossible to satisfy because of the 97-percent occupancy threshold that applies uniformly to all buildings. Occupancy may need to be indexed to the size of the building as there is a mathematical disadvantage under the current language for smaller facilities. For these buildings, one or two occupied beds, even for a short period, has a disproportionate impact for an entire quarter. Finally, HCR believes that the restrictions in Section 7 of the CON standards as to relocation of existing nursing home beds are unnecessary and unrelated to any objective standards or criteria. Specifically, allowing beds to be relocated from a donor facility only once every seven years is wholly arbitrary and unrelated to any factual evidence that more frequent relocations may be against the public interest. Relocation of beds to facilities seeking additional beds may help to right-size facilities within a planning area without increasing the total supply of available beds.

Additionally, the current standards may actually prop up poor performing nursing homes that have excess licensed beds by depriving more successful buildings of needed beds. The current standards also prohibit more than 50 percent of the licensed beds of the donor from being relocated. Again, this standard is arbitrary and irrational as there is no evidence that this would result in an appropriate number of beds at the donor facility to ensure ongoing quality of care. For example, an 80-bed facility could be reduced to 40 beds which would probably be highly inefficient. On the other hand, a 360-bed facility could be reduced to 180 beds, which still may be too many beds to support quality operations, particularly in an older, obsolete building. Additionally, after seven years, a 40-bed facility could relocate 50 percent of its beds again and have only 20 beds remaining. If necessary or appropriate, this standard could require a critical mass of beds to remain at the donor facility to address concerns that the number of beds left at that facility would be insufficient for quality operations. However, if that approach is used, criteria should be developed based on industry literature and published studies as to the relationship between nursing home size and quality of care and/or financial feasibility. Thanks very much.

**MS. MOORE:** Thank you. Is there anyone else interested in speaking on nursing home?

(Off the record interruption)

**MS. MOORE:** I have Betty Guy from Lakeland Health.

**MS. GUY:** Good morning. I'm Betty Guy from Lakeland Healthcare in St. Joe, Michigan. And we will be sending a more formalized statement regarding our position on the nursing home long-term care, and specifically the special addendum portion of that standard. Specifically, the State of Michigan has located a special pool of 130 hospice beds but currently, with pending application and already existing applications, there are no more hospice beds available in Berrien County. And Lakeland Healthcare would like to start a hospice residence to complement its comprehensive hospice and palliative care program. So we'd like to urge the Commission to increase the number of hospice beds available in the State of Michigan so that Lakeland Healthcare in southwest Michigan could initiate a hospice residence. Thank you.

**MS. MOORE:** Thank you, Betty. Is anyone else interested in speaking on nursing home?

**ALL:** (No response)

**MS. MOORE:** Seeing none, we will take testimony on Litho.

**ALL:** (No response)

**MS. MOORE:** Seeing none, let's go ahead and is there anyone else in the room that would like to provide testimony this morning on any of the five covered services?

**ALL:** (No response)

(Off the record interruption)

**MS. MOORE:** Then at this point, we're going to go ahead and adjourn for 10 minutes and make sure that we don't have any last minute people coming in late, and we will reconvene at 9:20.

(Off the record at 9:10 a.m.)

(On the record at 9:24 a.m.)

**MS. MOORE:** Is there anyone else in the room that would like to provide testimony on any of the five services today?

**ALL:** (No response)

**MS. MOORE:** Hearing none, we are going to go ahead and adjourn. Thank you, everyone, for coming today.

(Proceedings concluded at 9:24 a.m.)