FINAL REPORT AND RECOMMENDATIONS
Nursing Home-Hospital Long Term Care Unit CON Standards

To: **CON Commission**
From: **Karen J. Messick, MPA, LNHA**
CON Workgroup Chair
Date: **June 12, 2014 CON Commission meeting**
RE: **CON Workgroup report and recommendations**

The CON Workgroup met six times: December 18, 2013, January 16, 2014, February 13, 2014, March 27, 2014, April 8, 2014, and May 14, 2014

The workgroup was tasked with five charges (please see attachment 1). Charge 1 was to consider modifications to the comparative review criteria. By group decision, the majority of our time was focused on Charge 1. A sub-group was formed to work on recommendations with regard to Section 10(2) and 10(3) of the comparative review criteria regarding Medicare and Medicaid certification in relationship to the points awarded. The sub-group made their recommendation at the March 27th workgroup meeting, the recommendation was vetted and the final decision is included in our overall recommendations.

Another sub-group was formed to review Section 10(5) of the comparative review criteria regarding culture change with the objective to recommend any criteria changes. That group presented to the full workgroup on March 27th, the recommendations were vetted and are included in our overall recommendations.

The Department has been very helpful during this process (i.e. Beth, Brenda, Natalie, Tulika, and Joette). Spreadsheets were created to show all the comparative review criteria, scoring, etc. Other supporting information was also provided by the department to help us in our discussions. We used the spreadsheets to work through Section 10 of the comparative review in developing our final recommendations. In addition, Mr. Perry Smith, MDCH/CON, and Mr. Jim Scott, Licensing and Regulatory Affairs-BHS Engineer, attended specific workgroup meetings upon request to clarify requirements as we worked through the charges.

The intention for spending the amount of time we did on Charge 1 was to ensure we were making recommendations that not only made sense now but also in the future as health care reform begins to make its mark on skilled beds. Further, by resolving the criteria issues of Charge 1, we were able to work more effectively through the other charges as most of those discussions were also a part of the Charge 1 work.

At the February 13, 2014 CON Workgroup meeting, The Hospice and Palliative Care Association of Michigan presented a letter and recommendation to the Chair and the workgroup asking that Charge 4: "addition of 130 beds to the special pool for hospice" be removed from our charge list (please see attachment 2). The workgroup agreed unanimously with the recommendation to remove Charge 4.

Attachment 3 is a spreadsheet summary of the changes discussed in this report related to Section 10.

Finally and before proceeding with the workgroup recommendations to the CON Commission, I would like to acknowledge and thank the workgroup participants and the department for their outstanding work over these past five months. Ground rules for workgroup participation were established at the first meeting and revisited at the beginning of each subsequent meeting. The ground rules also helped establish a focus on only the charges at hand (recommendations not related to the original five charges are included in attachment 4).

The workgroup respected and adhered to the ground rules and, for this, I am most grateful. As this was my first role as chair of a CON workgroup with no prior experience with which to compare, I submit that we were thoughtful, diligent, respectful, and productive in accomplishing our task. The workgroup included an excellent representation of advocacy and professional diversity from all over Michigan: attorneys, the Ombudsman's office, staff from various state departments representing policy and rules, providers, insurers, hospice, health care and hospital associations, and Medicaid just to mention a few (note: this list is not all inclusive).

CON Workgroup recommendations and rationale: In all recommendations, please refer to the 6/5/2014 final draft of the CON Standards. **Note:** recommendations to point value changes have been made to the standards. However, at no place do these recommendations exceed the primary point values of the Medicare and Medicaid percentage requirements for patient days and bed certification.

Charge 1: Modifications to the comparative review criteria
Section 10:

10(2)(a)(i) and 10(2)(a)(ii): Qualifying project points for percentage of Medicaid patients days of care.

- After sub-group deliberation and considerable discussion by the full workgroup, it was determined that CON legislation requires this percentage in CON points awards. The points and percentages were changed to reflect the workgroup's desire to raise the bar for existing and proposed projects since one of the main goals of CON is to ensure access under Medicaid.

10(2)(b): Qualifying project awarded points for some determined percentage of Medicaid beds.

- Workgroup eliminated 10(2)(b)(i) and (ii) and created 10(2)(b) to specifically read: "If all beds in the proposed project will be dually certified for both Medicare and Medicaid services by the second 12 months of operation" then 10 points will be awarded.

  The rationale for this change was based on the redundant, unnecessary complexity of the old requirements, to ensure enhanced Medicaid access for those requiring the need for care. By recognizing the second 12 month period of operation would include existing and new qualifying projects starting when the CON is awarded.

Old 10(3): Participation in the Medicare program for the most recent 12 months.

- Delete; deemed unnecessary in relationship to the recommendations for 10(2)(a) and (b) above

10(3)(a) New number: Currently identified as a special focus NH-HLTCU by CMS.

- Delete; redundant to the remaining sections of 10(4)

10(4): Participation in a cultural change model.

- Workgroup asked MDCH to remove the Wellspring model from the review criteria as it no longer exists. Additionally, it was determined to award points accordingly: 3 points for a qualifying project if the applicant provides documentation to participate or proposes to participate in a culture change model. An additional 5 points will be awarded if the model is one approved by the department.

  The rationale for this recommendation is two-fold: first, to recognize that culture change comes in many packages-off the shelf and self designs. Some organizations have developed very good culture change programs but are not on the MDCH/CON approved list. The additional 5 points are awarded to those providers who have chosen a department-approved culture change model.

10(5): Applicant cash.

- The workgroup added language to the definition of applicant cash [Section 2(1)(c)] to include contributions from lease holders; deleted old 10(11) which awarded 5 points for providing audited statements

  The rationale for this recommendation appropriately includes the investment by the lease holder.

Old 10(6) Deleted: A qualifying project will be awarded 5 points if the existing or proposed NH-HLTCU is fully equipped with sprinklers.

- Deleted; the workgroup verified with the State Fire Marshall that sprinkling is now Federal law as of 8/2013 and confirmed that the State of Michigan complies.

10(6): Qualifying project will be equipped with air conditioning

- The workgroup amended the language to read: "A qualifying project will be awarded 4 points if the ENTIRE existing and proposed NH-HLTCU is fully equipped with air conditioning AS DEFINED IN THE MINIMUM DESIGN STANDARDS FOR HEALTH CARE FACILITIES IN MICHIGAN AND INCORPORATED BY REFERENCE IN SECTION 20145(6) OF THE PUBLIC HEALTH CODE, BEING SECTION 333.20145(6) OF THE MICHIGAN COMPILED LAWS OR ANY FUTURE VERSIONS."

  The rationale for this recommendation is to ensure improved climate control for the entire facility.

(Facility Design criteria):

10(7): 100% private rooms with adjoining sink, toilet, and shower.

- The workgroup amended the language to read: "A qualifying project will be awarded points based on the proposed project as follows:
  - 100% private rooms with DEDICATED TOILET ROOM CONTAINING A SINK, WATER CLOSET, AND SHOWER (6 POINTS)
  - 80% private rooms with dedicated TOILET ROOM CONTAINING A SINK, WATER CLOSET, AND SHOWER (4 POINTS)

  The rationale for this change to the prior language is to incent qualifying projects to create or update space to be more homelike and less institutional. The workgroup indicated that private citizens do not have sinks in their living areas and do not believe NH-HLTCU patients should

either. There is a need for semi private rooms to accommodate couples and other lifestyles hence the second bullet point and subsequent point award.

10(8): A qualifying project will be awarded 10 points if it results in an NH-HLTCU with 150 or fewer beds.

- "IN TOTAL" was added to the end of the statement in 10(10)

The rationale for this recommendation is not to create large campuses which could include both skilled nursing and assisted living.

Old 10(11) Deleted: Audited financial statements.

- Deleted and added to 10(5) "Applicant Cash"

The workgroup determined section 10(11) was redundant because it is already addressed in the Administrative Rules.

10(10): Elimination of existing 3/4 bed wards.

- The workgroup amended the language to read: "…will have no more than double occupancy at the completion of the project."

The rationale simply is the belief that wards are not appropriate for good care

10(11): The qualifying project is on a readily accessible public transportation route.

- Points were changed from 5 to 2

The rationale was to balance the points of comparative review based on better relevance to the care of residents.

(Technology criteria changed to "Innovations")

10(12):

The workgroup recommended the following changes to the Innovation criteria:

- WIRELESS NURSE CALL/PAGING SYSTEM INCLUDING WIRELESS DEVICES CARRIED BY DIRECT CARE STAFF.

- WIRELESS INTERNET WITH RESIDENT ACCESS TO RELATED EQUIPMENT/DEVICE IN ENTIRE FACILITY.

- AN INTEGRATED ELECTRONIC MEDICAL RECORDS SYSTEM WITH POINT-OF-SERVICE ACCESS CAPABILITY (INCLUDING WIRELESS DEVICES) FOR ALL DISCIPLINES INCLUDING PHARMACY, PHYSICIAN, NURSING, AND THERAPY SERVICES AT THE EXISTING AND PROPOSED NURSING HOME/HLTCU.

- THE PROPOSED PROJECT WILL HAVE A BACKUP GENERATOR SUPPORTING ALL FUNCTIONS WITH AN ON-SITE FUEL SUPPLY CAPABLE OF PROVIDING AT LEAST 48 HOURS OF SERVICE AT FULL LOAD.

The rationale for the workgroup recommendations after sub-group presentation was to recognize technology changes in these areas and look towards what will be changing in the immediate future.

Additionally, the workgroup added language related to an enhanced generator support to recognize recent outage issues.

10(13): New criteria for Bariatric rooms

- THE PROPOSED PROJECT INCLUDES BARIATRIC ROOMS AS FOLLOWS: PROJECT USING 0 – 49 BEDS WILL RESULT IN AT LEAST 1 BARIATRIC ROOM OR PROJECT USING 50 OR MORE BEDS WILL RESULT IN AT LEAST 2 BARIATRIC ROOMS [BARIATRIC ROOM MEANS THE CREATION OF PATIENT ROOM(S) INCLUDED AS PART OF THE CON PROJECT, AND IDENTIFIED ON THE ARCHITECTURAL SCHEMATICS, THAT ARE DESIGNED TO ACCOMMODATE THE NEEDS OF BARIATRIC PATIENTS WEIGHING OVER 400 POUNDS. THE BARIATRIC PATIENT ROOMS SHALL HAVE A LARGER ROOM AND BATHROOM ENTRANCE WIDTH TO ACCOMMODATE OVER-SIZED EQUIPMENT, AND SHALL INCLUDE A MINIMUM OF A BARIATRIC BED, BARIATRIC TOILET, BARIATRIC WHEELCHAIR, AND A DEVICE TO ASSIST RESIDENT MOVEMENT (SUCH AS A PORTABLE OR BUILD IN LIFT). IF AN IN-ROOM SHOWER IS NOT INCLUDED IN THE BARIATRIC PATIENT ROOM, THE MAIN/CENTRAL SHOWER ROOM THAT IS LOCATED ON THE SAME FLOOR AS THE BARIATRIC PATIENT ROOM(S) SHALL INCLUDE AT LEAST ONE SHOWER STALL THAT HAS AN OPENING WIDTH AND DEPTH THAT IS LARGER THAN MINIMUM MI CODE REQUIREMENTS.

  The rationale for this recommendation is to ensure access to care for bariatric individuals.

<u>Charge 2:</u> Elimination of the restrictive relocation criteria

- Section 7 was moved to Section 8 and the recommended changes are as follows:
  - Elimination of the 50% of the beds to another NH-HLTCU to make it consistent between the two types of units
  - Elimination of the 7 year relocation restriction
  - Added the relocated beds cannot create three or more bed wards

  The rationale for these recommendations was to better accommodate access to care.

<u>Charge 3:</u> Elimination of the 3 mile radius relocation requirement-Replacement beds, Sect. 7(3)(c)(i)

- The workgroup changed the language to read: "The proposed site for the replacement beds is in the same planning area." The 3 mile radius language was removed because it was initially put in because of new model design which is no longer relevant.

<u>Charge 4:</u> Addition of 130 beds to the special pool for Hospice

- The Hospice and Palliative Care Association of Michigan requested that this charge be removed. See attachment 2.

<u>Charge 5:</u> Technical changes

- The department corrected for consistency within CON standards and changes within the department structures (i.e. BHS to LARA) as well as grammatical changes. These enhancements include an addition to Section 11 indicating accountability of the applicant to complying with the CON award criteria for the approved project.

Workgroup concerns outside of the 5 charges:

1. The recognition that skilled nursing services are going to a more post acute care environment where patients are of higher care and recognizing that level of care through the CON process. We were not able to come to consensus on this issue and the issue will continue to grow in terms of access to care.
2. The current CON process requires the applicant to be site/location specific. However, due to the time required to approve a CON application, the location may no longer be appropriate or available. The workgroup discussed this concern at length and the department stated that this could not be addressed through the standards. We recommend that this be further reviewed and addressed by the appropriate mechanism be it legislative or administrative rules.
3. The CON planning areas for these standards are based on geographic county region with the exception of Wayne County which has 3 geographic regions. Whether geographic regions is appropriate at this time given the shift in the state's population is a matter of concern for the workgroup and we respectfully request a review be done of the planning areas. This issue was also raised by LeadingAge of Michigan. Please see attachment 4.

Lastly, the workgroup identified a serious technical error which the group was unable to correct. It concerns the availability of data from LARA that is used by CON numerous times to make application determinations based on survey citations at a Level D or above. Please see Section 6, 1(a)(iv) of the CON standards which is the first mention of many in the standards. This needs to be corrected in order to properly implement the CON standards. The workgroup strongly recommends that the data has to be current and correct or the standard must be changed.