

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH

PUBLIC HEARING
NURSING HOME AND HOSPITAL LONG-TERM CARE UNIT BEDS

Michigan Department of Community Health
Capitol View Building
201 Townsend Street, 1st Floor
Conference Center Room B
Lansing, Michigan 48913

Thursday, October 23, 2014
9:30 a.m.

APPEARANCES: NATALIE KELLOGG, CON

 PAT ANDERSON, HCAM

 RENEE BENIAK, MCMFC

RECORDED BY: REGENCY COURT REPORTING
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Lansing, Michigan

Thursday, October 23, 2014 - 9:32 a.m.

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MS. KELLOGG: Good morning, I'm Natalie Kellogg, departmental technician to the Certificate of Need Commission from the Planning and Access to Care Section of the Department of Community Health. Chairperson Mark Keshishian has directed the Department to conduct today's hearing.

Please be sure that you have completed the sign-in log. The comment cards can be found on the back table with the sign-in log. Comment card needs to be completed and provided to me if you wish to give testimony. Additionally, if you have written testimony, please provide a copy of that as well.

Today we are taking testimony on the following CON review standards: nursing home and hospital long-term care unity beds and hospital beds. A summary of the proposed changes for each set of standards can be found on the notice of public hearing and the complete set of proposed changes for each can be found in the draft language. The notice of public hearing and draft -- and the draft language for all standards can be found at www.michigan.gov/con on the -- on the meeting's page.

1 As indicated on the notice of public
2 hearing, written testimony may be provided to the
3 Department via our website at www.michigan.gov/con,
4 and will be accepted until 5:00 p.m. Thursday,
5 October 30th, 2014.

6 Today is Thursday, October 23rd, 2014,
7 at 9:33. We will begin the hearing now. Does anyone
8 wish to provide testimony?

9 MS. ANDERSON: Me. I filled out your
10 card and everything.

11 MS. KELLOGG: Thank you.

12 MS. ANDERSON: Is it all right if I
13 provide testimony for someone else that isn't here?

14 MS. KELLOGG: Absolutely.

15 MS. ANDERSON: I put that on the card,
16 too.

17 Good morning. I'm Pat Anderson with
18 the Health Care Association of Michigan. HCAM
19 represents -- okay -- HCAM represents 300 skilled
20 nursing facility providers across the State of
21 Michigan, including for-profit, not for profit,
22 county medical care facilities and hospital based
23 long term care units. HCAM would like to testify in
24 support of the proposed changes to these standards
25 for possible long term care units and nursing homes,

1 with the exception to the definition of "Proposed
2 Licensed Site." HCAM supports the concept this
3 definition adds to the standards, but believes the
4 250 yards is too restrictive and should be expanded
5 to the same three-mile limit and other criteria used
6 in defining -- in defining replacement zone.

7 The proposed language defining
8 "Proposed Licensed Site," which is line 127-131,
9 reads: "Proposed Licensed Site" means the physical
10 location and address, in parentheses, (or a legal
11 description of property) of the proposed project or
12 within 250 yards of the physical location and
13 address, parentheses again, (or legal description of
14 the property) and within the same planning area of
15 the proposed project that will be authorized by
16 licensed and will be listed on licenses -- licensee's
17 certificate of licensure.

18 HCAM understands from information
19 provided by CON staff at the September Commission
20 meeting that the 250 yards is from EMTALA, the
21 Emergency Medical Treatment and Labor Act. EMTALA is
22 a federal law that requires all Medicare-
23 participating hospitals with dedicated EDs or
24 emergency departments to provide care to anyone who
25 comes to the ED. Code of Federal Regulations, CFR

1 Section 489.24(a)(1)(i) defines the term hospital
2 property as a hospital campus as defined in
3 413.65(a), including the parking lot and other areas,
4 including any building owned by the hospital that are
5 within 250 yards of the hospital. It appears this
6 language is extended to the proposed definition of
7 "Proposed Licensed Site" keeping in line with the
8 campus type arrangements for hospital settings. It
9 does not appear to apply to the nursing home or
10 hospital long term care units covered by these
11 standards.

12 HCAM proposes that the "250 yards" be
13 changed to three-miles, similar to the allowance
14 provide in the definition of replacement zone. The
15 replacement zone provides for a three-mile radius, as
16 defined in these standards on line 151. Some of the
17 reasons for needing to change a location are: local
18 ordinances changes, wetlands, unsuitable soil to hold
19 structure, environmental contamination and the
20 purchase price becomes unreasonable. All of these
21 reasons can cause an applicant to seek a new location
22 prior to construction which can only be resolved at a
23 distance greater than the 250 yards. In fact, many
24 nursing facility construction projects need between
25 six to eight acres to have adequate space to meet

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their proposed construction plans.

The flex -- 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 pop -- population it was intended to serve.

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

I would also like to enter in testimony on behalf of Ciena Healthcare. David Stobb, the legal counsel, prepared this for them and wasn't able to drive up today.

So it starts, "My name is David Stobb and I am the 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'm here to provide comment to the most recent changes to the Proposed Amendments to the Review Standards for Nursing Home

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and Hospital Long Term Care Unit Beds.

I'm here to testify in support of the effort made by MDCH in revising the nursing home standards to include a 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 the construction projects greatly needed flexibility in identifying the specific location for new construction that would become a site under the CON rules.

I adopt my previous testimony provided before the Commission on September 25th 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 three-mile radius instead of 250 yard radius, we are not suggesting in any way that a provider could replace an existing nursing home within three-miles of the current site and then add another three-miles with the definition of Proposed Licensed Site. The Department should draft the definition so that such

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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 three-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 I urge this Commission to expand the 250 yard radius to the three-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."

That ends my testimony.

MS. KELLOGG: Thank you.

If there is no more further testimony, we will adjourn the hearing at this time. It's 9:40.

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Thank you.

(WHEREUPON, hearing was adjourned at
9:40 a.m.)

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STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

C E R T I F I C A T E

I hereby certify that this transcript,
consisting of eleven (11) pages, represents the
complete, true, and correct rendition of the
recording of the hearing held on October 23, 2014.

I further state that I assume no
responsibility for any events that occurred during
the above proceedings or any inaudible responses by
any party or parties that are not discernible in the
recording of the proceedings.

Amber Huffman
Amber Huffman, CER #8378
Certified Electronic Reporter
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Date: November 5, 2014