STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
CERTIFICATE OF NEED COMMISSION

COMMISSION MEETING

BEFORE JAMES FALAHEE, CHAIRPERSON

333 South Grand Avenue, Lansing, Michigan

Thursday, December 5, 2019, 9:30 a.m.

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Lansing, Michigan

Thursday, December 5, 2019 - 9:35 a.m.

MR. FALAHEE: Let's call the meeting to order. I'm going to apologize in advance. The microphone system, for those of you in the audience, is not going to work which might be an advantage for some of you. But for us Commissioners, these are not going to work. You heard the static, so we just shut them off. But the -- Marcy over here is going to record every word we say so don't think you can get away with anything.

So good morning, everybody. Let's call the meeting to order. I'm Chip Falahee, the chairperson of the Commission. It's always good when you have an agenda that's only one page because we may get out of here before I have to go testify in front of the senate health policy committee about CON reform. I'll fill you in on that later.

First item of business is the review of the agenda. Commissioners, we got a revised agenda yesterday and it was in front of you this morning. I would entertain a motion to accept the agenda as presented to us either late yesterday or in front of you this morning.

MS. GUIDO-ALLEN: Guido-Allen, motion to approve.

MS. LALONDE: Lalonde, second.

MR. FALAHEE: Great. Thank you. There's a motion to approve the agenda as presented. All in favor say "aye."

ALL: Aye.

MR. FALAHEE: Opposed? The agenda is approved.

(Whereupon at 9:36 a.m. motion approved)

MR. FALAHEE: Next item is our usual declaration of conflicts of interest. Does anyone have, looking at the agenda we have in front of us, any conflict of interest to declare? All right. Thank you. Next item, review of the minutes of our September 19th meeting. Those minutes were in our packet. I would entertain a motion to accept those minutes.

MS. BROOKS-WILLIAMS: So moved, Brooks-Williams.

MS. GUIDO-ALLEN: Guido-Allen, second.

MR. FALAHEE: Great. Thank you. Motion made and seconded to approve the minutes of September 19. All in favor say "aye."

ALL: Aye.

MR. FALAHEE: Opposed? Minutes are approved.

(Whereupon at 9:37 a.m. motion approved)

MR. FALAHEE: Great. Next we'll move on to the -- there's three, if you will, substantive items, not that they're not all substantive, but the first item is the one that was added the most recently. That's titled, "Hospital beds - set effective date of new hospital groups." And then we'll have one on nursing home/long-term care bed - effective date of new bed need numbers, that actually,

that's the one that was added, and then the next one is CT scanner services. You will notice that to my right there is one person missing and that's Brenda Rogers. Brenda is not here today but we assured her that we'd do our best to behave and act appropriately.

So let's go, the first item is the hospital beds, the effective date of the new hospital groups. That was in our packet, but I'm going to turn it over to Beth Nagel to describe it, answer any questions that we might have, and to seek her advice on what effective dates you would like us to set. Thank you.

MS. NAGEL: Sure. Thank you. Good morning. What's in your packet is an updated listing of the hospital groups. The hospital groups are -- in all of our standards there is a way to -- sometimes it's by health service area, sometimes it's by county to group facilities together to within those facilities for need. The hospital group calculation is outlined in the hospital bed standards and it essentially uses, you know, the locations of each facility and the patient pattern of each facility to group them together. The hospital bed standard set it that these must be updated and brought to the Commission every five years. We have been working on it for about a year, so we're about a year and some change off of that five-year review. We believe they are ready now for you to look at and to set the

effective date. We do recommend an effective date of January 2 which is the next time that we would publish the hospital bed need. So we are -- we are asking you to set the effective date at that time.

With that said, there were some changes. They're kind of briefly outlined. Several of the hospital groups stayed the same. There was some movement between each hospital groups. There were three that were eliminated all together because the hospitals went to other groups within -- within the hospital groups. So I can certainly answer any questions. There was a report in your packet from Michigan State University that hopefully added some additional detail. As I said, it's a -- it's highly technical, a mathematical formula that MSU runs for us so there certainly is a limitation of things that I can answer, so I'll do my best.

MR. FALAHEE: Any questions of Beth? I'm sure you've all read the report. She's very thorough and you can see where some hospitals move from one group to another. But any questions of Beth? Okay. Any Commission discussion? If not, I'd entertain a motion to set the effective date and recall that the Department's request is for the effective date of January 2 of 2020.

MR. MITTELBRUN: Mittelbrun, motion to set effective of new hospital groups of January 2nd, 2020.

DR. GARDNER: Gardner, second.

MR. FALAHEE: Motion made and seconded. Any discussion?

MR. DOOD: Is there any public comment?

MR. FALAHEE: None. Not that I'm -- Tania, do you have any other cards?

MS. RODRIGUEZ: (Shaking head negatively)

MR. FALAHEE: Okay. No public comment. Any other Commission questions, discussion? Okay. We have a motion on the floor to approve the standards as of January 2 of 2020. All in favor of the motion say "aye."

ALL: Aye.

MR. FALAHEE: Opposed? That motion carries.

(Whereupon at 9:41 a.m. motion approved)

MR. FALAHEE: Great. Thank you everyone. Next item is titled, "Nursing Home/Hospital Long-Term Care Unit Beds - Effective Date of New Bed Need Numbers." I've got three cards in front of me so far. And just to recall, when we were here last in September we talked about the effective date, we set the effective date, we instructed the Department to set the effective date as November 1. There was a motion made at our September meeting to delay that. The motion was made, but it was not seconded. So what we have is a situation where last week I received a request to add this as an agenda item working with Mr. Hammaker here to

make sure we were in compliance. As the chairman I said yes, I'd be happy to add that as an agenda item to this meeting. That's why it was added within the last week or so.

Just -- just a refresher of the facts here and then we'll go to the three cards. And the facts are that the new methodology numbers, they were in place and about ready to go about August or September. You all recall that we were -- we wanted to form a Nursing Home SAC, that was back in March of '19, when we made a motion in March of '19 to form that SAC, and we attempted to form the SAC and a SAC was never formed until after our September meeting. In spite of best efforts to the contrary, it didn't get formed until then. The SAC was formed. The first meeting of the SAC -- and I know the chair and the vice chair are here. I can't see the chair because the column is in the way, but Don, I know he's here and Frank's here. The first meeting of the SAC is in a week or so and then they'll proceed with that. The bed need methodology as we discussed last time we set it for November 1, based on our setting of the date, the Department then set that date, and since then I'm aware that letters of intent have been filed with the Department. A letter of intent is the first step in the CON process. The letters of intent have been filed based on those new bed need numbers, so people have acted what lawyers call a

reliance and taken action in reliance on those new bed need numbers. Those are the facts as we have them today. I wanted to refresh everybody's memory about what brought us here today before we turn it over to the public testimony.

I got three cards right now. I don't know if there's anybody else that wants to speak. Those of you who come here regularly know that if you have a dying interest to speak and all you're going to say is "me, too," don't bother. All right? You don't need to do that. The broad number doesn't necessarily sway the Commission one way or the other. So having said that, I've got three cards and they kindly told me who wants to speak first, second, and third, so I'll follow that. The first person to speak from HCAM, Melissa Samuel. Full disclosure, Melissa and I attended the Michigan/Ohio State debacle. There was one Ohio State fan in our group, but we kept making sure she was very quiet. She was quietly gloating, so there. So, Melissa, as you understand, all witnesses have three minutes to testify and then we as the Commissioners can ask them whatever questions we'd like. So, Melissa, the floor is yours. Thank you for being here.

MELISSA SAMUEL

MS. MELISSA SAMUEL: Thank you. Thank you. Good morning, Chairman Falahee and Commission Members. Thank you for the opportunity to comment today regarding the bed need

report adopted at the September Commission meeting. My name is Melissa Samuel, President of the Health Care Association of Michigan. HCAM represents nearly 350 nursing facilities across the state of Michigan, including for-profit, not-for-profit, county based and hospital long-term care units.

In light of the recently formed Standard Advisory Committee, I respectfully ask the Commission to rescind the adoption of the August 2019 bed need report, which added nearly 3,000 beds to the system, and revert to the prior bed need numbers.

Rescinding the report will not cause any negative consequences to the long-term care system and the seniors we serve. The current statewide occupancy for nursing facilities is 81 percent. It is clear there is not an access issue at this time. Allowing the potential development of excess beds, however, will have a significant impact on providers, residents, and the Michigan Medicaid program. The potential cost to the state is startling. Care provided in nursing facilities is funded by Medicaid, Medicare, and private resources, with Medicaid funding approximately 63 percent. Once unneeded beds enter the stream, the consequences of being over-bedded will follow, and we may not be able to undo the resulting negative impact.

The national trend over the past several years is to promote alternative options for seniors utilizing the long-term care continuum. Michigan's continuum of care reflects this trend and that is why we have seen yearly decreases in nursing facility occupancy. Michigan's seniors have other viable options. These changes should be reflected in how we determine the need for development of new nursing facilities.

I want to thank the Commission for forming the SAC to review the current methodology. HCAM has researched programs in other states and many use occupancy rates as a factor before allowing additional beds. We believe this is one of a number of improvements that can be made to update our current methodology.

State of Michigan should not embark on a path leading to significant cost implications for both the public and private sectors until full confidence in the need and methodology used to determine that need exists.

Thank you for your commitment to address this very serious issue and we hope you appreciate how important it is to the long-term care system.

MR. FALAHEE: Thank you for your comments and thank you for their brevity. Thank you.

MS. MELISSA SAMUEL: Thank you.

MR. FALAHEE: Any questions of Ms. Samuel? Okay.

Thank you. Next on the order I've been given, Don Haney, who is somewhere, behind a column.

DON HANEY

MR. DON HANEY: Good morning. Chair Falahee and Commissioners, thank you for the opportunity to speak today regarding the bed need numbers for nursing homes and hospital long-term care units. My name is Don Haney. I'm the administrator of Thornapple Manor, a county-owned, medical care facility located in Hastings, Michigan. I'm also chair of the Michigan County Medical Care Facilities council. I am also chair of the Standard Advisory Committee charged with reviewing the bed need methodology for nursing home and hospital long-term care beds. I would like to thank the Commission for entrusting me with this responsibility.

I am here today to respectfully request that the Commission take action to rescind the implementation of the bed need projection adopted at the September 19 CON meeting while the SAC reviews the basic methodology used to determine bed need. The August 2019 update to nursing home and hospital long-term care unit bed need reports an increase of nearly 3,000 beds over the current inventory, much of which is concentrated in counties with occupancy rates below 80 percent or at the 80 percent mark. Statewide occupancy rate is 80.6 percent and there is not an excess

issue. Beds are currently available for those who need them, and there will be no harm caused to Michigan residents if the Commission chooses to delay the addition of beds to inventory. However, more than 60 percent of facility residents are Medicaid beneficiaries and assuming that all beds in each planning area for the updated bed need are built, the additional cost to the state of Michigan program could be over 45 million of state general fund dollars. Each and every year further the additional -- the addition of beds will exacerbate an already severe shortage of direct care workers.

Included in the charge of the SAC is a review of the bed need methodology. We have already begun to review this methodology used in other states and understand Paul Delamater, who currently authors the bed need report, is also planning to make a recommendation to the SAC. The SAC is due to run for six months. As chair, I intend to complete our work and offer to the Commission a recommendation on bed need methodology much sooner than that. I am confident that we will ensure an updated methodology that takes into account occupancy rates and the modern dynamics of the long-term care continuum with access, quality, and cost concerns in mind. I am respectfully asking the Commission to delay any addition of the beds to the system while we work with my fellow SAC members to do

their duties as charged. Thank you for your consideration.

MR. FALAHEE: Thank you, Mr. Haney. Questions?

MR. MITTELBRUN: Mittelbrun. Mr. Haney, as chairman you mentioned that you're hoping to have your work completed sooner as chairman of the SAC. Ballpark? I know work has already been started, so what month do you think that might be?

MR. DON HANEY: You know, I would hope to -- depending on how the committee works well together which I'm sure we'll do, I would hope to see something in March, March or April.

MR. FALAHEE: Commissioner Wang?

DR. WANG: Commissioner Wang. Thank you for your comments. Just a couple things I wanted to clarify. So the 3,000 additional beds, how much of a percentage increase does that represent over the existing beds?

MR. DON HANEY: That I don't know. There's about 47,000 current beds, so less than 10 percent increase.

DR. WANG: Okay. And it's being commented several times, including in the letter in front of us, that the large proportion of Medicaid pays 63 percent and then the statement is made that adding beds is going to substantially increase that burden on Medicaid. Could -- could you explain the reasoning of that for me? Is Medicaid building the beds?

MR. DON HANEY: Medicaid wouldn't be building the beds, but once the beds are built, the plan cost by definition is going to increase the cost to the state of Michigan because as soon as they take in one resident, they're going to start receiving reimbursement, one Medicaid resident. And then that -- you leave the other buildings there as well that have occupancy issues already perhaps and it just creates additional cost without any additional benefit to the state.

DR. WANG: So there's billing, there's cost to Medicaid or the state just by having a facility and it's not billed, only on the services rendered?

MR. DON HANEY: Yeah. As soon as they start taking Medicaid residents, yeah, there's going to be costs.

DR. GARDNER: Commissioner Gardner. Wouldn't those costs be fixed, though, they'd just be at a different facility?

MR. DON HANEY: Yes, but you're paying for the plant costs and the facilities that are, you know, not fully occupied. So it kind of, you know, you're paying for buildings that aren't full.

DR. GARDNER: But the cost itself is the same. You get reimbursed X for this service across the board?

MR. DON HANEY: Yeah, our rates are based on a cost base reimbursement, correct; yeah.

DR. MCKENZIE: Commissioner McKenzie. You mentioned that the statewide occupancy rate is 81 percent. Are we aware of any areas, geographic areas where the occupancy rate is running higher where there are challenges in terms of getting beds?

MR. DON HANEY: I am not off the top of my head. I can tell you that in my county our occupancy rate combined is probably at 80 percent between facilities in my county and the current methodology would show I think a 44 bed increase.

DR. MCKENZIE: Any awareness from the Department at all?

MS. NAGEL: Sure. There are several counties, over 80. I don't have -- I have the numbers, but without reading each county to you, you know, I see some that are in the 90's.

DR. MCKENZIE: Okay. Thank you.

MR. MITTELBRUN: Mittelbrun again. Mr. Haney, as a followup, you know, we all kind of deal with the same thing with aging, an aging workforce, an aging population, our retiree population, so all the numbers I see is a, you know, a growth in all those things. So, you know, from my perspective I see increased demand as time goes by and I'm assuming your SAC is obviously taking a look at all that?

MR. DON HANEY: Yes.

MR. MITTELBRUN: And so this is -- it's not really a question, it's just more of a comment based on the way our, you know, population is going here in the state of Michigan and all over the country. So I guess I'm -- in my mind I'm anticipating there being a greater need.

MR. DON HANEY: There may be a greater need down the road. We know that the silver tsunami which we call it is coming. However, we've seen significant changes in our industry in the past three to five years. So this industry really hasn't changed since the late 50's in terms of how we operate and how we are being reimbursed. Medicare and Medicaid have been the predominant payers since the 50's. But within the last five years or so -- and I've been doing this for about 20 years in long-term care -- we've seen a significant change in the way that long-term care facilities are reimbursed, from Medicare advantage plans to ICOs to ACOs to PACE programs. So there's a much wider spectrum of folks that are involved in our reimbursement methodology.

What we've also seen in the last five years, three to five years ago my facility in our rehab unit would take in hip and knee replacements, rehab them for about 30 days and send them home. Today, we don't do any hips and knees at all. They go straight home and they follow up in outpatient therapy. The folks that we get are much more medically complex and even given that they're much more

medically complex, so they have multiple what we call co-morbidities: diabetes, congestive heart failure, other chronic conditions. Our average length of stay in a rehab unit has gone from 30 days to 11 days, so we need three times as many admissions just to keep our occupancy the way that it was because whereas technology is changing, the folks that were in-home 30 years ago, or that were in the hospital 30 years ago are in long-term care beds, folks that were in long-term care beds 30 years ago are now at home or assisted living. We're continuing to see that -- that push. And that's good. That's a great thing for all of us and for all taxpayers because we're -- have less costs overall when -- when we push folks down to the least costly alternative setting of care. We don't know how that's going to continue. I mean, just the change in the last three years has been phenomenal and how that change will continue to happen over the next five, ten, or 15 years we can't predict. So as that silver tsunami arrives, there are other factors changing how we approach health care and how we care for those folks.

MR. FALAHEE: Other questions?

MS. NAGEL: Could I update?

MR. FALAHEE: Sure.

MS. NAGEL: Just to update you, Commissioner McKenzie. Tulika went ahead and did a quick analysis and of

the counties in Michigan, 13 are above 90 percent occupancy and 32 are above 80 percent occupancy.

DR. MCKENZIE: Thank you.

MR. FALAHEE: Mr. Haney, thank you. Thank you for your work and I see Frank over there, too, as the vice chair on the SAC. I appreciate both of you saying yes when I called. We look forward to your report, whether it's March, June, whenever you want to get it to us. Thank you very much.

MR. DON HANEY: Thank you.

MR. FALAHEE: Thank you. The last card I've got, he's already standing because he knows he's it, Dave Walker from Spectrum.

DAVE WALKER

MR. DAVE WALKER: Thank you very much, Mr. Chairman, and thank you members of the Commission. My name is David Walker and I'm here on behalf of Spectrum Health. I was going to try and set -- set a record for the shortest public comment, but I've added a few notes since the other speakers started.

So I wanted to comment and provide a health system perspective, how Spectrum Health fully supports the comments made by HCAM and supports rescinding the bed need numbers that were put in effect at the last CON Commission meeting. I think that an addition of 3,000 beds is significant and I

would also comment that there are certain ways that facilities that do need beds could add beds under the high occupancy provision. If there's 13 counties that are above 90 percent and 32 percent (sic) that are above 80 percent, the facilities in those counties certainly have the option to add beds by a high occupancy provision and therefore an addition of new beds is probably unnecessary at this point.

So I would just be here to voice support from a health system perspective of HCAM's effort to reduce or to rescind the recent bed need numbers, rescind the old numbers, and I understand that this causes a delay, but allot a time for the SAC to complete its work, develop a new methodology that more accurately reflects the needs of the beds in the -- in the state, and then we'll be able to know the real number needed and go forth. So thank you very much for your time. I'm happy to answer any questions commissioners may have.

MR. FALAHEE: Any questions? Commissioner Hughes?

MR. HUGHES: And maybe after him a member from the Department. But could somebody just give us a quick refresher on the CON foreign language of the high occupancy in terms of getting more, what that entails? That would be awesome, please.

MS. NAGEL: Yeah. Tulika, are you able to talk about how the occupancy works for nursing homes?

MS. BHATTACHARYA: Yeah. I don't have the standards in front of me.

MS. NAGEL: Oh, okay. I'm going to get them.

MS. BHATTACHARYA: Yes, please.

(Ms. Nagel retrieving electronic data)

MR. HUGHES: And I'm going to phrase my question while you do that. I'm just trying to understand when it kicks in and what it entails.

MR. FALAHEE: While Tulika is looking, I was on a SAC as the vice chair when we came up with the high occupancy language for hospitals. Nursing homes modeled closely after that and the bottom line is -- and Tulika will give me the exact numbers -- but when you reach a certain occupancy and if you stay there for 12 months, let's say -- in a hospital I think it's 75 percent. If you stay at 75 percent for 12 months, then you can apply for beds to get you to back to, if you will, roughly 70 percent occupancy. Okay. So the theory being if you "full" add the beds and then if you've added too many and your occupancy drops too low, then beds will be taken away from you. But that's how it worked and it's worked well in the 15 years that we've had high occupancy for hospitals. I know that Beaumont has used high occupancy and Bronson has used high occupancy for their hospitals, not for nursing homes. But Tulika's probably got the language by now.

MS. BHATTACHARYA: So this is Tulika. And you were right, Mr. Chairman. It used to be a complicated methodology for nursing home occupancy, but in the last round of revisions we have simplified it. So right now how it will work is if a nursing home can show 92 percent occupancy in the most recent 12-month period from the date of their application and then 90 percent for the previous 12-month period, so it's a 24-month look back, then they can add new beds to their facility. But there are some restrictions. The nursing home must not have decreased their beds or given up their beds to another facility in that last 24 months because we don't want them to, you know -- like if you have given up beds to other facilities then -- and then you come back and say, "Oh, we have high occupancy, give us new beds." So in order to stop that, so that is one restriction. And for the new beds they are going to add under high occupancy it has to be either semi-private room or private rooms. And the new beds shall be certified for Medicare and Medicaid and once we have added the high occupancy beds, they cannot relocate any beds from their facility to another nursing home in the planning area.

MR. HUGHES: So maybe just, like, correct me if I'm wrong on this assumption. Is -- and this is more of an ambiguous question, but it is, I think we have some that are

a little bit over 90, but is there any complaints that we're getting from counties where people are saying, "Hey, we have a real crisis here. There's -- there's not options"? I don't think we're hearing that. And then second, if there was a place that in an issue like this, the stuff that you did a few years ago seems like a pretty good solution to deal with it on a shorter term basis. Is that a fair assessment or am I off base?

MS. NAGEL: That's to us?

MR. HUGHES: It's to anybody.

MS. NAGEL: Oh, okay. Well, I couldn't say -- we're not aware of any complaints or concerns, but that doesn't mean there aren't any, just they haven't come to us.

Mr. HUGHES: Thank you.

MR. FALAHEE: Other questions? Thank you.

MR. DAVE WALKER: Thank you very much.

MR. FALAHEE: We'll now go into Commission discussion. Prior to whether any motion is made or not we always have discussion so we can ask questions of ourselves or the people to my right. So any -- any items, any questions you've got, any discussion items?

MS. BROOKS-WILLIAMS: Commissioner Brooks-Williams. I'm sorry. I was chewing. So -- so my one question is we're rescinding, right, what we approved last time. Is that our only option? And maybe I'm asking

that --

MR. FALAHEE: We're not doing anything yet.

MS. BROOKS-WILLIAMS: Well, we're considering that.

MR. FALAHEE: We're being asked --

MS. BROOKS-WILLIAMS: There you go. So my question is, is that our only option?

MR. FALAHEE: This is Falahee. I would say that's -- that's one option.

MS. BROOKS-WILLIAMS: One option is leave it alone. I understand that one.

MR. FALAHEE: One option is leave it alone.

MS. BROOKS-WILLIAMS: Uh-huh (affirmative).

MR. FALAHEE: Another option is rescind.

MS. BROOKS-WILLIAMS: No in-between? There's nothing else. Is there something called pause?

MR. FALAHEE: Well, I have a question for the Department. If you'll let me ask that one. I don't --

MS. BROOKS-WILLIAMS: Yes, ask yours and then --

MR. FALAHEE: -- I don't think it will create a third option, but it might help us figure out --

MS. BROOKS-WILLIAMS: To clarify the --

MR. FALAHEE: -- what to do. Right.

MS. BROOKS-WILLIAMS: Okay.

MR. FALAHEE: So Mr. Haney said that the SAC may

finish in March. Whether it'S March or June, if the SAC comes forward whenever and says, "As part of our charge we've looked at the November 1 bed need methodology and we find issues with it and here's why" and then we as the Commission take that report from the SAC, we say, yes, we agree with you -- bear with me here, okay? -- and then we send it out for public comment and then the public comment comes back and it's okay and we approve that SAC recommendation, then that would probably entail changes to the standard and maybe changes to the bed need methodology. All right. So right now we have what I call the November 1 bed need methodology. Let's say the SAC comes forward and by September 1 we've gone through all the public comment and there are changes in the bed need methodology then as of, I just threw out a date, hypothetically September 1. Could the Commission then approve new bed need numbers as of September 1 that would replace the November 1 bed need numbers?

MS. NAGEL: The answer is yes. We just actually did this exact same maneuver for psychiatric beds if you recall. We changed the psychiatric bed methodology and at the same time that you approved the changes to the methodology and the changes to the standard, you also approved and set the same effective date for the bed need numbers that corresponded with that, with the new

methodology changes.

MR. FALAHEE: So Commissioner Brooks-Williams, that's -- I wanted to push, parse through that because that may be something that would factor into any decision we might make, whether it's rescind, keep it in place or whatever else.

MS. BROOKS-WILLIAMS: So Brooks-Williams. Just one additional question then to the Department. So in the scenario that Commissioner Falahee just laid out, if within that window of time someone applies for beds under the November 1 methodology that potentially changes September 1, those that would apply within that window if they are granted those beds through the process, are they affected by that change?

MS. NAGEL: So if a -- let's say someone applies, the next time -- even though the bed need effective date is November 1, the next time that they're able to apply is that open window date of February 1. So let's say someone applies February 1 and it takes us four months --

MS. BHATTACHARYA: Four to five months.

MS. NAGEL: -- four to five months to approve that application. If the bed need changes within the time that it takes us -- it changes as in is approved, goes through all of the 45-day review and all of that, within those four to five months from February 2nd, then those applications

that haven't been -- yet been approved are subject to the new numbers. Is that --

MS. BROOKS-WILLIAMS: Yes, that answers my question.

MS. NAGEL: And did I say that right?

MS. BHATTACHARYA: Yes. Everything you said is right. Just one thing. So the maximum review period is four to five months, but depending on our application queue decision load, we never wait the maximum period and we issue decision as soon as they come up in our queue. So just that caveat that four to five months is the maximum review period, but it can be issued sooner if, you know, it comes up in our queue.

MS. BROOKS-WILLIAMS: One more question for the Department. Brooks-Williams. So -- so -- so you're look -- and maybe it's not a question. It's kind of a question because the only dilemma I think that I want us to consider at as we're discerning this is if there is a need that the beds, and even if the formula is not precise, created an opportunity for would we want them to have to wait -- potentially it sounds like we're talking just shy of a year -- before that would be revealed given your concept that you've got some people -- because I don't presume that this would only be people who are currently operating somewhere trying to incrementally add beds to where they

are. It could be someone adding beds to an environment that does not have them today; right?

MS. BHATTACHARYA: Uh-huh (affirmative).

MS. BROOKS-WILLIAMS: Okay.

DR. WANG: So Wang for clarification on that. So given wherever the bed thing is, if there is a need that's greater than -- they meet the high occupancy criteria, those are not subject to these numbers and approvals; correct?

MS. BROOKS-WILLIAMS: Yeah. They don't meet those.

MS. NAGEL: Correct.

MS. BHATTACHARYA: Correct.

MS. NAGEL: Yup.

MS. GUIDO-ALLEN: So to -- Guido-Allen. So to clarify, if they meet high occupancy, they can proceed with that request?

MS. NAGEL: Yeah, regardless of what the bed need numbers are.

MS. GUIDO-ALLEN: Regardless of what bed need. Okay.

MR. FALAHEE: Other questions?

MR. MITTELBRUN: Mittelbrun. Based -- based on the chairman's question and the Department's response of that scenario, that seems like a logical -- a logical course of action to me. That's all I wanted to say.

MR. FALAHEE: And this is Falahee. I've had multiple discussions with those that are going to chair and co-chair the SAC and when Mr. Haney said March, I won't take it to the bank, but I might bet on it. I know they want to get moving as quickly as possible and they're getting ready to start this month. So we -- when we have our March meeting March 19th, odds are we may get a report back. Not guaranteeing, but we might.

The one -- this is Falahee again. The reason I asked Beth Nagel that question was one of the concerns I've got is if people have acted, as I said earlier, in reliance on the November 1 bed need numbers, if they've gone out and bought a piece of land, gone out and spent money to do something, and I'm concerned about those that have acted in reliance, if we rescind, it's up to us to vote on that if we want to, that they would say, "Wait a minute. I took an action based on some numbers that you approved or the Commission authorized and then the Department approved" and I -- I worry about the impact of that. That's my two cents worth.

MR. HUGHES: And, like, I might whisper to the legislators and get legislators that are already looking to get rid of the CON even more ammunition?

MR. FALAHEE: Were you there when I met Mr. Shirkey this morning on the sidewalk?

MR. MITTELBRUN: So Mittelbrun. Just, Chip, to your comments based on the time frame and if there are people that already acted in reliance, I'm -- I guess I'm going to ask the Department if they have a -- to me it's not going to be a huge num- -- it's not going to move the needle in the time frame we're talking about. Right? So --

MS. BROOKS-WILLIAMS: I mean, we don't know, but --

MR. FALAHEE: This is Falahee. I think it's hard to know. People could have acted in reliance already and not have filed anything with the Department.

MR. MITTELBRUN: Right.

MR. FALAHEE: They could have bought a piece of land --

MS. BROOKS-WILLIAMS: Exactly.

MR. FALAHEE: -- and then spent some money to put earnest money down on a piece of land, not have filed any letter of intent. And that's why I know in speaking to Mr. Haney that's why -- one of the reasons the SAC wants to get moving and get moving quickly. Any other discussion or questions? Commissioner Dood?

MR. DOOD: I think there's a potential given how if -- if things play out that when we change the methodology and have new bed need numbers and if you've got CON applications in place that then are subject to brand new

numbers, that many more people will have acted between now and then and my guess is just based on the intuition of it, the fact that there are way more beds than there are people sitting in them today, that it will be a much bigger issue if we don't rescind the higher bed need. I just don't see any impact on -- any adverse impact on access, quality, or cost if we rescind these numbers and let the SAC do their work, come back with a recommendation, and we'll change it once. I suspect they -- they won't go up nearly as much as what -- what we approved or the number won't.

MR. FALAHEE: Other questions or discussion? Commissioner Brooks-Williams?

MS. BROOKS-WILLIAMS: I was going to say -- Commissioner Brooks-Williams. Not a question, but -- but -- but another thought. And I think just trying to rely on the education I privately received this morning is that not being able to anticipate what people are thinking based on what we approve, we -- we need to take that into consideration because for whatever reason we accepted those numbers based on the information that was presented to us. And so to not have an option, if I'm hearing the Department correctly to -- to kind of have a stay which is what I would be very comfortable with, so if we said we could just hold until we had the SAC's result, but we can't do that. I just think we have to be aware of what it means to say we're

going to rescind it with no new information. Just -- just seating the SAC in and of itself isn't new information to suggest that it is actually not accurate; right? I think the SAC will give us clarity on if we need a new methodology or if it's accurate or not. And so I think we have a risk in either way is I guess what I would advance.

MR. FALAHEE: Thank you. Other --

MR. HUGHES: Yeah. I just want to add because there's a lot of Commissioners that are smarter to me. To me the dilemma is I'm convinced that there is not a need for additional beds right now and I hate to saddle more Michigan taxpayers with more unnecessary open places. But at the same time because the way this process went down, I'm worried about the collateral damage of us doing what should be the right thing, but because the SAC didn't get seated in the first place, it created this whole situation. So what's the best of bad options? It's kind of like my haircut and I don't know what it's -- and I'm hoping one of you has a better idea than me.

MR. FALAHEE: Other comments, questions? We need a motion on the floor one way or the other. If someone's ready to make a motion, so be it.

MS. GUIDO-ALLEN: I am.

MR. FALAHEE: Okay.

MS. GUIDO-ALLEN: So Guido-Allen. I actually

wrote it out last night. I make the motion to rescind the November 1st, 2019 effective date for our nursing home and hospital long-term care unit bed need numbers which were previously established at the Commission September 19th, 2019 meeting, and to revert back to our bed needs number that were in effect as of October 31st. So this motion would allow the SAC to review the bed need methodology during this time, then there'll be a second motion after that. Do you want me to share that?

MR. FALAHEE: No. Let's do the first one first. Okay? Is there a second for that motion?

MR. DOOD: Commissioner Dood. I'd support that.

MR. FALAHEE: Okay. Motion has been made and seconded to, and I'll -- with your permission, to rescind and revert. So to rescind the November -- rescind our September action and revert back to what was in effect before November 1. Any questions about that motion? Any discussion about the motion?

MR. HUGHES: Nobody else has a --

MR. FALAHEE: Well, we have a motion on the floor.

MR. HUGHES: I know, but discussion? I just --

MR. FALAHEE: Yeah, that's what I asked, any discussion.

MR. HUGHES: Yeah. Is everybody just scared of the ramifications of doing this? To me it seems like the

right thing. That's what I'm trying to weigh this against.

MR. FALAHEE: Yeah. It's up to each individual.

MR. HUGHES: Yeah. But does the Department have an opinion on the collateral?

MR. MITTELBRUN: Well, while you're thinking about that. This is Mittelbrun. I'm just going to say I -- I agree with Commissioner Brooks-Williams' comments earlier and I just think it should take its normal course. And as you reviewed the history of why we're where we were at earlier, and you just said the same thing, we should just let it take its normal cour- -- in my mind, take its normal course, let the SAC do its job. Mr. Haney is probably going to get it done more quickly and I think that avoids any other complications.

DR. MCKENZIE: Yeah. This is Commissioner McKenzie. I -- you know, I think we're all sitting here weighing -- right? -- and I tend to agree with Commissioner Brooks-Williams as well as Commissioner Mittelbrun that, you know, letting the process run its course. I think there is potential impact for collateral damage as you talked about. So it's a difficult situation, rock and hard place.

MR. FALAHEE: Right. Other discussion? Commissioner Dood?

MR. DOOD: I think by the time we get around to setting the new bed need methodology people will put dirt in

the ground and so you're talking about hundreds of millions of dollars that will be spent on new nursing facilities before we get back to this again. And just the fact that people can get into this process, spend a lot of time and money getting the CON's queued up and if we change that methodology and it goes back, we're going to have a much bigger collateral damage problem than we do acting today.

MR. FALAHEE: Commissioner Brooks-Williams?

MS. BROOKS-WILLIAMS: This is Commissioner -- yeah, Commissioner Brooks-Williams. Just to clarify with the Department. If someone submits a letter of intent, they still have to go through the CON application process, what is their recourse if they're not approved?

MS. NAGEL: They can appeal.

MS. BROOKS-WILLIAMS: But -- but -- but they could not, I mean, so the presumption that they can do it before they have the CON -- I'm trying to clarify the idea that we would have millions of dollars spent --

MS. NAGEL: So --

MS. BROOKS-WILLIAMS: -- prior to having the -- the SAC results back because I -- I want to be sensitive to that.

MR. DOOD: We were talking about a September 1 date. So if people filed February 1 --

MS. BROOKS-WILLIAMS: No. Understood, but I think

we're being kind of -- hopefully hoping that we're going to be sooner than that.

MS. NAGEL: So if someone -- so they -- they filed a letter of intent, they applied February 1st, Tulika and her staff are doing a great job, there's not a lot in the queue, they could get approved let's say in May, May or June potentially and then they could start implementing their new beds. That could be a shovel in the ground, that could be a wall in their current facility, you know, whatever it is. They could start at that time. If the standard changes and is effective in that time, then that application is denied.

MS. BROOKS-WILLIAMS: Right. Okay. Yeah. So that site -- so timing becomes a critical piece.

MS. NAGEL: Yes.

MS. BROOKS-WILLIAMS: Are you -- are you able to make us aware if anyone has filed letters of intent or you have any knowledge of people that are interested in these beds?

MS. NAGEL: I think we have --

MS. BROOKS-WILLIAMS: Are we able to share that?

MS. NAGEL: Yeah, I think it's public.

MS. BROOKS-WILLIAMS: Yeah?

MS. BHATTACHARYA: Yeah. To my knowledge I believe there are five letters of intent filed for new nursing home beds in multiple planning areas. I can give

you the exact details.

MS. BROOKS-WILLIAMS: No. I just was curious. Okay.

MR. HUGHES: What if the Department here wasn't at our state run as great as it is and you emulated some of the poor performance --

MS. BROOKS-WILLIAMS: Someone had a vacation.

MS. NAGEL: Yeah.

MS. BROOKS-WILLIAMS: A couple months.

MR. FALAHEE: In some states the chairman makes the decision of whether to grant or deny a CON, and in those states the chairman took under the table money. Here I take a bagel. No. I think we've had a real good discussion and good questions. Any -- anything else? Any other commissioners want to raise anything? We've got a motion on the floor.

DR. GARDNER: I don't -- Commissioner Gardner. I see the risk from our standpoint as rescinding those beds. We made that decision without SAC input. Made that decision based on some basic knowledge of aging population, et cetera. I understand there may be a cost component that could be had by building these beds, but the decision was made. I think that's a greater risk is rescinding.

MR. FALAHEE: Thank you. Other comments?

DR. WANG: Those -- Wang. Just this is a minor

point, but I think it's important. Those five letters of intent, do we have any idea whether they're in the high occupancy counties or elsewhere? Don't know?

MS. BHATTACHARYA: I don't want to make that comment without looking into it, which counties they are in and what has been their occupancy in the last couple years. I just don't know off the top of my head.

DR. GARDNER: Commissioner Gardner again. The high occupancy is greater than 70 percent?

MS. BHATTACHARYA: 92 percent for 12 month, and then 90 percent for the previous 12 months.

MS. NAGEL: And that is for their facility, not their county.

MR. FALAHEE: Anything else? Okay. We have a motion on the floor and I'll rephrase it and Commissioner Guido-Allen will tell me if I get it wrong. It's shorthand version to rescind the action the Commission took and instructed the Department to take at our September meeting, to rescind that for the date was set as November 1, and then to revert to the bed need methodology that was in place before November 1. So all those in favor of that motion, please raise your hand.

(Commissioners Dood, Hughes, Guido-Allen in support)

MR. FALAHEE: I see three. All those opposed to

the motion please raise your hand.

(Commissioners Falahee, Mittelbrun, Brooks-Williams, Gardner, Lalonde, McKenzie, Oca, and Wang opposed)

MR. FALAHEE: That motion is denied.

(Whereupon at 10:26 a.m. motion is denied)

MR. FALAHEE: Commissioner Guido-Allen, you said you had a second motion?

MS. GUIDO-ALLEN: No. I'm done. Thanks.

MR. FALAHEE: Okay. Thank you. Would anyone care to make another motion? As I think about it, lawyers talk to themselves all the time. There's no motion needed to re-approve what we did in September. So I think that matter is closed. Thank you for very good discussion. Thank you for hearing your testimony by our three witnesses and we can anticipate a quick SAC process.

Okay. Moving on, we have next a CT scanner services interim report. In your packet you'll see the work group report. It's a very, very detailed report. I commend the work group for all the work they've done and I look forward to their final -- final report. But does anybody have any questions about that work group report?

Okay. Moving on, legislative update. Where do I begin? I'll just say that thanks to you putting up with the e-mails I sent regarding the IECT issue, as you all know,

that the legislature by voice vote approved concurrent resolution to reject the action the Commission took and we'll leave that at that point for now.

Related to that, there is, as I mentioned before, keen interest in the Certificate of Need and Certificate of Need reforms. As many around the table know and those out in the audience, Senator VanderWall has been pushing six reforms. Those bills were introduced either Tuesday or Wednesday of this week. The first hearing on those bills is today at 1:00 o'clock. I know some in this room and maybe even Commissioner McKenzie are going to be there to testify. Senator VanderWall contacted me and asked me to testify. I get to go last. I don't know if that's good or bad, but that will be this afternoon, the first set of hearings. And there's six reforms and we'll see what happens through the legislative process. I've met with Senator VanderWall probably five times between when we last met in September and now. I've met with 15 legislators to talk about CON, to talk not just about IECT, but to talk about the CON process, reforms. I can -- I assured them that, you know, we do our job with the standards that we're presented and do we all think CON is perfect? No. And that appropriate, well thought out reforms I think are valid and should have the light of day and we should be able to look at them. So that process will begin this afternoon at 1:00 o'clock. Any

questions about anything to do with our friends in the legislature?

MS. GUIDO-ALLEN: Are any of the reforms to eliminate CON?

MR. FALAHEE: None of the reforms are to eliminate CON. There are six reforms. The one that would most impact us is to add two members to the CON Commission, so we would be a lucky 13 on the Commission. Two members of the "public," however that's defined. All right? Then there are reforms are to remove air ambulance from CON. Right now when you do a covered clinic expenditure or capital expenditure, sorry, once you get above a certain threshold you have to file a CON. The proposal is to eliminate the covered capital expenditure dollar amount. Catheterization standards, the proposed reform is to enable CMS approved outpatient cath procedures to be performed somewhere not in a hospital setting. There's another one on psych beds, to potentially exempt adult and child psych beds, the initiation of them, from CON. I think that wording is still in flux. Another of the reforms would exempt certain critical access hospitals from CON based on whether they're either 35 miles radius from the nearest hospital or maybe they really meant to say 35 minutes drive time from the nearest hospital to exempt them from CON. Based on the analysis that I've done and I know that the department has

done, the hospitals that would meet that criteria are all in the UP. There's either six or eight of them depending on how the crow flies or your car drives. Okay. And I may be missing one, but that gives you a gist of what they're at. None of them are saying repeal.

I've had several discussions with Senator Shirkey over the years. He is a former board member of the hospital in Jackson, understands that health care is a unique economic market. And though he is clearly a free market person, either right or wrong that's what he is, he understands the need for CON. And we were able to show the legislators I met with that Indiana just had a study commission to look at costs and where state's costs are relative to CON. And in the graph, Indiana didn't get what it wanted. When you looked at one of the most expensive states, it was Indiana. The least expensive state? Michigan.

MR. HUGHES: Indiana is actually the highest. They're 400 percent of Medicare. We're 153.

MR. FALAHEE: We're 153 percent of Medicare. Thank you, Commissioner Hughes. So I've said for years and I know many of you has also said when you meet with legislators that there's reason for CON. The automobile companies know it. It keeps per capita health care costs down. And that study, we handed it out to the legislators I

met with so they can have background information on the merits of CON. Any other comments about legislative issues? Thank you for those of you that worked with me through the IECT issue, thanks to those who sent letters to the editor, and it was a interesting process and a lot of reporters and most of the quotes they got right.

MR. HUGHES: Could I just share something quick on my personal experience? Because I think this happened after we all got together and you may not care. But remember VanderWall, when he came here, his big thing was making sure there was access to people because his district is way up north and we all felt that FACT accreditation was not a barrier and a good thing to have. I talked to Munson up there which would be the biggest hospital by where he's at and talked to the oncology people specifically. And they said, "If we decided to pursue CAR-T therapy going forward, we would get FACT accreditation. We believe it's a good thing" in the district where he thinks he's concerned about access. So I just -- big pharma at its best from a lobbying standpoint.

MR. FALAHEE: Any other comments about legislative issues? So if you've got nothing better to do, you can come today at 1:00 o'clock. I think Commissioner McKenzie might be there. I will be there last, so don't hang around for that. All right.

MR. MITTELBRUN: I think we wish you both good luck.

MR. FALAHEE: Thank you. Next, administrative update, and that's where I'll turn it over to Beth and Tulika, please.

MS. NAGEL: Yeah; sure. The NICU work group will meet next week and Commissioner Oca has agreed to chair that for us. That is a week from today. And then two weeks from today the Nursing Home SAC will also meet. We are preparing the comments and collating the comments from the October public comment period for the comments and the input for standards. It should be on your plate for the January agenda. And so we will have those to you as soon as we can. The comments that we received are all available on the CON web site and we are in the process of preparing that agenda and those materials for your special meeting.

MR. FALAHEE: And as a reminder, that's -- January is our special meeting where we sort of chart the course for the ensuing year, just so you all remember. Okay. Next, Tulika, the evaluation section update, please?

MS. BHATTACHARYA: So there are two reports in your packet, one on the program activities and the second one is on the compliance review and monitoring process and if you have any questions, I'll be happy to answer.

MR. FALAHEE: Just general, looking at the

year-to-date numbers, Tulika -- this is Falahee. I'm sorry.

MS. BHATTACHARYA: Yes.

MR. FALAHEE: When I -- I'm just curious how it relates to prior years. When I see applications received year-to-date: 210, is that, I'm always curious how busy the Department is.

MS. BHATTACHARYA: Well, Chip, if you look at just the numbers it is misleading.

MR. FALAHEE: Okay.

MS. BHATTACHARYA: I mean, the numbers are comparatively lower right as of now. So when we do the annual report, you will see the actual comparison. In terms of just numbers I can tell right now that it's a little lower than the previous year.

MR. FALAHEE: Right.

MS. BHATTACHARYA: But it's like -- like more and more complexity and consultation and things like that. And if I could share just to one more thing? Usually we don't share staffing updates, but all of you -- most of you know our long-time review specialist Matt Weaver. He has been with the Department for 30 plus years. He announced that he's going to be retiring end of this year. So those of you that know Matt, I just wanted to share.

MR. FALAHEE: Well, that's the worst thing I heard this morning. For those of you who don't know Matt, I've

worked with Matt for 30 years. He's an exceptional person. I see Joette in the audience. There's a lot of people in the Department it's been a pleasure to get to know. Matt is one of those when you have a question, just call him up and he'll give you the straight scoop. You may not like what you hear, but he will give you the straight scoop. So on behalf of all of us that have worked with him, give him our best.

MS. BHATTACHARYA: I will.

MR. FALAHEE: I'll call him and get even. That tells me I need to speed up one of my CON applications. Anything else, Tulika?

MS. BHATTACHARYA: No. That's all.

MR. FALAHEE: Thanks. All right. Legal activity report. Carl?

MR. HAMMAKER: All right. This is Carl Hammaker. There's a legal activity report in your packet. It has been a bit busier. We have four active cases currently. I specifically would draw your attention to the case in the Court of Claims. The CON Commission was a named party in that case and I do have an update from since this was written. They sought a preliminary injunction to seek -- to stop the CON Commission from making any changes to the hospital bed need standards. The request for preliminary injunction was denied by the Court of Claims yesterday. So

that's the only update I have. Otherwise, does anyone have any questions?

MR. FALAHEE: Thank you. Okay. Next, we've already discussed the future meeting dates. For those that want to make sure you've got them in your calendar for next year: January 30 is the special Commission meeting, and then the other dates are March 19, June 18, September 17, and December 10. Any other public comment? All right. Review of Commission work plan.

MS. NAGEL: The work plan in your packet has not changed based upon today's meeting. It does, it is an actionable item.

MR. FALAHEE: Entertain a motion to approve the work plan?

MS. BROOKS-WILLIAMS: So moved, Commissioner Brooks-Williams.

MR. FALAHEE: Thank you. Support?

MS. GUIDO-ALLEN: Guido-Allen, second.

MR. FALAHEE: Any questions or discussion? All in favor of the motion say "aye."

ALL: Aye.

MR. FALAHEE: Great.

(Whereupon at 10:39 a.m. motion approved)

MR. FALAHEE: Before we adjourn I want to say thank you to everyone for participating the past year. Safe

travels during this holiday season and we'll see probably most of you in January. I'd entertain a motion to adjourn.

MR. HUGHES: Motion to adjourn.

MR. FALAHEE: Second?

DR. GARDNER: Second.

MR. FALAHEE: All in favor?

ALL: Aye.

MR. FALAHEE: Thank you.

(Whereupon at 10:40 a.m. motion approved)

MR. FALAHEE: We are adjourned. Thank you everyone.

(Proceedings concluded at 10:40 a.m.)

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