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, September 19, 2024, 9:30 a.m.

RECORDED BY: Marcy A. Klingshirn, CER 6924
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TABLE OF CONTENTS

Lansing, Michigan

Thursday, September 19, 2024 - 9:30 a.m.

MR. FALAHEE: Good morning, everybody. Let's call the meeting to order, please. And the -- I'll add as a opening comment, I was not here at the June meeting, but I'd like to thank all of you who called me, texted me and e-mailed me as I was walking through the streets of Copenhagen that morning, all right, or in Copenhagen that afternoon. So I –- I was not here, but I –- I was aware of what was going on, but good to be back.

The first item on our agenda is the review of the agenda. Justin and Marcus sent these out. We've got them in front of us. Any questions about the agenda? Otherwise, I'll entertain a motion to accept the agenda as final.

DR. MCKENZIE: Motion to approve the agenda.

MS. TURNER-BAILEY: Support.

MR. FALAHEE: Questions? All in favor say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Okay. Great. Thank you.

(Whereupon motion passed at 9:31 a.m.)

MR. FALAHEE: Next, declaration of conflicts of interest. As you know, if any item on the agenda that is something that you think may create a conflict of interest for you or your organization you represent, now is the time to declare that. Are there any conflicts of interests that

any of the Commissioners would wish to declare? Hearing none, we'll move on.

Next item, review of the minutes of the June 13, 2024, meeting. First off, are there any questions about the minutes? If not, I'd entertain a motion to accept those minutes as before us.

DR. FERGUSON: So moved.

MS. GUIDO-ALLEN: Second. Guido-Allen.

MR. FALAHEE: There's a motion and second to approve the minutes. Any questions? Discussion? All in favor say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Great. Thank you very much.

(Whereupon motion passed at 9:32 a.m.)

MR. FALAHEE: Then we'll move on to the next item, Surgical Services. And just so everybody knows, Beth is going to be here, but she's going to be a little bit late. Justin is going to describe the Surgical Services and we may have a witness or two, and then we'll have Commission discussion and answer any questions, and we'll move forward from there. Justin?

MR. EASTER: I'd just like to make an announcement to hit –- push the button before speaking so we get it all on record.

For Surgical Services, at the June 2024 Commission meeting, the Commission took proposed action on the language that was presented by Dr. Patton on behalf of Surgical Services, SAC. The draft language was sent out to a public hearing on July 10, 2024, and to the JLC. There were two public comments, one in support of the standards voted on at the June Commission, one non-support. Final action of the Commission will require a motion, a second, and a vote to approve. If the Commission chooses to take final action on the language as presented, then the language will be forwarded to the JLC and the Governor for the 45-day review period. 45-day review period must include not less than nine legislative session days. If the language is not rejected, it becomes effective upon the expiration of the 45-day period or at a later date that the JLC or Governor so chooses.

MR. FALAHEE: Great. Thank you.

MR. EASTER: And we do have public -- oh, sorry.

MR. FALAHEE: We'll get to that in a second. Any questions so far of Justin from the Commissioners? If not, I think we have at least one public comment card?

MR. EASTER: Yes, we do. Dr. Maru from Neph Association of Michigan.

VIDOOSHI MARU, M.D.

DR. VIDOOSHI MARU: Okay. All right. I can hear

myself now. You can all hear me. Good morning, everyone. I am Vidooshi Maru. I –- I am lead nephrologist for Nephrology Associates of Michigan. I was also able to participate on the Surgical Standards SAC, and I was lead for the subgroup for the charge in which we discussed dialysis access.

I wanted to thank everyone for all of your due diligence. I've had the opportunity to meet with several of you and answer questions regarding the charge. I also wanted to thank the SAC and the subgroup constituents because it's a lot of work. It's a very nuanced topic. It's not at all straightforward. And I'm very appreciative to have gotten to this point and I'm hoping that this might be the last time that I have to address you guys.

So to summarize, the SAC voted to create a carveout to allow for only initiation purposes the use of surgical dialysis access cases done in a non-surgical setting, so an OBL, to be used for application for an ASC. And we recognize in our workgroups the concerns regarding slippery slope, and so guardrails have been put in place for this charge specifically. We have created a dedicated dialysis access center. No other type of surgical work can be done in these facilities on these patients. Cases performed in this new setting cannot be used to initiate or meet volume requirements in a standard CON for other

settings. And for nephrology practices that are already able to provide these procedures in a standard CON, nothing changes for them. So it's sort of a parallel path. These cases cannot be used to meet volume or expansion requirements in a standard CON setting. So they really are sort of relegated to this dialysis access center, ASC, world. We recognize that ASCs are the optimal site of care for this work as we can efficiently get patients in and back to their dialysis units with minimal delay in their treatments. CMS is driving, via declining reimbursements, this work to the ASC setting. OBLs have closed all over the country and states without CON, access to care has been preserved by transitioning the work to ASCs. So this carveout is imperative in maintaining access to care.

The alternative to losing this site of care is to send patients to the ER for this work. This unfortunately results in patient admissions. They get their work done and they're discharged, but the average length of stay for these admissions is three to five days depending on weekends. And we know that delays in dialysis lead to increased morbidity and mortality in these patients. And please also consider the increase in the total cost of care and the burden of care these patients already face having to go to dialysis treatments three days a week for hours at a time.

I appreciate all the work that's been done on this

topic and I'm available for questions.

MR. FALAHEE: Thank you, Doctor, and thanks for your participation in the SAC. And the fact that you've served on one might mean in three years we contact you again to do it again. We'll see. But, no, thank you. They are a lot of work, they're a lot of effort. So thank you for your expertise and your efforts to be on the SAC. Any questions of the Commissioners? She did address -- Commissioner Ferguson, please.

DR. FERGUSON: Thank you for your work on this. We've talked about this before, but perhaps you could remind me and remind us. So this is a parallel path for dialysis. Are there other analogous, parallel paths for other service provisions? Like does –- does this same model exist for endoscopy, or interventional radiology services, or anything else, or is this a unique one-off?

DR. VIDOOSHI MARU: This is supposed to be a unique one-off. And honestly, I'm going to say that I don't know the rest of it well enough to say that it doesn't exist anywhere else.

MR. FALAHEE: I'd welcome any comments from the Commissioners. But I've –- I always try to figure out how to game a standard and Tulika knows that well, but I always get thwarted in my efforts. But I don't see others coming down the road at this point that would be similarly situated

to this one. That doesn't mean five or ten years down the road who knows. What I did like, though, to help prevent the gaming, because the one letter we received that was questioning this, it was direct -- it was addressed in the standards. There's specific requirement, I think it's Section 11, that say you can't use these numbers to start a freestanding surgical outpatient facility or an ASC, what you might call another CON, or I forget how you phrased it. So that potential gaming was specifically said, no, you can't do that. And, Tulika, if I got that wrong, or Justin, let me know if I got it wrong. So I like seeing that. But I can't think of anything else that might be coming down the pipe at this point. Comments from the folks on that side of the table about anything that I said?

MR. CONNOLLY: Marcus from the Department. In the SAC we definitely try to make sure that we just have a carveout specifically for dialysis, to prevent the gaming like what you were saying. We had in-depth discussions with the chairs and co-chairs, and we were just making sure that nobody could come in and initiate or expand the dialysis, open up an OR, and then start doing it for something else. That was our concern. And I think that's been the concern for a decade of trying to get dialysis added to Surgical Services.

MR. FALAHEE: Thank you. Thank you, Marcus. Any

questions further? Thank you, Doctor, --

DR. VIDOOSHI MARU: All right. Thank you.

MR. FALAHEE: -- again, for being here and for being on the SAC. Thank you so much.

DR. VIDOOSHI MARU: Appreciate all of your time and help.

MR. FALAHEE: Any question from the Commissioners about the standards, because they're up for final action? If not, I'd entertain a motion.

DR. MCKENZIE: This is Commissioner McKenzie. I will move to adopt the language as put forward by the SAC to take final action to adopt the language and then forward it to the JLC and the Governor for the 45-day review period.

MR. FALAHEE: Is there support for that motion?

MR. DRAKE: Commissioner Drake. I second.

MR. FALAHEE: Thank you. Any discussion? If not, all in favor say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Okay. It carries. Thank you very much.

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

MR. FALAHEE: Next item on the agenda is Bone Marrow Transplant. And I'll turn it over to Katherine for a summary, please. Thank you, Katherine.

MS. TUCKER: Sure. Katherine from the Department.

BMT did not become a workgroup or a SAC because there were only technical edits. The technical edits include the name change from the Community Health to the Michigan Department of Health and Human Services, and the 30-day language -- adding the 30-day language whereas one must notify the Department of any planned decrease or discontinuation of services within 30 days of the change. At the June 2024 Commission meeting, the Commission took proposed action on the language that was presented from the Department. The draft language was sent out to a public hearing on July 10th of 2024, and to the JLC. There were no public comments. If the Commission chooses to take final action on the language as presented, then the language will be forwarded to the JLC and the Governor for the 45-day review period. The 45-day review period must not -- must include not less than nine legislative session days. If the language is not rejected, it becomes effective on the expir-, upon expiration of the 45-day period or at a later date if the JLC and Governor so chooses. Final action from the Commission will require a motion, a second, and a vote to approve.

MR. FALAHEE: Thank you. Oops. Sorry. Got to get used to new technology. Thank you very much. Any cards at all?

MR. EASTER: No.

MR. FALAHEE: Okay. Any questions about these

technical edits? Okay. Entertain a motion to take final action, please.

DR. MCKENZIE: Commissioner McKenzie. I will make a motion that we take final action to approve the proposed language, move it forward to the JLC and the Governor for the 45-day review period.

MR. FALAHEE: Thank you. Support?

DR. ENGELHARDT-KALBFLEISCH: Commissioner -- support, second. Commissioner Engelhardt-Kalbfleisch.

MR. FALAHEE: All right. Thank you very much. Any questions? All in favor of the proposed final action please say aye.

ALL: Aye.

MR. FALAHEE: All opposed? Great. Thank you. That carries.

(Whereupon motion passed at 9:43 a.m.)

MR. FALAHEE: All right. Moving on. Hospital Beds Rural Emergency Hospitals.

MR. EASTER: The June 2024 Commission meeting. The Commission took proposed action on the language that was presented by the Hospital Bed REH workgroup. The draft language was sent out to a public hearing on July 10, 2024, and to the JLC. There were no public comments regarding this. If the Commission chooses to take final action on the language as presented, then the language will be forwarded

to the JLC and the Governor for the 45-day review period. The 45-day review period must include not less than nine legislative session days. If the language is not rejected, it becomes effective upon the expiration of the 45-day period or at a later day if the JLC and Governor so chooses. Final action from the Commission will require a motion, a second, and a vote to approve.

MR. FALAHEE: Thanks, Justin. And –- and to our newer Commissioners, Commissioner Velez and DeLano, a lot of this is technical speak, but it's necessary technical speak. Oftentimes -- and we're –- we're rolling through the agenda fairly quickly. There are times when we don't roll this quickly. But there are substantive discussion and that's why I always ask if there are comment cards as well, because often we'll have six comment cards from one side of the issue and five on the other. So it's not all geek speak when we get around this table, so enjoy this moment. Before I -- are there any public comments?

MR. EASTER: Just from MHA supporting it.

MR. FALAHEE: Okay. Thank you. I will add it was –- it was my pleasure to be the chair of this workgroup. And I know Commissioner McKenzie talked about it in June, but this was a workgroup where everybody got together, listened to each other, respected each other, and I –- I must say came together with a very good, open conclusion

that everybody supported. Lots of discussion back and forth at the workgroup meetings. And it was a –- a pleasure to just sit back and –- and just watch it happen. So I –- I thank everybody. There were some in this room that were very involved in that workgroup and I thank you again in person.

So are there any questions about the language in front of us? Commissioner Ferguson?

DR. FERGUSON: Is there -- a question perhaps less about language and more about the workgroup. So you took on some pretty tough topics. At the end of the day was there unanimous consensus on every item or were there still disagreements?

MR. FALAHEE: Anybody that objected we threw out of the room before we took a vote. No, there was -- anybody in the audience, correct me if I got it wrong, there was unanimity on the proposed --

DR. FERGUSON: Thank you.

MR. FALAHEE: And there was –- I mean, there was robust discussion, professional robust discussion back and forth. What about this, what about that. Exchanging drafts of language back and forth. And a good, I think, a good conclusion coming out of it that everybody supported. Any other questions or comments? I'd entertain a motion.

DR. MCKENZIE: Commissioner McKenzie. I will move

to take final action on the Hospital Bed Rural Emergency Hospitals on the proposed language and forward that to the JLC and Governor for the 45-day review period.

MR. FALAHEE: Is there support?

MR. DRAKE: Commissioner Drake. Support.

MR. FALAHEE: Thank you. Questions or discussion? All in favor say aye.

ALL: Aye.

MR. FALAHEE: Opposed same side? Okay. That motion carries. Thank you.

(Whereupon motion passed at 9:47 a.m.)

MR. FALAHEE: Heart Lung Liver update.

MS. TUCKER: Sure. And this is Katherine from the Department. The Heart Lung Liver was anticipated to be a SAC, but because the Department did not receive enough nominees after three rounds of nominations, Heart Lung Liver may need to be converted to an informal workgroup. We needed a total of 12 people to seat a SAC, but we only received 10 nominations with the standard three rounds. So the Commission needs to vote on converting the Heart Lung Liver from a SAC to an informal workgroup, and we will need a motion, a second, and a vote to approve.

MR. FALAHEE: So this is Commissioner Falahee. I forgot, Marcy, to introduce. I've got to remind everybody, for –- for Marcy's sake when she's recording this. She's

very good at recognizing voices, but not all of the time. So make sure you say who you are. So, sorry, Marcy.

This is an important issue, Heart Lung Liver. For those of you that were here at the March Commission meeting, we had testimony, very, very good testimony from both sides of the issue. And I spoke to a couple of the physicians that were here afterwards and they both said, I didn't want to be here today because I knew I was going to be speaking opposite to Dr. X whom I have ultimate respect for. So this is an important issue. And what we've done informally, at least the last 10 or 15 years, is if we don't get a SAC the first time we seek nominations, we do it again a second time, and a third time. It's very informal. There's nothing in writing that says how many times you get to do it. The third time, usually three strikes and you're then a workgroup. In my opinion, this is a very substantive issue that should not be put through a workgroup. This needs a SAC. So as Katherine said, we came up short. I believe we came up -- we need -- we have ten experts, we need two more?

MR. EASTER: We need two more period and then a consumer.

MR. FALAHEE: So we need two more experts and one consumer. And I think looking around the room, those of us in this room can make that happen. Not today. But I think if we sent out a fourth request, please?

MR. EASTER: If that's okay with the Commission, we can.

MR. FALAHEE: Well, we'll –- we'll get there. All right. But my thought is let's –- let's send it out a fourth time with the Commission asking those in the audience and friends to make sure we get the requisite number of experts and at least one more consumer. All right. And if that's okay, I -- just –- just the substantive nature of this I think it requires a SAC versus -- not that there's anything wrong with a workgroup, but there's clearly two sides of this issue so I'd like it to be that.

MS. GUIDO-ALLEN: Guido-Al- -- Guido-Allen, question. Define what –- what is needed in an expert? How do are -- how are we defining an expert for this SAC?

MR. CONNOLLY: Marcus from the Department. It –- it would be in the bylaws. Typically we want someone that has a background in Heart Lung Liver to be a part of the SAC that could bring their expertise to the group. That's what we typically look for, but there's further information in the bylaws that's more technical.

MR. FALAHEE: Commissioner Ferguson?

DR. FERGUSON: This is Ferguson. Question, right. If, on this fourth round of soliciting volunteers, we are unsuccessful, do we have the authority to authorize a waiver to be able to proceed with a SAC with 10 people rather than

12 people?

MR. FALAHEE: I'll –- I'll defer to Brien Heckman to my right, but I don't think we do under the –- the rules under which we operate.

MR. HECKMAN: This is Assistant Attorney General Brien Heckman. No, the –- the option at that point would be to use a workgroup.

MR. FALAHEE: Commissioner DeLano, I thought I saw your hand up?

DR. DELANO: Yeah. Commissioner DeLano. I am interested in knowing who are the ten so I don't ask them again and that would be useful when –- when we assist in getting the other two.

MR. FALAHEE: Right. I don't think there's anything wrong with -- Justin, if you could send the Commissioners a list of those who have nominated themselves already? The way it works is they submit their names, the Department then looks at their bios, and if somebody claims they're an expert, yes, they really are or no, they're not. And then those names are submitted to the chair and the vice chair to make the final pick, if you will. And we found that recently since SACs no longer have to meet in person, we've gotten much better attendance, if you will, from people as far away as Marquette in the UP, whereas before when you had to meet in person, that never happened. So I

think it'll be I'll say fairly easy to get the requisite number. But I think it'd be great if you could send that -- that list out, Justin, so that we all know. So if we -- if -- if -- if you know somebody you think might qualify, please reach out to them. And this is all assuming the Commission agrees with this. All right? Please reach out to them, have them submit their names to the Department so that we can put together the SAC. Commissioner Velez?

MR. VELEZ: Great suggestion, Commissioner DeLano. For technical purposes I would like to know as well what's the criteria for consumer?

MR. FALAHEE: For consumer?

MR. VELEZ: Or is there any?

MS. NAGEL: There isn't -- this is Beth. There isn't any written criteria for the consumer necessarily. For the expert, if I could just go back, it is a clinician or an administrator in that particular field whose professional competency demonstrated by relevant professional activity over the majority of the last five years. And so they provide us their either resume or CV and we look at the last five years. But other -- and consumer, I believe that's defined in the statute, but I don't think that there's anything specific like there is for expert.

MR. VELEZ: Thank you.

MR. HECKMAN: This is Assistant Attorney General

Brien Heckman. Consumers are just purchasers and payers of health, but the –- the –- the subject of the specific service. In –- in the event that the Department doesn't find like a –- like a warm, like a living consumer of the product, they can reach out to -- sorry. That was an odd statement. I apologize. As soon as that came out of my mouth started to try to cram it back. So, but just somebody that's a purchaser of the service in –- in general. And if you guys have trouble with that, reach out to me.

MR. FALAHEE: Other questions? Commissioner Drake?

MR. DRAKE: Commissioner Drake here. So first I want to applaud you for pushing for the SAC. I think it's that important. I think we've heard enough discussion here to warrant that it –- it needs to be so I thank you for –- for that. So I'm a big believer in timelines. So when we get the e-mail of the current people that are -- have –- have been put forward, I would like to see some type of timeline for us to get back –- people back to make –- make nominations so we can get this moving along.

MR. FALAHEE: And –- and I'll –- I'll say this, and, Justin, correct me if I'm wrong, when the nominations go out there's always a deadline, you must submit by, all right, so that it doesn't go on forever. So that will be part of it. Well, first we'll get the list and then

normally you give, how many weeks is it, Justin?

MR. EASTER: Two weeks.

MR. FALAHEE: Two weeks. That's what I thought. Does that answer your question?

MR. DRAKE: Yes, it does.

MR. FALAHEE: Okay. Great. Thank you. All right. Other discussion? Then if I'm hearing things correct, what we need is a motion from the Commission to authorize the continued efforts to find the requisite number of experts and consumers because we think as a Commission this merits a SAC versus a workgroup. And that number two, the Department will send to each of the Commissioners a list of the current nominees whether it's expert, consumer, payer, whatever.

MS. TURNER-BAILEY: Mr. Chair? Commissioner Turner-Bailey. I move that we continue our search to seat a SAC for the Heart Lung Liver Transplant issues and under the timelines that you've described and after the Commission has received a list of those who have already been nominated.

MR. FALAHEE: Great. Thank you.

MS. GUIDO-ALLEN: Guido- -- Guido-Allen. Second.

MR. FALAHEE: Thank you both. Any Commission questions or discussion? If not, all in favor of the motion please say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Great. Thank you very much.

(Whereupon motion passed at 9:56 a.m.)

MR. FALAHEE: This will be one of those where we've had this before and –- and Commissioner McKenzie and I have already appointed a chair and vice chair in anticipation of the SAC. They both spoke in March. They're both on exact opposite sides of the issue, which I've done as chair, and Commissioner McKenzie has done multiple times. The current Cardiac Cath SAC is set up the same way because you're never going to get a better discussion of the issues than when you have both sides represented. So, okay, thank you very much.

MR. EASTER: We do have public comment about the Heart Lung Liver workgroup.

MR. FALAHEE: Great. Thank you.

MR. EASTER: Makenzie Buchert from CHM.

MAKENZIE BUCHERT

MS. MAKENZIE BUCHERT: Good morning and thank you for allowing me to speak to you today. My name is Makenzie Buchert, and I am the new director of transplant services at the Children's Hospital of Michigan in Detroit. Prior to my arrival at the Children's Hospital earlier this year I was the director of transplant surgery at Seattle Children's Hospital, and before that was at Monroe Junior Carell

Children's Hospital at Vanderbilt.

So I am admittedly new to the Certificate of Need process here in Michigan and have been familiarizing myself with the CON goals related to transplant services. Through this process I've come to recognize that the provisions in the CON standards related to joint sharing arrangements include some outdated provisions.

Children's Hospital operates a liver and heart pediatric program through joint sharing arrangement with Henry Ford Hospital. Although I'm sure the provisions made sense many years ago when they were written, we believe it's time for a review of a few of them. More specifically, the provision requiring that two hospitals in a joint sharing arrangement operate under the same OBTN certification. OBTN and UNOS updated their policies back in 2016, implemented 2020, to prohibit this unless the transplant programs have operating rooms within a one-mile walking distance from each other or are geographically on a shared campus. In addition, the volume requirements for joint sharing programs, the facilities are nearly double the requirement for non-joint sharing arrangements, making it extraordinarily difficult for us to meet our CON requirements despite our program having the best outcomes in the state. Having CON requirements, even with the best programs, if we cannot meet them, it does jeopardize the

opportunity for pediatric transplants in the state of Michigan.

Since a SAC, maybe a workgroup is already slated to review the standards this fall, I am here to request a charge be added to review the joint sharing arrangement provisions in the standards and address these issues. We are confident that, be it a SAC or workgroup, these charges can easily be addressed by the group and a reasonable recommendation brought forward to this Commission. Thank you for your time. I can answer any questions.

MR. FALAHEE: Thank you very much. Any questions? Thank you for your letter as well. It was very well worded. Yeah, the one-mile requirement, that surprised me. Where did that come from? But, no, thank you very much. I understand. So you were -- the bottom line is to add a charge to look at the joint sharing agreement language that's allegedly potentially out of date and figure out what changes need to be made in it; correct?

MS. MAKENZIE BUCHERT: Yes, sir.

MR. FALAHEE: Okay. Thank you.

MS. MAKENZIE BUCHERT: Thank you.

MR. FALAHEE: Any other comments? Any comment cards that had --

MR. EASTER: (Shaking head)

MR. FALAHEE: Okay. So what we do when we have

any charge or a potential new charge is the Commission can, if it wants, authorize the chair and the vice chair to work with the Department to prepare the necessary charge to be added to that SAC or workgroup's list of issues to look at. And so if the Commission wanted to do that in this case, to add a charge to look at the joint sharing agreement language and see if it needs to be updated, that's something that the Commission could make a motion on and vote on and then Commissioner McKenzie and I would work with the Department on that language. So if anyone would care to make a motion to that effect, that would be great. Or have questions?

DR. FERGUSON: This is Commissioner Ferguson. Just a question or a –- or a perhaps a request that if we go down this path, I would encourage that the language not necessarily be to identify what changes need to be made, but it needs to be if changes need to be made, you know, what changes would be made. All right. So I wouldn't –- I wouldn't make an assumption that things need to be changed. They may need –- they may need to be. I don't know. I mean, that's –- that's the purpose or at least a good chunk of the purpose.

MR. FALAHEE: Right. Well said. Thank you very much. We'll take -- we'll keep that in mind.

MS. GUIDO-ALLEN: So Guido-Allen. I move to add a charge to the Heart Lung Liver Transplant SAC to review the

provisions for operating a transplantation service under a joint sharing arrangement in Section 3(4) and recommend if necessary updates to any outdated provisions as well as annual volume requirements.

DR. FERGUSON: This is Ferguson. I'll second that.

MR. FALAHEE: Thank you both. Any questions? Commissioner Drake?

MR. DRAKE: Commissioner Drake. I'd like to know how many transplant programs are operating under a joint sharing arrangement?

MR. FALAHEE: Tulika, I think you might know the answer.

MS. BHATTACHARYA: Only one.

MR. FALAHEE: And this is Falahee. And the sharing partners in that arrangement are?

MS. BHATTACHARYA: Henry Ford and Children's Hospital of Michigan, with Henry Ford being the adult transplant side and Children's Hospital being the pediatric.

MR. FALAHEE: Thank you. Other questions? All in favor of the motion please say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Thank you very much.

(Whereupon motion passed at 10:03 a.m.)

MR. FALAHEE: Commissioner Drake?

MR. DRAKE: For the record, I'm abstain from voting.

MR. FALAHEE: Right.

MR. DRAKE: And he already get my –- my second vote. He has my vote, but he can't have it.

MR. FALAHEE: And –- and –- and –- and –- and my -- this is Falahee. My, my assum- -- hunch is that Commissioner Drake is abstaining because of his role at Children's Hospital.

MR. DRAKE: That's correct.

MR. FALAHEE: Just in case people are wondering what's going on here. So thank you. All right. Thank you very much. So we'll move forward on that. Next, election of officers. Marcus?

MR. CONNOLLY: The Commissioners will need to nominate a chair and vice chair for the Commission. Whoever is nominated cannot partake in the voting process of that respective position. We will need a discussion from the Commission, a motion and a second to decide who the chair will be. Are there any questions? All right.

MR. FALAHEE: Any qu- -- okay. So no questions of Marcus on the process? All right. Anybody want to make a motion?

MS. GUIDO-ALLEN: Guido-Allen. I motion to nominate Chip Falahee as chair and Dr. McKen- -- Amy

McKenzie as vice chair of this Commission.

MR. FALAHEE: Is there support for that motion?

DR. ENGELHARDT-KALBFLEISCH: Commissioner Engelhardt-Kalbfleisch. Second.

DR. FERGUSON: How dare you. Second by the entire Commission.

MR. VELEZ: That'll be in the record.

MR. FALAHEE: All right. There is a motion on the floor. Commissioner McKenzie and I will abstain. All in favor of the motion please say aye.

ALL: Aye.

MR. FALAHEE: All opposed? Okay. Thank you very much.

(Whereupon motion passed at 10:05 a.m.)

MR. FALAHEE: It's a pleasure to serve as chair and vice chair, happy to do it again. Thank you. Review of the Commission Biennial Report. So I want you, if you don't have it with you, every two years we put together a very, very, very, very detailed report. And the whole team over there takes a hand in it. And I've reviewed it. It is a mountain of information that summarizes as tightly as possible, but in a long form, all that goes on. And I think it really shows the value of CON, the hard work that the people sitting across from us over here do, the work that we do in this room, the work that all the people in this room

do on these issues. So I thank you. I thank the Department for all the work. I thank them for their report. I thank everybody in this room, not just around this table, but out in the -- in the regular seats as well for all you do, to make a strong CON program in Michigan. So thank you. This is a draft and it'll be finalized and come back for a final vote in December.

MR. EASTER: Correct.

MR. FALAHEE: That's what I thought. So if, when you go through it ,you have questions, please let any of the five folks over there know. Send them an e-mail, hey, what about this, what about that. But then it'll come back to us in December for a final vote. Any other comments? Thank you. Legislative update?

MR. EASTER: Justin from the Department. House Bill 4693 was introduced May 30th, 2023, and House Bill 4817 was introduced June 15th, 2023. Both of those bills pertain to the Open Meetings Act. There's been no movement on these bills. House Bill 4834 was introduced June 22nd, 2023, related to the Certificate of Need. There's been no movement as well on this bill. In February House Bill 40- -- 5470 through 5498 to repeal the Certificate of Need in its entirety within Michigan was introduced. There's no movement on these bills. And Senate Bill 811 was introduced April 9th, 2024, to expand access to mental health patients.

That was referred to Health Policy and there's no movement. There's currently no movement on any of these bills, but the Department will continue to track them.

MR. FALAHEE: Any questions of Justin about that? Any of you that –- that watch the activity downtown in the legislative offices know there isn't much. So -- and, in fact, when we -- you always hear us count, like, nine legislative session days before something is final? We're still counting. Okay? So I -- I wear my other hat as a legislative person that works on those issues. I don't think we're going to get nine days before the November election, and then depending on that election, we'll see if we get nine days after that between Thanksgiving and Christmas. We'll see. It's just a –- it's an unknown right now. So that's where we're at. Thank you, Justin. Next, Nursing Home Beds and setting an effective date. Marcus, I think that's you?

MR. CONNOLLY: Yes. A new Nursing Home Bed report is included in your electronic binder. The tentative effective date for the recalculated bed need that we set in the Department is January 1, 2025. We will need a discussion by the Commission, and if you are in agreement with the new effective date, we'll need a motion and a second to approve. Are there any questions?

MR. FALAHEE: I know we've got some public comment

cards on that and there were some letters that were submitted about that. Any questions at this point from the Commissioners of the Department at all? Okay. And then public comment?

MR. EASTER: Abby Burnell, from McCall Hamilton on behalf of Ciena Healthcare.

ABBY BURNELL

MS. ABBY BURNELL: Good morning. Abby Burnell on behalf of Ciena Healthcare. I think there are some others that will provide comments as well. But at this point Ciena would support a pause in the implementation of the bed need methodology that's before you. The bed need methodology involves a three-year rolling average that involves data from 20- -- the calendar year 2020, which, as we all know, did not accurately reflect the patient populations at that time. So we recommend a pause of the implementation in order to ensure future bed need reflects the expected increase in demand of communities that Ciena sees, and we would recommend that the Commission would review the bed need methodology of the Nursing Home standards when they're up for review in 2025. Thank you.

MR. FALAHEE: Any questions? Question. Abby, I've got a question for you.

MS. ABBY BURNELL: Sure.

MR. FALAHEE: So right now the proposed date is

1/1/25.

MS. ABBY BURNELL: Uh-huh.

MR. FALAHEE: Your recommendation is, or request is push it off beyond that. Do you have a set –- a date in mind?

MS. ABBY BURNELL: I think ideally the -- Ciena's position would be that they would let the workgroup or SAC, whatever you all decide at your December or January meeting, do their work, look at the methodology on whether a three-year rolling average makes sense, and pausing it until that group can do that work, review the methodology, and put something in place that's really meaningful and makes sense and better reflects patient need and –- and access.

MR. FALAHEE: And the primary rationale for that is to remove the blip of 2020 and partial 2021 from the data?

MS. ABBY BURNELL: Yeah. I believe it was between 2016 and 2018 we redid the methodology last time, and it had a three-year rolling average clause into it and so we're still using 2021 -- or 2020, '21, '22 data right now. And so we would either suggest removing that, looking at something different, or creating some language that would exclude public health epidemic data like we've done in the MRI standards. It would be based off of what we've seen in the past, but if there's ever another one, it would live in

the standards then going forward.

MR. FALAHEE: Great. Thank you. Other questions?

MR. VELEZ: Commissioner Velez here. So I totally agree with –- with –- with your statement. I work in a nursing home, long term care, representing that. And right now based on our data, 2023, the average occupancy statewide is 74.6 percent. Prior to the pandemic, it was close to 81 percent. 2024 shows that we have an increase at 81 percent. So I do not have any concern about the methodology, but the time frame from 2020 to 2023. If the Commission is going to agree that we can postpone this, and we're looking at possibly 2026 or 2027 so that the data are not skewed. Because right now 2020, 2020 to 2024, this is not a reflective, true reflection of the bed need of our most vulnerable patients in the community. Likewise, I would like to note that in 2026, that's the first of our baby boomers, 80 years old, are going to be possibly be part of our residents or guests in the nursing home. So we're going to have an increased need of the bed for nursing home.

MR. FALAHEE: Thank you for your comments and your expertise on the issue. Thank you. Very helpful. Other questions.

MS. GUIDO-ALLEN: Guido-Allen. I have a question I think for both of you. How much of that occupancy rate in your –- in your sites is related to not being able to staff

licensed beds?

MS. ABBY BURNELL: I'll let Commissioner Velez address that since I'm not a Commissioner or administrator.

MR. VELEZ: Actually in –- in our organization right now we're 89 percent occupied. The state average is 81 percent. Yes, indeed, there is a –- there's a big part of staff challenges, but we're able, you know, to work it out. And residents are still being admitted to our homes and it's increasing based on our occupancy rate.

MS. GUIDO-ALLEN: Thank you.

MR. FALAHEE: Thank you. Commissioner Ferguson?

DR. FERGUSON: Ferguson here. Question for the Department. If we wanted to exclude either the worst of the COVID era or the entirety of the public health emergency from methodology, what would you recommend? Like what –- what –- what –- what do you propose as a path forward here? Because I think a valid point is raised. The data during the COVID years is not representative.

MS. NAGEL: Yeah. That's a great question. And what I would recommend, especially considering Commissioner Velez's comments, is not to depart from the current methodology, but to keep the methodology as it is today which doesn't have those years -- or keep, excuse me, the bed need numbers as they are today which don't include those data years and revisit this when we have additional data

that comes in and we're –- we're able to re-run the numbers.

MR. FALAHEE: Other comments? Sorry. Other comments? Other comment cards?

MR. EASTER: Rich Farran from HCAM.

RICHIE FARRAN

MR. RICHIE FARRAN: Thank you. Richie -- is this on?

MR. CONNOLLY: No. You have to press the button.

MR. RICHIE FARRAN: Thank you. Richie Farran with HCAM. We represent 360 nursing facilities in the state. And really just want to echo Commissioner Velez, Abby and Ciena and the Department. Really support the discussion. I think it was really comprehensively hashed out here in the previous discussion so I don't want to be too redundant. But we do continue to see that occupancy level rise since 2021 as the sector has recovered from the pandemic. And as Commissioner Velez said, we expect the demand to increase as Michigan's population continues to age and those ba- -- baby boomer generation starts to reach that age of 80. The average age of a nursing facility resident is in the low 80's, 82, so we will see the demand, excuse me, for long term care as a whole increase, and of course nursing facilities as well. So thank you for the Commission's consideration.

MR. FALAHEE: Any questions? Great. Thank you

very much.

DR. FERGUSON: I have a --

MR. FALAHEE: Commissioner Ferguson? Sorry.

DR. FERGUSON: Commissioner Ferguson. Commissioner Ferguson. A follow-up question. So the Department has floated an idea of essentially, if I understood correct, freezing or status quo until we get enough post-COVID data to do a reassessment. Does that work for the nursing home community?

MR. RICHIE FARRAN: I would say from the association's perspective we would support that. I think once you get certain data through perhaps 2025, we'll see a more accurate trend line.

DR. FERGUSON: Okay. I just wanted to make sure that a free-, essentially a freeze was an acceptable path forward.

MR. RICHIE FARRAN: Yes, absolutely.

DR. FERGUSON: Thank you.

MR. RICHIE FARRAN: Thank you.

MR. FALAHEE: Thank you.

MR. EASTER: We have one more public comment, Dave Walker, Corewell.

DAVE WALKER

MR. DAVE WALKER: Good morning. Dave Walker from Corewell Health. The previous speakers and discussion was

much more articulate than I could provide, and so at this point I just want to echo Corewell Health's support for the delay of the implementation of the bed need methodology. Thank you.

MR. FALAHEE: Thanks, David. Any questions? Appreciate your comments. Thank you. Commission questions? Discussion? Comments? I'll just, to me it sounds like we have unanimity around not doing a 1/1/25 effective date, not doing any effective date at this point until we make sure that the COVID data is outsi- --- out of the data we're looking at to establish bed need, and then number three, in effect preserving the status quo. The bed needs as they currently exist are the bed numbers until the –- the data doesn't reflect the COVID dip. That's how I'm looking at it.

Now I'll turn to the Department. Do –- does the Commission need to make a formal decision on that to maintain the status quo or do we need to just -- just the fact that we've talked –- talked about it, is that adequate? Or I'll turn to Assistant Attorney General Heckman on that as well.

MR. HECKMAN: So the short answer is yes. And then if the Department wants to put any type of kind of follow up on it, that may be appropriate.

MS. NAGEL: Yeah, I think –- I think a -- this is

Beth. I think a –- a vote is all we need just to say I think exactly what you said a moment ago.

MR. FALAHEE: Okay. Thank you. I don't remember what I said. That's all right. No, I -- Marcy will remember.

DR. MCKENZIE: Yeah. This is Commissioner McKenzie. I'll try and make a motion here. That we pause the effective implementation date of the current methodology, retain the existing methodology until further data is obtained for the Commission to opine on.

MR. FALAHEE: Support for that motion?

MR. VELEZ: Commissioner Velez. I support.

MR. FALAHEE: Thank you. Any discussion?

MR. DRAKE: This is --

MR. FALAHEE: Commissioner Drake?

MR. DRAKE: -- Commissioner Drake. Should we be a little more specific of when and what dates we're going to look at to maybe tighten it up a little bit?

MR. FALAHEE: If you allow me to make a friendly --

DR. MCKENZIE: Sure.

MR. FALAHEE: Okay. Number one, we would not set the effective date as 1/1/25. Number two, we would continue the current bed need, bed numbers until such time as data comes forward which removes the dip caused by COVID. And at

that point, then, we will look at these new numbers and establish whatever the bed need needs to be. That'd be my fine tuning, if you will.

MR. DRAKE: There we go.

MR. FALAHEE: Is that okay with the person that made -- Commissioner Velez?

DR. MCKENZIE: Yes. Commissioner –- Commissioner McKenzie, --

MR. FALAHEE: Commissioner Velez, is that okay with you?

DR. MCKENZIE: -- (inaudible).

MR. VELEZ: Commissioner Velez. Absolutely. Thank you.

MR. FALAHEE: Okay. Thank you. Thank you. All right. Other questions? Okay. We have a motion on the floor. All in favor please say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Great.

(Whereupon motion passed at 10:22 a.m.)

DR. MCKENZIE: It's a perfect example of a doctor versus a lawyer.

MR. FALAHEE: Yes. Requires both. All right. Next item, we'll turn it to Marcus for Psych Beds.

MR. CONNOLLY: Yes. A new Psych Bed need report is included in your electronic binder. The tentative

effective date for the recalculated bed need is January 1, 2025. We'll need a discussion by the Commission, and if you want to adopt that effective date, a motion and a second to approve. Are there any questions?

MR. FALAHEE: Any questions? Any comment cards?

MR. EASTER: Justin from the Department. No.

MR. FALAHEE: Okay. I have a question or a comment. Is the Psych Bed issue just a -- and very, very similar to the Nursing Home Bed issue. Because if you look at the numbers in the Psych Bed issue, arguably we have too many psych beds in the state of Michigan. Those of us around this table and in this room that deal with health care know that is not the fact. So do we have a similar situation? I'll put it that way. And I'm not –- I'm not questioning the work that Professor Delamater did. It's just, much like with nursing homes, there's that COVID dip which I think creates an artificial situation with the true need for psych bed. And the staffing issue as Commissioner Guido-Allen talked about, that is critical within psych facilities. It was that way before COVID and it's even worse "after" COVID.

MR. CONNOLLY: Marcus with the Department. When we did meet with Dr. Delamater he said it was a significant change as far as the numbers looking more normal than it was in 2019, but we did talk about, like, the staffing shortages

and things of that nature, and some of the similar issues like you mentioned in the nursing home, which is difficult to take care of patients when you don't have the staff. So those things was talked about as far as in our meeting, and the Department understands that, so we'll take the direction from the Commission as far as what they want to do. If they want to freeze, like we're doing with the Nursing Homes, we can do that, or we can set the effective date of January 1.

MS. NAGEL: One thing I would also just add is that, you know, when we look at the history of the Psych Bed need, these numbers for adults look a lot like pre-COVID numbers. The child adolescent side actually looks like we're responding to -- the methodology is responding to increased need. So I don't think, just as Marcus said, I don't think it's the exact same issue as we're seeing in Nursing Home. We don't have the same methodology in Nursing Home. It's more of a it looks at five years of data and projects forward, and Nursing Home it's a –- it's a little bit different. There's a little bit of a look back. You know, we could still say that there is an impact from COVID. We brought you data two years ago that was clearly showing an issue. This data does return us a little bit closer to pre-COVID numbers, on the adult side.

DR. FERGUSON: Commissioner Ferguson. Do you mind scrolling up to the graph? It's near the top section? I

think it shows the dip in the adults, that one, and the trajectory of pediatrics. I think what I might consider doing is in light of there is a look back on this and it shows a drop in the need for adult, which I guess I'm skeptical of based on both experience, well, and the data year showing the dip. So I guess I would lean towards freezing the adult, but accepting the increased need in the peds. Can we split it?

MS. NAGEL: No.

DR. FERGUSON: That's a problem.

MS. TUCKER: That's a problem.

DR. FERGUSON: That's a -- I mean, so what -- so how do we solve this? Because I -- I'm -- I -- I -- I don't think I can support the idea that we need fewer adult beds, and yet I don't want to end up in a three-year freeze where we can't expand pediatric. So, Brien, how can we navigate this on -- on a authority basis?

MS. NAGEL: If I could just add? The graphs that you're looking at are the actual reported patient days. That's not the need. Those are the actual --

DR. FERGUSON: I realize, like, and -- and there was a massive dip during the COVID years.

MS. NAGEL: Yes.

DR. FERGUSON: For adults.

MS. NAGEL: Yes.

DR. FERGUSON: If you scroll down, we have the bed need.

MS. NAGEL: Yes.

DR. FERGUSON: And it says we 300 too many adult beds and 30-some or whatever short on pediatrics.

MS. NAGEL: Yes. But this is using a base year of 2023. It's not using the '20 data. It's using -- if you scroll up, Justin? I'm sorry. It's using the 2023 data as a base year. It says it under the -- yeah, yeah, under the summary. So –- so what, what -- if you look at -- and we could, you know, certainly bring this back to another meeting. But if you look at the 2019 data, it looks a lot like over bedded in –- in most areas like this data shows you.

DR. FERGUSON: And the Bed Need results when it talks about using a three-year average per methodology, then what's the three-year average per methodology?

MS. NAGEL: Are you in the --

DR. FERGUSON: Next –- just below the graph.

MS. NAGEL: Yeah. Yep, I would have to get -- talk to Paul on those exact dates that he used for that. But it was our understanding, and maybe we misunderstood him, that it didn't use COVID data.

DR. FERGUSON: I –- I don't know. Right?

MS. NAGEL: Yeah.

DR. FERGUSON: I mean, so I'm -- I'm raising questions. I'm not claiming to understand this. I just want to make sure that we don't inadvertently do something stupid and restrict access to what I think remains a significant health concern for our communities.

MR. FALAHEE: Right.

MR. CONNOLLY: Marcus with the Department. We did talk to Paul in depth and I -- I asked him if we did have any question that came up, that we could also bring him in the December meeting. We just have to let him know early enough so he can clear out his schedule of teaching. But we knew this would be complicated and a lot of gray area that the Department doesn't have specialty in. But we can always bring him to the December meeting or any of you can e-mail me specific questions and I'll talk to Paul so we can get you answers, because I agree we want to make sure that we get it right and we understand the methodology of what he's doing.

MR. FALAHEE: I'm -- I'm having a side chat with Brien because if -- if -- I think it's a good idea to address the questions we've got and move this to December. If -- if we need Professor Delamater here, I don't think here means here. I think he could be available --

MS. NAGEL: Yes.

MR. CONNOLLY: Through Zoom.

MR. FALAHEE: -- through Zoom. Okay. Which would make it easier for him in terms of doing that. Because I think there is a –- a lot of questions that were raised today that we got. And then at the bottom of -- it's a couple pages down, keep going, very bottom. Whoop, whoop, keep going. On –- on our page, it's page -- well, my page is 138. He even says,

"It's unclear whether Psych Bed utilization will stabilize or continue to be highly variable. One potential issue that may be affecting adult utilization, artificial depression of patient days due to staffing issues."

So there you go. So it's just -- there's a lot of unknowns here. I get where Commissioner Ferguson is coming from with a dip in one and a increase in the other. So I think those are things we'd want to ask Paul about and have a discussion about it lest we do what Commissioner Ferguson said. We set it and then we live to regret it when we see one area going down and one going up.

MR. DRAKE: I want to add something, too. Commissioner Drake.

MR. FALAHEE: Commissioner Drake.

MR. DRAKE: You know, the other thing that's missing and the data, I'm happy to see that the pediatric bed need went up because there's definitely a need for that.

But what's missing -- and I definitely think there are markers on the methodology was site facility patient days. Correct? I think it is psych facility patient days. What's missing from is in our health system every single day we look at patients simply waiting in our hospitals for behavior health beds that are staffed. And I think those patients that are medically clear, just need to be placed, aren't captured as part of the need, but they are part of the need but they're sitting in acute care hospitals.

MR. CONNOLLY: Yeah.

MS. GUIDO-ALLEN: Guido-Allen. That's exactly where I was going to go. We're not capturing the days, weeks that they're either sitting in the ER ,or in an obs bed, because they're too disruptive for the ER or their length of stay is too long in the ER, and they're not getting the care that they need in an acute care setting. We're missing that whole piece. And for those of us that live that day after day after day, that's why the data is so disturbing for both the adult and the pediatric side.

MR. FALAHEE: Yeah.

MR. DRAKE: Uh-huh.

MR. FALAHEE: And, and for those that go, what's an obs bed? That's an observation bed for those that don't know. It's still occupying space in a hospital. You wouldn't look at -- it's not marked as observation bed.

It's still someone occupying a space that doesn't -- they shouldn't be there. They should be in a psychiatric facility. That's --

DR. MCKENZIE: This is Commissioner McKenzie. In addition to having further discussion in December with Dr. Delamater, I think the question was posed of do we have the ability to create a split because if there still is an issue with the methodology that may need to be entertained, do we have the ability to implement a portion of this and not another portion which Commissioner Ferguson posed. And I -- I don't know if that's been answered already or if that's something that we need to investigate in terms of optionality, or what -- is that the Commission's discretion?

MR. HECKMAN: Assistant Attorney General Brien Heckman. I think the answer depends on what Professor Delamater says. I mean, you can. The difference is I think the complexity of what –- what is going on. So depending on what the problem and the solution are, depends on how easy you can separate those two things.

MR. FALAHEE: Okay. To be determined later. All right. So we'll –- we'll have further discussion about this in December.

MR. CONNOLLY: Yes.

MR. FALAHEE: Other questions? Okay. And remind me, the Psych Bed group starts meeting?

MR. EASTER: Tentatively December.

MR. FALAHEE: That's what I thought. Okay. And did we have anyone that wanted to add some charges to the Psych Bed?

MR. EASTER: We were going to do that at public comment at the end.

MR. FALAHEE: Great. Thank you. All right. So next we'll move to NICU beds. We'll see if we can set an effective date. Marcus, please?

MR. CONNOLLY: A new NICU Bed Need report is included in your electronic binder. The Commission does not have to set an effective date for the recalculated bed need. This is completed by the Department. The Department has set an effective date of November 1, 2024. Are there any questions?

MS. GUIDO-ALLEN: Guido-Allen. Why do we use '22 as the birth data?

MS. NAGEL: Can you -- can you repeat that one?

MS. GUIDO-ALLEN: So in the summary on page 142, the NICU bed -- bed need methodology was implemented using the birth data from 2022, to calculate our current NICU bed need.

MS. NAGEL: I know -- you know, again, that would be a great question I would probably need Paul to answer specifically. But when he contacts us, we talk to our state

demographer in our vital records and give him the most recent data available. And so it could be that that is the most recent data available and published by our state demographer.

MS. GUIDO-ALLEN: Just a -- could be a lot.

MR. FALAHEE: Commissioner Guido-Allen, this is Falahee, would you recommend then holding off until December until we get that answer?

MS. GUIDO-ALLEN: I make the motion that we hold on this standard as well.

MR. FALAHEE: Do we need a formal motion on that or can we just instruct the Department to look at these issues and see you in December?

MS. NAGEL: So in this case it's the Department setting the date. This one's a little bit different. This one we don't actually need Commission action. We brought it to you to let you know that --

MR. FALAHEE: We can -- this is Falahee. Can we let you know that we have questions and then --

MS. NAGEL: And so that is exactly what I would suggest. That you direct us to hold off on setting the date until you can answer your questions with Dr. Delamater.

MR. FALAHEE: I think we're about to have a motion to that effect.

MS. GUIDO-ALLEN: Guido-Allen. Motion to request

that the Department hold on setting an effective date for the NICU bed need bed methodology update until we have a chance to speak to Dr. Delamater in December.

MR. DRAKE: Commissioner Drake. I second.

MR. FALAHEE: Any questions from the Commissioners or the Department? All right. All in favor of the motion please say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Okay. That carries. Thank you.

(Whereupon motion passed at 10:37 a.m.)

MR. FALAHEE: All right. Administrative update. Marcus, I think we'll start with you.

MR. CONNOLLY: Yep. At this point we don't have any additional administrative updates in my section.

MR. FALAHEE: That's quick. All right. How about Commission Special Projects Section Update? Anything there?

MR. CONNOLLY: Nope.

MR. FALAHEE: Okay. Thank you. Tulika, CON Section Update, evaluation section?

MS. BHATTACHARYA: Good morning. This is Tulika. So the program activity reports and the compliance reports are in your packet. And as you can see, we continued to meet the timelines for our processing of applications and issuing the decisions. There were no emergency CONs in this

quarter. And then as far as compliance monitoring, we continue to follow all of the approved projects for implementation on time or giving them extensions as needed. There were three –- or, sorry, two specific compliance issues related to mobile MRI reporting, and the details are in your packet of those cases. If there are any questions, I'm happy to answer.

MR. FALAHEE: Any questions of Tulika? Thank you for the usual thorough report. We can tell that COVID has gone through the -- as opposed to the bed needs, the number of emergency applications has dropped way off that we saw in COVID. So at least that's one area where we don't have COVID to worry about anymore affecting the numbers. All right. Thank you very much. I'll turn it over to Assistant Attorney General Brien Heckman for his report.

MR. HECKMAN: Thanks, Chip. This is Assistant Attorney General Brien Heckman. We have no litigation currently in the Michigan Office of Administrative Hearing and Rules. So no CON-specific litigation. We do have a new civil suit that's been filed against MDHHS and LARA. Due to how new that action is, I'm inclined not to go into details at the moment until the –- the Department files a –- a response of pleading. So I would just say hold questions until the next meeting on that. If anybody does want anything, you can reach out to me specifically and I can

kind of give a little bit more detail.

MR. FALAHEE: Thank you, Brien. All right. Now, public comment. Thank you. Justin, I think -- all right.

MR. EASTER: Justin from the Department. We have one public comment from Melissa Reitz from McCall Hamilton.

MELISSA REITZ

MS. MELISSA REITZ: Good morning. I'm Melissa Reitz with McCall Hamilton. Thank you for the opportunity this morning to provide comments regarding the upcoming Psych Bed workgroup. Unlike usual, I'm actually going to read my comments this morning as it's the only way I'm going to be able to fit everything in under three minutes.

Earlier this year you approved the creation of a workgroup to review the Psych Bed standards. Since then, through our experience in preparing CON applications, we have identified a few additional items we would love to have the workgroup review. To that end, there are four additional charges I am here to ask you to consider adding to the workgroup charge.

One, review the average occupancy rate calculation in Section 8(2) and recommend revisions to clarify the calculation that should be utilized. Section 8(2) requires an existing facility to be meeting 70 percent occupancy in order to add more beds from the pool. This section includes a formula for calculating the 70 percent occupancy, but the

language just doesn't make sense. The workgroup could easily clarify the formula and provide revisions to make it clear in the standards.

Two, review the high occupancy provisions in Section 8(3), specifically the requirement that there be no beds available in the planning area where the beds are being requested, and recommend if any changes should be made to address more immediate bed need. This requirement has what I believe to be an unintended consequence of causing significant delay in bringing more beds online at facilities that qualify for high occupancy beds. Facilities that are in essence guaranteed approval for more beds have to wait for a comparative review window, wait through a potential comparative review, wait through a potential appeal, and then possibly still have to reapply under the high occupancy provision if they aren't the winning party in the comparative review.

Third, consider a provision should be added to allow for the reallocation of special pool beds from under utilized pools to pools without beds available and/or consider recommending a different allocation of available beds within the existing pools. There are special population groups within the special pool of beds that just simply are not being used, while other pools are utilized at a much higher rate. The Nursing Home standards have very

similar provisions, except the language allows for,

"The adjustment/reallocation of beds in the pool allowing the Commission to take some beds from under utilized groups and move them into groups that have fewer or even no beds available."

And, four, review the use of the term "provisional license" in Section 11(3)© and determine if changes to that provision should be made to align with current terminology used within the Michigan Department of Licensing and Regulatory Affairs. The current standards deduct points in a comparative review for an applicant whose facility has been issued a "provisional license" from the Department in the last three years. But based on our conversations with LARA, this is a term that they do not use and they would like to have the standards updated to either remove this provision or attach the point deduction to some other similar action that is currently utilized by LARA, DHHS, CMS or –- or another relevant body.

I apologize if these new issues were not brought forward last October. Admittedly, the last one is something I should have raised and I just simply forgot. However, the rest I did not recognize as issues until the past few months when we were working on applications and tried to apply the standards to real life situations. Since a workgroup is already meeting, it seemed like it would be a shame to not

have them address these issues, most of which I think will be relatively quick to address. I appreciate your consideration of this request and happy to answer any questions you may have.

MR. FALAHEE: Questions for Melissa? I've got one, or six, seven. So when I look at number two, no beds available -- or maybe it's number three. Yeah. Here we go. It's the third one. I apologize. The reallocation.

MS. MELISSA REITZ: Oh, sure.

MR. FALAHEE: As I talked about earlier, I worry about gamesmanship. So would this, say, if you're an adult facility and you'd rather be in pediatric, you can switch, vice versa? Is there a game that can be played by saying, well, now I am this and six months later I'm going to be that?

MS. MELISSA REITZ: Well, so, actually that issue is already included in the charge for the upcoming workgroup. So that was a -- a request that was made by Havenwyck back in October where they want to have the workgroup consider allowing the flex bed status. Right now we have flex bed status that you can apply to add to an adult bed to allow it to flex to pediatric and they are asking the workgroup to review the opposite of that, to allow a flex bed status on a pediatric bed to be used for adult. But this one is related to the special pool of beds

which is, like, geriatric, developmental, disability, med psych, and high acuity, and hopefully I have all those right. And what this is just saying, have some of –- like, the developmental disability beds, for example, we have some categories where they just don't have any approvals, we've had no applications. We maybe originally had applications for some beds and they were approved, and then they just weren't implemented and they're just sitting unused. And so the idea would be either to have the workgroup recommend or, you know, if we should move some of those beds out of -- I wouldn't say take it down to nothing, like still have some beds available in all of the pools, but to move some beds out of, like, the development disability pool into geriatric is one that has no beds available. Every once in awhile a facility will give back a few beds and they'll pop in and then they're right back out again. But just in Nursing Home Beds we have that ability to shuffle beds around, and so this would -- we could either recommend that language be adopted so the Commission could do the reshuffling, or we could just ask the workgroup for their recommendation on how the beds might be reshuffled or –- or –- or leave it alone, but have the workgroup kind of talk through the pros and cons of –- of that ability to do that.

MR. FALAHEE: Okay. Or –- or could it be the Commission does the reshuffling after receiving

recommendations from the Department?

MS. MELISSA REITZ: Oh, sure. Yeah, absolutely.

MR. FALAHEE: Okay. Thank you. All right. Other questions?

DR. DELANO: Commissioner DeLano. I just -- a question. Is there any accounting for the shuffling that's going on with the flex beds that are currently being done? So in other words, would it be an appropriate metric to follow that a bed is at a certain percentage, adult versus pediatric? Wouldn't that eliminate the capacity to do the gamesmanship or seeing how that's working?

MS. MELISSA REITZ: So on the flex bed piece, again, not part of my request because it's already part of the charge to the workgroup that was approved back in January. But the Department does track flex bed use in the annual survey.

MR. FALAHEE: Did that answer your question?

DR. DELANO: I think so.

MR. FALAHEE: Okay.

MS. MELISSA REITZ: And –- and it's recorded on the state web site. You can actually see all of the flex bed utilization on the CON survey reports.

MR. FALAHEE: Other questions?

MS. MELISSA REITZ: Thank you.

MR. FALAHEE: So other –- other cards on this?

MR. EASTER: No cards.

MR. FALAHEE: So if we could leave that slide up for a second? So what Melissa has recommended is that charges be added. And for those of you that have been sitting around this table for awhile, we –- we –- we don't like it as a Commission when charges are added after a group has already begun to meet, or very soon before a group has begun to meet. In this case, that's not happening because that's why I asked when the Psych group is going to meet. So it has not met yet. So like we did earlier today, one option is the Commission could instruct the vice chair and chair work together with the Department to put these additional charges together for the workgroup to look at when it begins its meetings in a few months. That's one option. And if somebody thinks that's a good option, they wanted to make a motion that said that, so be it. Or there's other comments or discussion, other ideas.

MS. GUIDO-ALLEN: Guido-Allen. I –- I move to ask the chair and vice chair to work with the Department to add these proposed additional charges to the Psych Bed workgroup that has yet to be put together.

MR. FALAHEE: All right. Is there support for that motion?

DR. ENGELHARDT-KALBFLEISCH: Commissioner Engelhardt-Kalbfleish. Support.

MR. FALAHEE: Thank you very much. Questions? Discussion?

DR. FERGUSON: Ferguson. Yeah, a question. And maybe it's similar to a prior comment I made. Probably not an issue. Number two, three and four all have, if's, if warranted, make a change. The first one doesn't. It sounds like it probably does need clarification. I don't want -- I'm not saying that it doesn't. But I would just urge caution that if the workgroup looks at it or the SAC looks at it and says, nope, these are perfectly clear. We don't need to make a change, we should stick with that as opposed to be required to make recommended changes. I don't want to --

MR. FALAHEE: So if you -- yeah.

DR. FERGUSON: -- but ever- -- everything that goes to a SAC should be an if.

MR. FALAHEE: If --

DR. FERGUSON: So, if warranted, make a change. Not required to make a change.

MR. FALAHEE: -- yeah. At the end of that first line where it says, and, if necessary?

DR. FERGUSON: Yes.

MR. FALAHEE: Point noted. With –- with that noted, all in favor of the motion please say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Okay. Great. Good comment.

(Whereupon motion passed at 10:51 a.m.)

MR. FALAHEE: Next item review of -- are there any other public comments about other issues?

MR. EASTER: There are none.

MR. FALAHEE: Okay. Looking at the audience. Going, going, gone. All right. Review of the Commission Work Plan. Katherine?

MS. TUCKER: Katherine from the Department. The Department is keeping track of the workgroups and the SACs requested by the Commission. Presented is the updated Commission work plan. The Commission will need to make a motion, a second, and a vote to approve the work plan as presented.

MR. EASTER: I just want to make a note about Heart Lung Liver. Right here it says, SAC/workgroup. We created this before –- before the Commission decided to continue on with the SAC. So where it's a SAC, we will update the workgroup to reflect it as, Heart Lung Liver SAC.

MR. FALAHEE: So other than that, Justin, then anything we did today doesn't impact the work plan?

MR. CONNOLLY: No.

MR. EASTER: No, sir.

MR. FALAHEE: Okay. For the new Commissioners,

sometimes actions we take at the meeting result in immediate amendments to the work plan, and so that's why it's sort of sometimes on the fly we're making changes. That's why I wanted to make sure we just had the one change and that was it. So we need a formal motion then to approve the work plan as it's presented before us now.

DR. MCKENZIE: Commissioner McKenzie. Move to approve the work plan as presented.

MR. FALAHEE: Is there a second for that?

MS. TURNER-BAILEY: Commissioner Turner-Bailey. Support.

MR. FALAHEE: Thank you both. Questions or discussion? All in favor of the motion please say aye.

ALL: Aye.

MR. FALAHEE: Opposed? Great.

(Whereupon motion passed at 10:53 a.m.)

MR. FALAHEE: Next item, looking into 2025 and meeting dates, just so everybody knows. So December 5 of this year, and then in 2025: January 23, March 13, June 12, September 18, and December 4. And we think those are final as of now. All right. Thank you. Any other items to come before the Commission today?

MR. EASTER: We will need a motion and vote to adopt those.

MR. FALAHEE: To adopt those dates?

MR. EASTER: Yeah.

MR. FALAHEE: All right. Thank you for reminding me.

DR. MCKENZIE: Commissioner McKenzie, move to approve the future meeting dates.

MR. FALAHEE: Is there support?

MR. DRAKE: Commissioner Drake. Second.

MR. FALAHEE: Thank you. All in favor please say aye.

ALL: Aye.

(Whereupon motion passed at 10:54 a.m.)

MR. FALAHEE: Any other business?

MR. EASTER: Nothing.

MR. FALAHEE: Okay. Anything from the Commissioners? Great. Entertain a motion to adjourn, please.

DR. MCKENZIE: Commissioner McKenzie. I move to adjourn.

MR. FALAHEE: Support?

DR. FERGUSON: Support. Ferguson.

MR. FALAHEE: All in favor say aye.

ALL: Aye.

MR. FALAHEE: Opposed?

(Whereupon motion passed at 10:54 a.m.)

MR. FALAHEE: Thank you all very much. Thanks

everyone in the room. Appreciate all your help.

(Proceeding concluded at 10:54 a.m.)

CERTIFICATE

I, Marcy A. Klingshirn, a Certified Electronic Recorder and Notary Public within and for the State of Michigan, do hereby certify:

That this transcript, consisting of 64 pages, is a complete, true, and correct record of the meeting given on September 19th, 2024.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am not interested in the outcome of this matter, financial or otherwise.

IN WITNESS THEREOF, I have hereunto set my hand this 30th day of September, 2024.

Marcy A. Klingshirn

Marcy A. Klingshirn, CER 6924
Notary Public, State of Michigan
County of Eaton
My commission expires: March 30, 2029