

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

COMMISSION MEETING

BEFORE AMY L. MCKENZIE, M.D., CHAIRPERSON

333 South Grand Avenue, Lansing, Michigan

Thursday, January 27, 2022, 9:30 a.m.

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24
25

TABLE OF CONTENTS

	PAGE
I.	Call to Order 5
II.	Review of Agenda. 5
III.	Declaration of Conflicts of Interests 6
IV.	Review of Minutes of December 9, 2021 6
V.	Megavoltage Radiation Therapy (MRT) Services/Units Action on Amendment to MRT Review Standards Section 4, including seating a SAC or workgroup, charging the Department with drafting language for review at next Commission meeting, scheduling a public hearing on proposed language without a SAC or workgroup, or approval of language to the extent possible 10
	A. Public Comment
	1. Anita Stdrok. 12
	B. Commission Discussion 15
	C. Commission Action 21
VI.	Air Ambulance Services - October 8-22, 2021 Public Comment Period Summary & Report. 28
	A. Public Comment. --
	B. Commission Discussion 29
	C. Commission Action 33
VII.	Computed Tomography (CT) Scanner Services - October 8-22, 2021 Public Comment Period Summary & Report. 41
	A. Public Comment. --
	B. Commission Discussion --
	C. Commission Action 43

1 VIII. Neonatal Intensive Care Services/Beds (NICU)
2 October 8-22, 2021 Public Comment Period Summary
3 & Report. 49
4 A. Public Comment. --
5 B. Commission Discussion --
6 C. Commission Action 52

7 IX. Nursing Home and Hospital Long-Term Care Unit
8 Beds and Addendum for Special Population Groups
9 (NH-HLTCU) - October 8-22, 2021 Public Comment
10 Period Summary & Report 53
11
12 A. Public Comment
13
14 1. Melissa Reitz 56
15 2. Pat Anderson. 57
16
17 B. Commission Discussion 62
18
19 C. Commission Action 68

20 X. Urinary Extracorporeal Shock Wave Lithotripsy
21 (UESWL) Service/Units - October 8-22, 2021 Public
22 Comment Period Summary & Report 69
23
24 A. Public Comment. --
25 B. Commission Discussion 70
26
27 C. Commission Action 72

28 XI. Public Comment
29
30 1. Matt Biersack, M.D. 74, 84
31
32 2. Amy Barkholz 79
33
34 3. Dave Walker. 81
35
36 4. Tracey Dietz 82

37
38 Heart/Lung/Liver Transplant Commission
39 Discussion 84
40 Heart/Lung/Liver Transplant Commission Action . . 87

1 XII. Review of Commission Work Plan. 95

2 XIII. Future Meeting Dates - March 17, 2022;

June 16, 2022; September 15, 2022;

3 December 8, 2022 97

4 XV. Adjournment 97

5

6

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8

9

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1 Lansing, Michigan

2 Thursday, January 27, 2022 - 9:31 a.m.

3 DR. MCKENZIE: Good morning, everybody. I think I
4 can still say happy new year safely for another couple of
5 days. We're almost near the end of January. Thank you for
6 joining us today and I'll call our meeting to order. Just
7 right at the outset for those that are new to the CON
8 commission, this January meeting is our special meeting
9 where we lay out our calendar of items that we're going to
10 be looking at through the year based on public comment that
11 we received in the fall, and feedback. So that's really the
12 context of this meeting. So it's a little bit of a
13 different meeting than the meetings that we have throughout
14 the year. So we will get going here today.

15 So our first item is the review of the agenda.
16 And you can see it's included in your packet. We have --
17 the key items are going to be Megavolt Radiation Therapy,
18 Air Ambulance Services, CT Scanner Services, NICU Beds,
19 Nursing Home and Hospital Long-Term Care Unit Beds,
20 Lithotripsy and then we have some time for public comment
21 and review of the work plan are the key items on the agenda
22 today. So I need a motion for the agenda.

23 MR. HANEY: So moved.

24 DR. MCKENZIE: Thank you.

25 DR. KONDUR: Second to approve.

1 DR. MCKENZIE: Thank you. All in favor?

2 ALL: Aye.

3 DR. MCKENZIE: Any against?

4 (Whereupon motion passed at 9:33 a.m.)

5 DR. MCKENZIE: So Chip Falahee is not with us
6 today, so I'm flying a little bit solo and I got a reminder
7 that when we're speaking, please announce your name. And
8 the other item is that as we move through on taking
9 Commission action, we are going to be doing roll call on the
10 key items. For things like agenda and minutes we'll do
11 consent approval, but it's easier to record commissioner by
12 commissioner so that's what we're going to be doing today.
13 The other reminder that I have for everybody is for during
14 public comment, if we have public comment during this time,
15 that you're limited to three minutes. So we would ask that
16 you keep your comments to that time frame.

17 And then the next item on the agenda is
18 declaration for conflict of interest. And if there's any
19 question, there's a disclosure or information in your packet
20 around conflict of interest. So do I have any -- anyone who
21 has -- wants to announce a conflict of interest today?
22 Okay. Hearing none, we will continue to move on. Next item
23 is the review of our minutes from December 9th, 2021.
24 They're included in your packet. I'll give everybody a
25 moment and then when appropriate, if anyone wants to make a

1 motion?

2 DR. FERGUSON: Ferguson, motion to approve.

3 MS. LALONDE: Lalonde, second.

4 MR. WIRTH: I'm sorry. Who was the first?

5 DR. FERGUSON: Ferguson.

6 DR. MCKENZIE: Ferguson. And then Renee
7 Turner-Bailey (sic); Commissioner Turner-Bailey.

8 MR. WIRTH: Okay. And I can do a roll call on
9 that.

10 DR. MCKENZIE: You want to do a roll call on the
11 minutes?

12 MR. WIRTH: Brien, do we need roll call on minutes
13 for vote? We do; right?

14 MR. HECKMAN: You don't have to do a roll call
15 because all the commissioners are present.

16 MR. WIRTH: Okay. Okay.

17 MR. HECKMAN: If you want to keep the roll calls
18 to the substantive action that the Commission is taking,
19 that's fine.

20 MR. WIRTH: Okay. Sounds good.

21 DR. MCKENZIE: So all in favor?

22 ALL: Aye.

23 DR. MCKENZIE: Any against?

24 (Whereupon motion passed at 9:35 a.m.)

25 DR. MCKENZIE: Great. So hearing none we'll move

1 in --

2 MS. TURNER-BAILEY: I'm sorry, Dr. McKenzie. I'm
3 having a hard time hearing you. Maybe it's me.

4 DR. MCKENZIE: No. I've been told that before so
5 let me -- that's why I put my mask down, but is that better?

6 ALL: Yes.

7 DR. MCKENZIE: Okay. Yup. I will try to speak
8 up, too. I do try to remember that, but thank you for the
9 reminder. So next item on the agenda is to start moving
10 into the substantive section of our agenda and our first
11 item is Megavolt Radiation Therapy Services and Units, and
12 this is an action item. And I'm going to turn it over -- I
13 think, Kenny, you're going to be walking us through this
14 information and also public comment information is in your
15 packet on this item.

16 MR. WIRTH: Correct. And I'm just checking.
17 Seems like people are having trouble hearing in the Zoom.
18 TJ, do you mind asking people if they can hear on Zoom?

19 DR. FERGUSON: Whatever you're saying, I can't
20 hear it.

21 MR. WIRTH: Yeah, I was speaking to TJ real quick.

22 DR. FERGUSON: Oh, okay.

23 MR. WIRTH: We're trying -- we're trying to make
24 sure people can hear us online. Sorry about that, everyone.

25 DR. MCKENZIE: Can they hear us at all or is it

1 just the volume's too low?

2 MR. WIRTH: It might be volume. I'm hoping it's
3 volume. We're just asking, seeing if people respond back.

4 DR. MCKENZIE: Okay.

5 MR. WIRTH: Sorry, everyone.

6 MR. YOUNGQUIST: They're not hearing anything.

7 MR. WIRTH: No?

8 MR. HECKMAN: So the remote nature of this meeting
9 is a courtesy and nothing substantive has occurred. If you
10 want to revisit some of the votes that have already
11 occurred, you could. All you've really done is the
12 declaration of conflicts and the agenda. So from that
13 standpoint you don't have to.

14 DR. MCKENZIE: Okay.

15 MR. WIRTH: I'm hoping people can hear us online
16 now, but if we want to continue with this section?

17 DR. MCKENZIE: Do we need to ask if -- ask people
18 to post in the chat if they're hearing us at this point?

19 MR. WIRTH: Are they hearing?

20 MR. YOUNGQUIST: I just asked.

21 MR. WIRTH: Okay. Thank you. Just one minute.
22 No sound. How about now? I just clicked a button. Sorry,
23 everyone.

24 DR. MCKENZIE: Can folks online hear us at this
25 point? Sorry, everybody, for the technical difficulties.

1 We're just going to hang tight for a couple minutes.

2 (Off the record)

3 MR. WIRTH: Thank you, everyone. Sorry about
4 technical difficulties. All right.

5 DR. MCKENZIE: Great. So I'm just going to recap
6 briefly the part -- for those that are attending virtually
7 the parts of the agenda that we have covered thus far are
8 the review of the agenda, declaration of conflicts of
9 interest, there were none, and review of the minutes and
10 those were approved; both the agenda and the minutes. So
11 we're going to move on with the substantive portion of the
12 meeting since we haven't really covered anything substantial
13 at this point.

14 So next up on the agenda is the Megavolt Radiation
15 Therapy Services and Units. This is an action item. And
16 the information on this item is in your packet as well as
17 the public comment that was received. So I'm going to turn
18 it over to Kenny to walk through briefly on this item.

19 MR. WIRTH: Thank you. So item five departs a
20 little bit from the normal run of show that we have for our
21 special Commission meetings. I'll do my best to explain the
22 issue that we found and, Tulika, please chime in if I
23 mischaracterize anything. So we've identified an issue in
24 the MRT review standards that limits the application of
25 reduced ETVs to units approved under section 33, which

1 creates a scenario where there's a very limited ability to
2 replace a new MRT service to a new site. So right now we're
3 only asking the Commission either request the Department
4 draft language for the Commission to consider at a later
5 date or to seat a workgroup with a very narrow scope to look
6 at the specific issue. If we'd like to just have a narrow
7 scope so we can get a quick workgroup through on this to
8 address this concern and then we can continue with the
9 workgroup that we've already sort of slated to continue on
10 through the year. So, Tulika, did I cover that properly?

11 MS. BHATTACHARYA: Good morning. This is Tulika.
12 Yes, that is correct. So it is only for a narrow scope like
13 Kenny said for facilities in a rural or micropolitan county.

14 DR. MCKENZIE: Thank you, Tulika and Kenny.

15 MR. WIRTH: Comments?

16 DR. MCKENZIE: Yes. So our next item on this is
17 public comment and I don't have any blue cards from anyone
18 in the room, so we'll look to what we have online.

19 MR. YOUNGQUIST: So Anita Stdrok from ProMedica
20 would like to give comment on agenda item five regarding
21 MIT.

22 MR. WIRTH: MRT.

23 MR. YOUNGQUIST: MRT.

24 DR. MCKENZIE: So, Anita, you can go ahead and
25 unmute for public comment.

1 ANITA STDROK

2 MS. ANITA STDROK: Good morning. Anita Stdrok,
3 associate vice president of radiation oncology for ProMedica
4 Cancer Institute and I'm based out of the Adrian facility.

5 Thank you for your -- thank you for this
6 opportunity to share with you the challenge that we are
7 facing related to MRT service in Adrian. We recently
8 consolidated two of our aged facilities to a single brand
9 new hospital located in Adrian, but geographically between
10 the two original sites. In doing so, we have reduced our
11 licensed bed from 113 to 58. We have created tremendous
12 efficiencies while also vastly improving our care that we
13 provide for both communities. All of our services have been
14 consolidated to the new campus except for the MRT service.
15 This was not part of the original hospital replacement due
16 to capital funding constraints. Because the MRT was located
17 within a still operation MOB, it was selected for phase two.
18 It is important for our MRT service to be replaced at the
19 new hospital campus for many reasons including efficiency
20 and patient convenience.

21 Currently patients receiving radiation therapy
22 offsite have to drive separately to the hospital for labs
23 and diagnostic testing. Many patients are able to continue
24 working while receiving radiation and having to make a
25 separate trip, it's difficult to handle everything in one

1 visit. Having radiation therapy at the hospital campus also
2 allows patients who are receiving chemotherapy to undergo
3 their radiation therapy during their chemo infusion. It has
4 also become problematic for transporting inpatients. Our
5 MRT service is an important access point for central
6 southern Michigan providing almost 5600 ETVs in 2020, which
7 is 24 percent higher than the CON maintenance volumes. For
8 patients receiving radiation therapy every day for weeks at
9 a time, having that care close to home is imperative to
10 maintain some normalcy of life, maintaining their jobs and
11 other important responsibilities due to treatment -- during
12 treatment.

13 Unfortunately, we have recently learned that our
14 MRT service does not qualify for relocation to the new
15 hospital campus under the current standards and we are
16 scheduled to break ground on phase two in the fall.
17 Although the standards allow for relocation of the existing
18 service at a volume of 5500 ETVs, the service to approve to
19 initiate at that volume, our program has existed longer than
20 the CON standards and therefore we do not qualify for that
21 provision and we need to be operating at 8,000 ETVs which is
22 the standard initiation volume. Looking at other CON
23 standards provision for relocation of service to a new site,
24 six of them tie relocation to maintenance volumes and two of
25 those having the same maintenance volumes as initiation

1 volume and three of those standards include lower volumes
2 for facilities located in rural and micropolitan counties.

3 We are asking you today to approve the formation
4 of a workgroup to review the volumes requirements, to
5 replace an existing MRT to a new location in a
6 rural/micropolitan statistical area or county. Thank you
7 for this opportunity and I'm happy to answer any questions
8 you may have.

9 DR. MCKENZIE: Thank you, Anita. That was a great
10 summary. So this is -- do we have any other public
11 comments?

12 MR. YOUNGQUIST: Yeah.

13 DR. MCKENZIE: Yeah? Do we -- are there any
14 questions first, for Anita, before we move on with the next
15 public comment, from the Commissioners?

16 MR. HANEY: I just want to clarify. This is Don
17 Haney. One of the thing you mentioned there, the -- when
18 you start the construction of phase two, the only thing left
19 of the old hospital campus would be the MRT, is that what I
20 heard you say?

21 MS. ANITA STDROK: That is correct.

22 MR. HANEY: Okay. Thank you.

23 DR. MCKENZIE: Any other questions from the
24 commissioners? Okay. We have another public comment?

25 MR. YOUNGQUIST: And, Anita, I just -- I did just

1 want to confirm, did you also include your comment on the
2 Nursing Home Bed Standards?

3 MS. ANITA STDROK: Did I include my comment on
4 what?

5 MR. YOUNGQUIST: The Nursing Home Bed Standards?

6 MS. ANITA STDROK: Nursing Home -- no.

7 MS. MELISSA REITZ: Sorry. This is Melissa. I am
8 the one who wants to speak on Nursing Home Beds. Melissa
9 Reitz.

10 DR. MCKENZIE: Yeah. I think we'll -- we'll take
11 that item when we come to the Nursing Home Beds once we
12 arrive at that place on the agenda. So thank you.

13 MS. MELISSA REITZ: Thank you.

14 MR. YOUNGQUIST: Nope.

15 DR. MCKENZIE: Okay. No further public comments.
16 So is there any Commission discussion on, or do we want to
17 hear from the Department on what the options are? But we
18 can open it up for Commission discussion first.

19 DR. FERGUSON: I have a question. This is
20 Ferguson. I got a question for the administrative team as
21 we look at the recommendations here. So I'm -- I understand
22 the situation here, moved a hospital and certainly this
23 seems to get tangled up in the logistics and so I'm very
24 sympathetic to the notion of looking at this. My question
25 is as we look at it -- and this is what I don't understand,

1 you all will understand better -- is this primarily a
2 question around rural/micropolitan county process and
3 regulation or is this really a question of if a hospital
4 moves, should the CON regulated items directly or indirectly
5 associated with that hospital be allowed to move with it? I
6 guess I struggle to see why this would be unique to rural
7 and micropolitan counties as opposed to a generic notion of
8 if somebody builds a new hospital, you would think we would
9 allow to move the equipment. And I know that officially
10 this is a part of the hospital. It's in the MOB. Like, I
11 get that.

12 DR. MCKENZIE: So I'll try to kind of weigh in and
13 then if Tulika wants to either correct me, I -- oh, sorry.
14 I know I'm getting a bit of an echo. Back up a little bit.
15 What I heard was that their program had existed prior to
16 initiation of the CON and so they don't -- there is a
17 relocation portion within the standard that actually has
18 lower volume requirements than initiation but they don't
19 qualify because they did not fall under CON when their
20 program was initiated. So therefore this then is looked at
21 like it's a new service, like it's an initiation and they
22 have to meet those higher thresholds. So that I think is
23 the challenge of what has gotten tangled up here. Tulika,
24 I'll turn it over to you if I've misunderstood or if you
25 want to add to anything that I -- or Kenny?

1 MS. BHATTACHARYA: Sorry. Can you hear me?

2 DR. MCKENZIE: Yeah.

3 MR. BHATTACHARYA: This is Tulika. No, Chairman
4 McKenzie, you got it right. But if I can elaborate a little
5 more, please? So you are right, the hospitals whether
6 metropolitan or micro/rural hospitals, when they move, they
7 should be allowed to move all of their services to the new
8 site and they do. But in the respective review standards
9 there are requirements to relocate those services to the new
10 site. So when it is part of a whole hospital replacement,
11 some of the standards say that you don't have to meet volume
12 but other standards say that you do have to meet the volume
13 for the equipment that you are trying to relocate to the new
14 site even though it is part of the same hospital site.

15 So what is happening in the MRT standard there is
16 a requirement for relocation to the new site. So for
17 metropolitan counties it is 8,000, for micro/rural it is
18 5500 but there is an additional requirement that there
19 cannot be any other service within a 60-driving miles. So
20 what we are asking to -- for you to reconsider that since it
21 is a rural and micropolitan county and it remains in a
22 county like that, do we need that additional requirement
23 that you have to prove there is no other service within a
24 60-driving mile.

25 DR. FERGUSON: I'm -- I'm fine with it. Right?

1 We need to fix the problem. It sounds like you have a plan
2 to fix the problem. Let's do that. I just hope that we
3 don't trip into another scenario with a hospital trying to
4 relocate getting snagged up because we fix it in such a
5 narrow fashion here that it's not more broadly applicable.
6 You know, there's reasons to have variability between
7 standards -- right? -- so I understand that, but there also
8 seems to be a little bit of divergent evolution. Right? So
9 I have a commis- -- you know, a committee work on this
10 standard and a committee work on this standard and after a
11 couple of cycles, they start to drift apart and so there's
12 not necessarily great -- doesn't seem like there's always
13 great symmetry between the standards.

14 DR. MCKENZIE: Yeah. I'm going to ask Kenny and
15 Tulika to speak to consistency because I know that that has
16 been brought up several times when we open the standards.
17 But is -- can you speak to the process around that?

18 MR. WIRTH: Around creating consistency across
19 standards?

20 DR. MCKENZIE: Yeah.

21 MR. WIRTH: So that would be something that I
22 think we would ask a workgroup to look at, whether or not it
23 makes sense to, you know, extend something that exists in
24 one standard into another one. But it does make it easier
25 to apply for Certificate of Need or to kind of go through

1 that whole review process if the standards do have some
2 consistency across them with certain aspects, but with some
3 standards they just, you know, things have to be measured
4 differently for MRI as opposed to Hospital Beds or things
5 like that. So some things we can't make consistent all the
6 way across, but any area where we can increase consistency
7 is definitely, you know, good.

8 DR. MCKENZIE: I know it's been discussed for
9 things like pediatric and defining pediatric age and all of
10 those types of things, but I also hear your point. So any
11 other discussion on this item?

12 DR. MACALLISTER: Commissioner MacAllister.
13 Just -- I would support Commissioner Ferguson's notation in
14 regards to consistency and I would hate for it to be
15 something that is put on the SAC itself to look for that
16 alignment and I would hope that we maybe systematically
17 maybe look at this, all of the reg -- regulations and where
18 there may be that alignment holistically so we can better
19 assess and assure that the SAC is doing the alignment that
20 we're looking to achieve holistically for the CON. That
21 would be, I guess, alignment as well.

22 DR. MCKENZIE: So Kenny and Tulika, I know that
23 when we pull together SACs on this, it's typically a
24 particular area of expertise that we're pulling together of
25 SNEs (phonetic), not something that kind of straddles across

1 all of the standards. Is this something that has been done
2 before by a particular workgroup or SAC or something that
3 would be undertaken perhaps at the Department level? Also
4 recognizing that there are, you know, constraints and you
5 have work and applications coming in and tracking and all of
6 those types of things. So I don't know if you have any
7 thoughts about that particular item?

8 MR. WIRTH: Yeah. So for this item we -- you
9 know, we can go about it in a couple ways. The Commission
10 could work to seat a SAC, charge, you know, the chair and
11 vice chair with seating the SAC, selecting the work group
12 chairperson and drawing up the charges. We could also have
13 the Commission charge the Department with drafting language
14 and bringing that at a later Commission meeting for you all
15 to consider. We could also go about it in terms of going
16 through the Standard Advisory or Standard Advising Committee
17 process. We are ideally looking at going through a
18 workgroup process first just because currently workgroups
19 aren't under the Open Meetings Act scope, so we could hold
20 those ones remotely and reduce people's exposure to COVID
21 and it creates for a more representative group if people are
22 able to attend from the far reaches of Michigan. And of
23 course if there are any charges on the workgroup charge list
24 that they can't complete, they can always recommend to the
25 Commission that we seat a SAC to look at those specific

1 items similar to what's going on with PET right now. So
2 those are the options.

3 DR. MCKENZIE: Thank you. Is there any further
4 discussion on this item?

5 MR. HANEY: I just want to make sure -- Haney. I
6 just want to make sure I understand. There were three
7 options there: a workgroup, a SAC and then the Department
8 drafts language that we can consider at our next meeting?

9 MR. WIRTH: Correct.

10 MR. HANEY: And you're recommending the workgroup?

11 MR. WIRTH: I would recommend either the
12 Department draft language or the workgroup, either one
13 works. We do -- are recommending two other workgroups this
14 year for later standards that we'll go over. So, you know,
15 the Department drafting language would work. But I know
16 that -- I believe it was ProMedica who brought this forward
17 that, you know, it was their hope for a workgroup. So it's
18 really up to the Commission which way you prefer to go. But
19 either a workgroup or a Department drafting language I think
20 would be ideal. The SAC would be kind of a follow-up to a
21 workgroup, I think, in terms of this.

22 DR. MCKENZIE: Yeah. I'll just add a comment to
23 that because I work with the Department in between these
24 meetings and seating the SACs has been a bit of a challenge,
25 particularly through COVID. It sometimes takes several

1 rounds. They're very -- they're particular around what
2 representation you have to have on the SAC and they also
3 have to meet in person. So it's just a consideration that,
4 you know, we're now on our third round for PET which you'll
5 hear about later on trying to seat that SAC and that's not
6 uncommon. So it's just a consideration. You know, if we
7 have a lot of substantive changes a SAC I think is a better
8 option. When it's a more narrow focus, you know, a
9 workgroup may be able to handle it or we could ask the
10 Department to draft language.

11 In terms of the consistency that was brought up by
12 Commission MacAllister and Commissioner Ferguson, I would
13 suggest that the group keep that confined to this particular
14 issue because obviously the standards are quite large. And
15 so to think about developing consistency across all the
16 standards, across all the items, I think that would be a
17 little bit much to bite off so that would be my suggestion.
18 But -- go ahead. Commissioner Turner-Bailey?

19 MS. TURNER-BAILEY: Commissioner Turner-Bailey. I
20 just wanted to say with regards to a workgroup, that does
21 not exclude the Department from getting input and
22 assistance; right? So we -- we laid it out as though
23 there's sort of three separate things, but we could agree to
24 do a workgroup -- correct? -- and get, they could get plenty
25 of guidance from the Department about what -- how we would

1 want to look at -- how they would want to look at the issue
2 and what that might, recommended language might look back --
3 look at -- like to come back to us.

4 DR. MCKENZIE: That's correct. Absolutely; yes.

5 MR. WIRTH: And I believe that we did have one
6 more public comment that came in. I don't know. Brien, is
7 it -- we already moved to Commission discussion. I don't
8 know if that's -- going back to public comment is an issue
9 or not?

10 MR. HECKMAN: How many people do we have logged
11 in?

12 MR. YOUNGQUIST: 37.

13 MR. WIRTH: There's also a public comment section
14 at the end of the meeting.

15 MR. HECKMAN: Okay. Then I would defer to have
16 them come back for that.

17 MR. WIRTH: Okay. So we will come back to the
18 other MRT comments in the public comment section under item
19 11. So if you could please make sure that TJ has your name
20 and organization in there, we'll make sure we get back to
21 that.

22 MR. YOUNGQUIST: And just a reminder to
23 Commissioners to please lean into the mic when you're
24 talking. Some people over the Zoom call are having some
25 problems hearing you. So just try to talk loud, try to

1 speak into the mic.

2 DR. MCKENZIE: So if there's any other discussion
3 items? Otherwise we can entertain an action and I will try
4 to outline what those can be again. So the opportunities on
5 the table are to seat a SAC, to examine the MRT services and
6 units and standards in section four; to seat a workgroup to
7 do the same; or to charge the Department to draft language.
8 And in seating the SAC or the workgroup, the opportunities
9 to have the chair and the Department to be able to select
10 who the leaders are of that workgroup or SAC as well as help
11 to draft the charges. So those are the opportunities.
12 Sorry, I wasn't -- didn't align those all together as I laid
13 them out, but that's -- that's how -- those are the
14 opportunities I see before us, so --

15 DR. FERGUSON: Motion to create a workgroup to --
16 this is Ferguson. Motion to create a workgroup to explore
17 the topic of MRT as narrowly defined.

18 MR. HANEY: Haney. I support.

19 DR. MCKENZIE: Thank you. I'm going to come back
20 to Commissioner Ferguson on that original proposal. Do you
21 want to also include the chair and the co-chair to select
22 the leaders of the workgroup and --

23 DR. FERGUSON: Yes, please.

24 DR. MCKENZIE: -- the Department and to draft the
25 charge?

1 DR. FERGUSON: Uh-huh (affirmative). That would
2 be great.

3 DR. MCKENZIE: Okay. So we will include that.
4 And Commissioner Haney, does your second still apply?

5 MR. HANEY: It does. Thank you.

6 DR. MCKENZIE: Okay. Any discussion?

7 DR. ENGELHARDT-KALBFLEISCH: This is Commissioner
8 Engelhardt. Quick clarifying question. Would this
9 workgroup focus specifically on rural and/or micropolitan
10 volumes?

11 DR. MCKENZIE: So the charges will be drafted
12 based upon what has been laid out. The particular charges
13 will be drafted by the chair as well as the Department to
14 cover the particular items that we've discussed.

15 DR. ENGELHARDT-KALBFLEISCH: Okay. Thank you.

16 DR. MCKENZIE: Yes. Any other questions or
17 discussion?

18 DR. FERGUSON: I have a -- this is Ferguson. I
19 have a discussion question and I don't want to undermine the
20 process here. The idea of having a pending public comment
21 on MRT, voting now and taking the comment later doesn't make
22 a lot of sense to me. And I understand that maybe -- maybe
23 that's what our process is and that we close discussion and
24 so be it, but I just want to explicitly flag that as
25 offered.

1 DR. MCKENZIE: Thank you.

2 MR. HECKMAN: So if I can lend my experience? Am
3 I being picked up? Commissioner Ferguson, I understand that
4 position completely. When we're dealing with a number of
5 issues on the agenda, if somebody misses the public comment
6 section, it becomes very cumbersome and time consuming to
7 continue to go back and forth between the various agenda
8 items.

9 DR. FERGUSON: Agreed.

10 MR. HECKMAN: So I share your opinion, it's just
11 kind of a -- it's a warning to the rest of the public that
12 may want to comment that they need to pay attention so that
13 the agenda can go through smoothly.

14 DR. FERGUSON: That's fine.

15 MR. HECKMAN: So I share your concern, but that's
16 kind of the policy reason to kind of have them come in at
17 the end.

18 DR. FERGUSON: Yeah.

19 MR. HECKMAN: At that point the vote will have
20 occurred. There may be an opportunity for that individual
21 to provide some type of input at a later date as well, so --

22 DR. FERGUSON: Okay. Thank you.

23 MR. WIRTH: Yeah. We'll make sure we get that
24 public comment in the general public comment section at the
25 end of the meeting.

1 DR. MCKENZIE: Any further discussion? Okay. I
2 will take a vote then and we're going to do a roll call
3 vote, so I'll turn it over to Kenny to walk through the roll
4 call.

5 MR. WIRTH: Yes. Okay. So, and this is on item
6 five which would be to form a workgroup on Megavoltage
7 Radiation Therapy Services and Units, to have the chair and
8 vice-chair draft the charge and seat the leadership of that
9 workgroup. So roll call would be -- McKenzie?

10 DR. MCKENZIE: Yes.

11 MR. WIRTH: Englehardt-Kalbfleisch?

12 DR. ENGELHARDT-KALBFLEISCH: Yes.

13 MR. WIRTH: Ferguson?

14 DR. FERGUSON: Yes.

15 MR. WIRTH: Guido-Allen?

16 MS. GUIDO-ALLEN: Yes.

17 MR. WIRTH: Kondur?

18 DR. KONDUR: Yes.

19 MR. WIRTH: Lalonde?

20 MS. LALONDE: Yes.

21 MR. WIRTH: MacAllister?

22 DR. MACALLISTER: Yes.

23 MR. WIRTH: Turnery-Bailey?

24 MS. TURNER-BAILEY: Yes.

25 MR. WIRTH: Falahee is absent, Dimick absent.

1 Haney?

2 MR. HANEY: Yes.

3 MR. WIRTH: Did I miss anyone? Okay. Motion
4 passes.

5 DR. MCKENZIE: Thank you, everyone.

6 (Whereupon motion passed at 10:07 a.m.)

7 DR. MCKENZIE: The next item on our agenda is on
8 Air Ambulance Services. And, again, the public comment
9 period was between October 8th and October 22nd, and that
10 information is in your packet along with the Department
11 recommendations. And I will turn it over to Kenny to walk
12 through the recommendations at hand.

13 MR. WIRTH: Thank you. So item six -- and this
14 is -- I'll say this up front for the rest of the items that
15 we're going to go through. This is -- our special
16 Commission meeting that we hold in January, it's typically a
17 planning meeting where the Commission sets the agenda on the
18 review standards for the upcoming year. Back in October we
19 held a public comment period for the five standards that are
20 up for review for this year. So you should all have those
21 recommendations and the public comments in your packet.

22 For Air Ambulance as item six, we had comments
23 from four organizations and they were all supporting
24 continued CON -- or, sorry, the Department is supporting
25 continued CON regulation of Air Ambulance Services until the

1 Department's emergency medical services licensing can update
2 schools to include Air Ambulance specific requirements.
3 This is consistent with the past couple review cycles we've
4 had Air Ambulance come up. So we're still waiting on EMS
5 licensing to pick up that regulatory process. I do have a
6 slight update from three years ago when this last came up.
7 It is making its way through the rulemaking process and I've
8 received word that they're hoping to have these rules in
9 place by spring or summer of this year. So at that time I
10 will give you all an update and let you know that those are
11 now in and we can move towards deregulating. But for right
12 now, the Department is recommending the continued regulation
13 until EMS can pick up. So if the Commission chooses to
14 accept the recommendation, the standards would be moved
15 forward for the next review period which would be 2025. If
16 we do get new regulations between now and then, we can bring
17 it up to the Commission and we can open them then to
18 deregulate. So that's Air Ambulance Services.

19 DR. MCKENZIE: Thank you for that summary, Kenny.
20 Do we have any public comment?

21 MR. WIRTH: No.

22 DR. MCKENZIE: Okay. Any Commission questions or
23 discussion? Just a reminder the item before us is the
24 Department recommendation to continue regulation of Air
25 Ambulance Services, so that's what we will be voting on.

1 DR. MACALLISTER: Chairperson McKenzie, are we
2 clear with the timeline for when the EMS would be re-looking
3 at that?

4 MR. WIRTH: So it's a very slow process to go
5 through revising administrative rules. So right now the
6 person I contacted over at EMS said that it would be late
7 spring, early to mid-summer of this year. So there's not
8 anything we can do on our end at this point, just kind of
9 waiting for them to do their thing and get through that
10 process and then we could let you, the commissioners, know
11 and you could choose to open them up to deregulate them.

12 DR. MACALLISTER: So at that -- so just for
13 clarification then, we would be getting a report from EMS
14 later this year to re-look at that and discuss, is that --
15 it would become another agenda for discussion then?

16 MR. WIRTH: Yes; yup. It would be -- it would
17 become an agenda item. We would bring it to the attention
18 of the chair and the co-chair of the Commission and they
19 would have it put on the agenda to be raised at a meeting.

20 DR. MACALLISTER: Okay.

21 DR. MCKENZIE: Yeah, so if I can summarize as well
22 as I understand. The basic component of this is if there
23 are quality components that exist within the standards right
24 now, EMS licensing is looking at incorporating those at the
25 state level and anticipates that happening I believe I heard

1 over the summer of this year. And then once that occurs, we
2 can bring it back to the Commission and determine whether
3 deregulation would be appropriate at that point.

4 DR. MACALLISTER: So we're just currently voting
5 just on this short window?

6 DR. MCKENZIE: We're just voting on whether to
7 maintain regulation of Air Ambulance Services. There is
8 no --

9 (Off the record interruption)

10 DR. MCKENZIE: -- there are no restrictions in the
11 standards because that's governed at the FAA level, at the
12 federal level, around access, you know, inability to -- so
13 they, you know, find all the kind of measurement in the
14 micropolitan/metropolitan, but there are quality components
15 imbedded within the Certificate of Need standards and that's
16 why the continued recommendation to maintain the CON
17 standards until this is incorporated in EMS licensing and
18 the public comments that we have received have been in
19 support of that.

20 DR. FERGUSON: Follow up on that. If I'm -- this
21 is Ferguson. So am I hearing -- so I think the plan is
22 fine. Am I hearing that we will look at revising our CON
23 standards this summer when the EMS standards come out or are
24 we looking at getting out of it all together?

25 DR. MCKENZIE: Yeah. It's a deregulation which

1 means you take --

2 DR. FERGUSON: I just want to be clear that
3 we're --

4 DR. MCKENZIE: Yeah; yup. You remove that as a
5 component that we are reviewing or, you know, monitoring
6 under CON.

7 DR. FERGUSON: But we'll have a chance to look at
8 the proposed standards enough to make sure that they're
9 actually meeting what we all would think is appropriate
10 quality standards as part of our charge and if we're going
11 to hand it off to somebody else, I want to make sure they're
12 doing it.

13 DR. MCKENZIE: That would be my understanding as
14 well.

15 DR. FERGUSON: Okay.

16 DR. MCKENZIE: But, Kenny, do you want to speak to
17 that?

18 MR. WIRTH: Yeah. So the -- any review, set of
19 review standards can be opened at any point in time by the
20 Commission for review. So we're not going to be stuck
21 waiting until 2025 to reopen that and review it. And, yeah,
22 it would be, you know, a priority to make sure that the new
23 rules or administrative regulations coming in would cover
24 everything that as the CON Commission you'd want to see. So
25 that would definitely be something that you could look at

1 when you re-open those to deregulate.

2 DR. FERGUSON: Thank you.

3 DR. MCKENZIE: I have a question regarding that.

4 MR. WIRTH: Yeah.

5 DR. MCKENZIE: How would that -- who would
6 undertake that review? Would that be something happening
7 with the Department or would that be something where we
8 would have to seat a workgroup to look at that? What would
9 be the process?

10 MR. WIRTH: I'm not certain on that. I don't know
11 if Tulika would know. I mean, I think, you know, I haven't
12 been around when we've deregulated an item before, but I'd
13 imagine it would be similar to a workgroup or Department
14 recommendation.

15 MS. BHATTACHARYA: Hi, this is Tulika. So there
16 has to be a CON Commission action to propose that and then
17 you have to go to the standard legislative processes to
18 deregulate the standards. So there has to be an action at a
19 Commission meeting.

20 DR. MCKENZIE: Okay. Thank you, Tulika. Any
21 other questions? If not, I can take a motion to move
22 forward with the continued regulation of the Air Ambulance
23 Services as they currently stand.

24 MR. HANEY: Haney, so moved.

25 DR. KONDUR: Commissioner Kondur, second to

1 approve.

2 DR. MCKENZIE: Thank you. Any further discussion?

3 DR. MACALLISTER: Can we qualify that with the
4 expectation that we would see it this summer for review?

5 DR. MCKENZIE: Because there's not full certainty,
6 like, we anticipate it will be the summer, I would hesitate
7 to include that specifically.

8 DR. MACALLISTER: So if we plan to recon- -- to
9 review again next year if we haven't seen it?

10 DR. MCKENZIE: So there will be -- that --
11 there -- that opportunity exists every year because there's
12 public comment that comes in every fall around what
13 standards need to be reviewed or issues that come in from
14 the public or from, you know, various different healthcare
15 leaders around the state. So -- so I don't know that it
16 needs to be qualified, but I -- you know, I can ask Kenny,
17 Tulika, if you --

18 MR. WIRTH: Yeah, so I don't -- I don't think we
19 would need to qualify it with a certain date that we would
20 bring it back up or open it. I mean, this motion would be
21 to basically close these review standards until it's up for
22 its next cycle which would be 2025. However, it is a
23 priority for the Department to deregulate Air Ambulance
24 since right now it's in -- it's not following what the FAA
25 has in their rules. So we're trying to get in line with

1 that, we just have to wait for the quality standards to be
2 picked up by a different entity. So --

3 DR. MACALLISTER: I guess that's my concern is
4 that if it's already not in compliance, then I would say
5 that we probably don't want to let it go longer than to
6 2025. That's all. That's why I want to quantify.

7 MR. WIRTH: Yeah. And so since it's such a
8 priority for us to get this done and closed, it's really
9 just waiting for EMS to finish their process of getting
10 through rulemaking. We've been waiting a long time for them
11 to -- for that process to finish up. So as soon as that is
12 finished up, the Department will bring it to the attention
13 of the chairperson and we'll have it brought to the
14 Commission.

15 DR. MCKENZIE: So Commissioner MacAllister, I'm
16 going to ask you, do you want to -- are you proposing to
17 amend the original proposal or --

18 DR. MACALLISTER: I would think it might get a
19 little bit more urgency to the team to be able to say it's
20 within the year, we'd like to review it again next year to
21 make sure we've got that movement. That would be my
22 recommendation is that we qualify it for a year to review it
23 in a year.

24 DR. MCKENZIE: Okay. So -- give me a minute.
25 Sorry. I just want to make sure I'm following process. I

1 appreciate it. So I'm going to open the amendment that
2 Commissioner MacAllister has proposed up for discussion
3 about adding on to the original charge that the -- and I
4 want to make sure I -- I'm going to repeat what I heard from
5 you, and then you tell me if that's correct or not. That
6 the Air Ambulance standard would be placed on the agenda for
7 the planning meeting next year for consideration?

8 DR. MACALLISTER: Yes, if it's not deregulated. I
9 mean, if it's not initiated.

10 DR. MCKENZIE: Correct.

11 DR. MACALLISTER: Yes.

12 DR. MCKENZIE: Okay. So any discussion or
13 questions or thoughts around that?

14 MR. HANEY: So this is Haney. I guess I want to
15 make sure I'm clear on what I think I heard which was there
16 is urgency within CON Department or within EMS or both to
17 process this and get this to happen?

18 MR. WIRTH: It's within both. You know, the
19 rulemaking process just takes a long time. It has to go
20 through a lot of, you know, checks and just reviews and
21 there's a -- you know, a list of other rules that are going
22 through the process right now, too. So it's really just a
23 matter of when those get checked and when it kind of makes
24 it through the other ones that are going through.

25 MR. HANEY: And the second thing that I think I

1 heard you say is that this Commission can at any time bring
2 this issue forward and say we want to discuss it and perhaps
3 move on it. So if I heard that right, and while I
4 understand the thought process, it seems to me that --

5 (Off the record interruption)

6 MR. HANEY: -- it would seem to me that that's
7 unnecessary and perhaps we'll put a constraint in place
8 because we just don't know what could happen as they go into
9 that review process, whether there's a huge COVID variant
10 breakout that stalls us again. So I guess that -- that
11 would be my -- my thinking on it.

12 MS. GUIDO-ALLEN: So this is Guido-Allen. Please
13 no more COVID.

14 MR. HANEY: Yeah.

15 MS. GUIDO-ALLEN: No more variants. I would
16 suggest that we move to just continue regulation of Air
17 Ambulance services and then when EMS has their standards in
18 place, we would then put it back on our agenda to review to
19 deregulate after review of what their standards are. That
20 would be my suggestion.

21 DR. KONDUR: Commissioner Kondur. I agree with
22 Guido-Allen.

23 DR. MACALLISTER: This is Commissioner
24 MacAllister. I'm just concerned because there's
25 non-compliance now that we acknowledge that and recognize.

1 That's my only concern, there's some precedence here. And
2 understanding that they're working towards it, but just to
3 say we wouldn't re-look at it until 2025, that would be my
4 only concern recognizing, you know, there's some
5 non-compliance.

6 DR. KONDUR: As a Commission we can open up the
7 motion any time to revisit deregulated, any changes to the
8 standards. We can always bring it to the table instead of
9 adding the addendum. That's kind of a little bit of
10 roadblock for them to approve the language as right now. If
11 next year any deregulation happens, we can always reopen the
12 motion to deregulate the standards or add on to it.

13 DR. MCKENZIE: Any other discussion? So I'm
14 trying to follow decorum here and I believe that there was a
15 proposal for an amendment on the floor. Is there a second
16 for that?

17 DR. KONDUR: So we can take a motion to approve
18 language as published, move on without addendum, see whether
19 we can pass the motion and if they don't move the motion in
20 the direction, we can always go to second motion with
21 addendum, see whether we can pass that one. So we can take
22 both roll calls.

23 MR. HECKMAN: You can handle it both ways.

24 DR. MCKENZIE: Handle it?

25 MR. HECKMAN: Right. So you could -- does that --

1 I think just for clarification or for purposes of being
2 clear on the motion, I think handling the amendment as is
3 makes sense because that's what we were just discussing. So
4 if you want to handle the amendment, if anybody else is
5 seconding that amendment, then -- if anybody wants to second
6 that amendment and vote on the motion as amended to speed up
7 the process and make sure that we're addressing that
8 amendment, that is fine as well. Does that make sense?
9 Okay. So we can vote as amended, we can vote on the
10 amendment or we can vote as Dr. Kondur stated.

11 DR. MCKENZIE: So as I understand it, we had the
12 original proposal that were seconded around moving forward
13 with continued regulation without the amendment. We had a
14 proposal on the floor for an amendment that has not been
15 seconded. It's probably -- I'm not saying that correctly,
16 but there was not a second motion made on that. Does anyone
17 want to make a second motion on that proposal, or on that
18 amendment? Hearing none, I'm going to go back and say we
19 have a second on the floor to move forward with continued
20 regulation around Air Ambulance. And therefore if there's
21 no further discussion, I'm going to take a vote on that
22 original amendment.

23 DR. KONDUR: Agreed.

24 MR. HECKMAN: The original motion.

25 DR. MCKENZIE: The original motion.

1 DR. KONDUR: Original motion.

2 DR. MCKENZIE: Yeah, sorry. Thank you. The
3 original motion. So thank you --

4 MR. HECKMAN: Do you want to restate the motion?

5 DR. MCKENZIE: Yes. So the motion that was on the
6 floor was for continued regulation of Air Ambulance
7 Services. So, Kenny, let's take a roll call vote on that.

8 MR. WIRTH: Okay. McKenzie?

9 DR. MCKENZIE: Yes.

10 MR. WIRTH: Engelhardt-Kalbfleisch?

11 DR. ENGELHARDT-KALBFLEISCH: Yes.

12 MR. WIRTH: Ferguson?

13 DR. FERGUSON: Yes.

14 MR. WIRTH: Guido-Allen?

15 MS. GUIDO-ALLEN: Yes.

16 MR. WIRTH: Kondur?

17 DR. KONDUR: Yes.

18 MR. WIRTH: Lalonde?

19 MS. LALONDE: Yes.

20 MR. WIRTH: MacAllister?

21 DR. MACALLISTER: Yes.

22 MR. WIRTH: Turner-Bailey?

23 MS. TURNER-BAILEY: Yes.

24 MR. WIRTH: Haney?

25 MR. HANEY: Yes.

1 MR. WIRTH: Motion carries.

2 DR. MCKENZIE: Thank you all. And many thanks to
3 Assistant Attorney General Heckman for his assistance in
4 that process.

5 (Whereupon motion passed at 10:25 a.m.)

6 DR. FERGUSON: Can I make a request to --
7 unofficial, but and ask if the administrative team in the
8 spirit of what Commissioner MacAllister was asking for? If
9 you'd be so kind as to give us some updates across the year
10 as to progress on the EMS standards so that this doesn't
11 fall below our radar? And if, in fact, it is lagging
12 unexpectedly for whatever good, bad -- good or bad reason,
13 that we might then have an opportunity to reopen things?

14 DR. MCKENZIE: Thank you. I think we have that
15 noted.

16 MR. WIRTH: Yes.

17 DR. MCKENZIE: Okay. Next up we have CT Scanner
18 Services. Again, public comment was open between October
19 8th and 22nd. I'm sorry. I'm getting a little bit of
20 feedback. So the information on that is in your packet
21 along with the public comment. And I'll turn it over to
22 Kenny to review CT Services.

23 MR. WIRTH: Thank you. And if anyone has --

24 (Off the record interruption)

25 MR. WIRTH: Very sorry, everyone. Obviously

1 having a number of technical issues today. All right. I
2 think we're good. And I would just remind everyone to
3 please speak into the microphone when you're speaking. If
4 you have jewelry on, that might be causing feedback. I
5 don't know. But maybe be careful with that. You don't need
6 to take it off, but just be careful.

7 So CT Scanner Services -- and if anyone has public
8 comments, please message TJ on Zoom with those. CT Scanners
9 are part of the regular review period this year. We
10 received comments from five organizations and you can see
11 the summary as well as the comments in your packet. All
12 testimony received was in support of continued regulation.
13 The Department also supports continued regulation of CT
14 Scanner Services and is recommending a workgroup to take a
15 look at some of the items brought forward. These include
16 reviewing definition for clarity, clarifying what is not
17 considered a CT scanner, adding language for lease renewal,
18 and adding language to prohibit the withdrawal of position
19 commitments during the review process, as well as other
20 technical edits from the Department if needed. So if a
21 workgroup is to be seated -- (go off here!!)

22 (Off the record interruption)

23 MR. WIRTH: All right. Apologies. Is this
24 working? Okay. Cool. So if a workgroup is to be seated
25 for CT Scanner Services, a written charge will need to be

1 drafted and voted on by the Commission, or the Commission
2 may instruct the chair to write the charge consistent with
3 the language presented at today's meeting. The chairperson
4 would also appoint a chairperson for the workgroup. After
5 the workgroup completes its work, there would then be a
6 recommendation brought to the Commission for a vote. The
7 Department is advising for all standards that workgroups are
8 preferred to Standard Advisory Committees since they don't
9 have the same statutory requirements as a SAC. We don't
10 need to search for specific amounts of representatives for
11 certain groups and we're also able to meet over Zoom which
12 is preferable at this point in time I think. They're also
13 not stuck on a six-month timeline. So if the workgroup
14 completes its work sooner, it can be done. If it takes
15 longer than six months, they're not stuck with just six
16 months. So, yes, those are CT Scanner Services, a few
17 recommendations in your packet. If there's any questions,
18 happy to answer those.

19 DR. MCKENZIE: Thank you, Kenny. Is this on?

20 MR. HANEY: You won't hear it in here. They're
21 just going to hear it online.

22 DR. MCKENZIE: Okay. So we reviewed CT Services.
23 I think we have public comment initially. So if there's any
24 public comment online?

25 MR. YOUNGQUIST: There's not.

1 DR. MCKENZIE: No public comment. Okay. Any
2 Commission discussion related to CT Services and the
3 Department recommendation which is to seat a workgroup with
4 the Department and the chair and vice-chair to draft the
5 charges as well as select the chairperson of the workgroup?

6 MR. HANEY: Haney, so moved.

7 DR. MCKENZIE: Thank you. I have a proposal on
8 the floor. Does anybody want to second that?

9 DR. KONDUR: Commissioner Kondur.

10 DR. MCKENZIE: Commissioner Kondur, second.

11 MR. HECKMAN: Pass the mic. Do we have a second
12 one?

13 DR. MCKENZIE: It's an interesting meeting here.

14 MR. HANEY: Haney, so moved.

15 DR. KONDUR: Second, Commissioner Kondur to move.

16 MR. WIRTH: Okay. And I can do a roll call.

17 MS. TURNER-BAILEY: I have a question. I'm sorry.

18 MR. WIRTH: Oh, yup.

19 MS. TURNER-BAILEY: I just want to -- this is
20 Commissioner Turner-Bailey. I just want to -- I'm just
21 trying to clarify because we've kind of went through things
22 fast and a lot of things are happening, what exactly we're
23 voting on here. So is it -- are we voting on those areas
24 where there were recommendations for substantive review? So
25 where it says "yes" in these various -- among these various

1 issues, these are the ones that we're talking about moving
2 forward with the workgroup?

3 MR. WIRTH: Correct. Those are -- those are the
4 recommendations that the Department is proposing for a
5 workgroup. And so the motion would be to accept those
6 recommendations and have the chair and vice chair draft the
7 charge and seat the workgroup.

8 MS. TURNER-BAILEY: Okay. Thank you.

9 MR. WIRTH: So we have a motion and second. Roll
10 call?

11 DR. MCKENZIE: Any other discussion? Any other
12 discussion or questions? Okay. We'll take a roll call
13 vote.

14 MR. WIRTH: McKenzie?

15 DR. MCKENZIE: Yes.

16 MR. WIRTH: I think if you just yell it out.

17 MR. HECKMAN: Say your name and say "yes."

18 MS. GUIDO-ALLEN: Guido-Allen, yes.

19 DR. KONDUR: Commissioner Kondur, yes.

20 DR. ENGELHARDT-KALBFLEISCH: Commissioner
21 Engelhardt-Kalbfleish, yes.

22 MR. HANEY: Commissioner Haney, yes.

23 DR. MACALLISTER: Commissioner MacAllister, yes.

24 DR. FERGUSON: Commissioner Ferguson, yes.

25 MS. LALONDE: Commissioner Lalonde, yes.

1 MS. TURNER-BAILEY: Commissioner Turner-Bailey,
2 yes.

3 MR. WIRTH: Motion carries.

4 DR. MCKENZIE: Thank you, all. So the CT Services
5 passed and we will be seating the workgroup.

6 (Whereupon motion passed at 10:36 a.m.)

7 DR. MCKENZIE: We are going to take a 10-minute
8 break to work on the audio because we are having some
9 challenges in the room that are necessitating people getting
10 up and moving around for those that are online, and see if
11 we can make this a little easier for us to work through for
12 the remainder of the meeting. Thank you.

13 (Off the record)

14 DR. MCKENZIE: Thank you, everybody. Can I get
15 confirmation that someone can hear me from the Zoom?

16 UNIDENTIFIED SPEAKER: (indicating)

17 MR. WIRTH: Perfect.

18 DR. MCKENZIE: Thank you. What we are going to do
19 now because all of the Commissioners are on Zoom for their
20 audio is we are going to go around and do a roll call and
21 for every Commissioner, it would be great if I could have --
22 I'm going to pick one person. Dave Walker, if you could
23 answer "yes" on each Commissioner that you can hear as we go
24 around that would be great. So I'll start with Commissioner
25 Guido-Allen.

1 MS. GUIDO-ALLEN: Here.

2 DR. MCKENZIE: Commissioner Kondur?

3 DR. KONDUR: I can hear.

4 DR. MCKENZIE: Dave, could you hear Commissioner
5 Kondur?

6 DR. KONDUR: Yes. Yes.

7 MR. DAVE WALKER: (indicating)

8 DR. MCKENZIE: Great. We got a yes.

9 DR. KONDUR: Yes.

10 DR. MCKENZIE: Okay. Commissioner Engelhardt?

11 DR. ENGELHARDT-KALBFLEISCH: Yes.

12 DR. MCKENZIE: Commissioner Haney?

13 MR. HANEY: I am here.

14 DR. MCKENZIE: Commissioner MacAllister?

15 DR. MACALLISTER: Yes.

16 DR. MCKENZIE: Commissioner Ferguson?

17 DR. FERGUSON: Ferguson here.

18 MR. WIRTH: Try unmuting yourself, Mr. Ferguson.

19 DR. FERGUSON: That was the unmuted.

20 MR. WIRTH: Try again real quick.

21 DR. FERGUSON: Ferguson.

22 MR. WIRTH: Yup.

23 DR. FERGUSON: Thanks.

24 DR. MCKENZIE: We got a yes?

25 MR. WIRTH: Lalonde?

1 MS. LALONDE: Lalonde here.

2 DR. MCKENZIE: Turner-Bailey?

3 MS. TURNER-BAILEY: Turner-Bailey here.

4 MR. WIRTH: We got everyone?

5 MR. YOUNGQUIST: Got it.

6 MR. WIRTH: Okay.

7 DR. MCKENZIE: Did we get a yes on that one?

8 MS. GUIDO-ALLEN: We didn't get a "yes" for
9 Turner-Bailey.

10 DR. MCKENZIE: We did?

11 MS. GUIDO-ALLEN: We didn't.

12 DR. MCKENZIE: I didn't see one either.

13 MR. HECKMAN: For whom?

14 MS. GUIDO-ALLEN: Turner-Bailey.

15 DR. MCKENZIE: Commissioner Turner-Bailey?

16 MS. TURNER-BAILEY: Here.

17 DR. MCKENZIE: They're saying they couldn't hear
18 her the first time. No. They can't hear you. Try one more
19 time. Maybe you lean in. Are you unmuted when you do it?

20 MS. TURNER-BAILEY: Hold on, let me see. I think
21 I may have turned too many things down. Turner-Bailey,
22 here.

23 DR. MCKENZIE: Could anyone hear Commissioner
24 Turner-Bailey?

25 MR. DAVE WALKER: (indicating)

1 DR. MCKENZIE: Hard to hear. Can you try again?

2 Lean in maybe a little bit?

3 MS. TURNER-BAILEY: Turner-Bailey. Turner-Bailey
4 here.

5 DR. MCKENZIE: That's better.

6 MR. WIRTH: They're saying we can hear it. It's a
7 little muffled, but that's, you know, that's -- so it's
8 okay.

9 DR. MCKENZIE: Okay.

10 MS. TURNER-BAILEY: Okay.

11 MR. WIRTH: Okay.

12 DR. MCKENZIE: All right. Do we need to test
13 public comment first or we just want to --

14 MR. WIRTH: So we were -- just took a vote on CT,
15 so now we will be on to item eight.

16 DR. MCKENZIE: Okay. Thank you everybody for your
17 patience while we have tried to get under way again. If you
18 are not hearing, please let us know in the chat. We are
19 going to move forward with the NICU Beds standard and the
20 information is within the packet as well as the public
21 comment that was received. There were several items that
22 the Department took a look at, and I will turn it over to
23 Kenny to summarize those.

24 MR. WIRTH: Thank you. So for item eight we have
25 NICU Services. Again, the public comment period was held

1 from October 8th to October 22nd. We received testimony
2 from six organizations. These organizations along with the
3 Department all support continued regulation of NICU
4 Services. Again, these public comments are in your packet
5 so please give those a look.

6 The Department is recommending the Commission
7 charge the Department with drafting language to clarify the
8 way standards are already being enforced for CT. The
9 Department can draft language that would clarify that at
10 least hospital staff must also be full time every month,
11 which would be 30 or 31 days, to meet the requirements of
12 "continuously available and onsite staff." And Tulika may
13 be able to explain this a little better than me, but this
14 recommendation isn't a diversion off course from what we
15 currently do. It's just clarifying how the standard's
16 enforced so that everyone knows how the Department has been
17 enforcing this up to this point. So that's why we're not
18 recommending a workgroup. It's more of a technical, you
19 know, correction in nature. So we're recommending the
20 Commission charge the Department drafting this language for
21 presentation at a later Commission meeting as opposed to
22 opening the standards completely for a full review. So some
23 minor technical edits could come of that, but we will
24 present that to the Commission if the Commission takes this
25 recommendation.

1 DR. MCKENZIE: Can I ask a clarifying question on
2 that?

3 MR. WIRTH: Yes.

4 DR. MCKENZIE: So in the packet it states, you
5 know, forming a workgroup to review a number of items, but
6 then I also heard the Department drafting language. So is
7 it a combination of the two that was the recommendation or
8 are we just saying that we can potentially go with one or
9 the other?

10 MR. WIRTH: So it could be one or the other. I
11 believe with this -- and let me just take a look real quick.
12 Yes, this would be, I mean, the Commission could choose to
13 go either way, but since there's only the one little change
14 that we're hoping to make which is just to make sure that
15 the standards align with how they're already being enforced,
16 we're asking the Commission to charge the party with
17 drafting that language.

18 DR. MCKENZIE: Thank you. So next up I will open
19 it for public comment.

20 MR. WIRTH: Don't see any --

21 MR. YOUNGQUIST: Is this for Neonatal?

22 MR. WIRTH: Yes.

23 DR. MCKENZIE: This is for Neonatal.

24 MR. YOUNGQUIST: Nope.

25 MR. WIRTH: None.

1 DR. MCKENZIE: So we're not seeing any public
2 comment for the Neonatal Standards, so I will move to
3 Commission discussion around the proposal from the
4 Department to draft language to come back to the Commission
5 around the Neonatal standards and some technical edits.

6 MS. GUIDO-ALLEN: This is Guido-Allen. I make a
7 motion that we -- the NICU standards should continue to be
8 regulated and the Department will be charged with drafting
9 language for the Commission to consider around the leasing
10 of staff.

11 DR. MCKENZIE: I have a motion on the floor. Any
12 questions or discussion? Otherwise, we can entertain a
13 second.

14 MR. HANEY: This is Haney. I'll second.

15 DR. MCKENZIE: Thank you, Commissioner Haney. If
16 no other questions or discussion, then I will turn it over
17 to Kenny --

18 MS. GUIDO-ALLEN: Just -- just one more -- just --
19 discussion.

20 DR. MCKENZIE: Yes.

21 MS. GUIDO-ALLEN: In it says 30 or 31 days for
22 full. There's a month with 28 days, so either we just say
23 "full month" or include February as well. That's it.

24 MR. WIRTH: Okay. Thank you. You ready for a
25 vote?

1 DR. MCKENZIE: I think we're ready for a vote.

2 MR. WIRTH: Okay. McKenzie?

3 DR. MCKENZIE: Yes.

4 MR. WIRTH: Englehardt-Kalbfleisch?

5 DR. ENGELHARDT-KALBFLEISCH: Yes.

6 MR. WIRTH: Ferguson?

7 DR. FERGUSON: Yes.

8 MR. WIRTH: Guido-Allen?

9 MS. GUIDO-ALLEN: Yes.

10 MR. WIRTH: Kondur?

11 DR. KONDUR: Yes.

12 MR. WIRTH: Lalonde?

13 MS. LALONDE: Yes.

14 MR. WIRTH: MacAllister?

15 DR. MACALLISTER: Yes.

16 MR. WIRTH: Turner-Bailey?

17 MS. TURNER-BAILEY: Yes.

18 MR. WIRTH: Haney?

19 MR. HANEY: Yes.

20 MR. WIRTH: Motion carries.

21 DR. MCKENZIE: Thank you all.

22 (Whereupon motion passed at 11:04 a.m.)

23 DR. MCKENZIE: Glad we've gotten the technical

24 challenges hopefully under -- away at this point, so squared

25 away. So next we will move on to the Nursing Home Long-Term

1 Care Facility Beds and Addendum for Special Populations.
2 Again, public comment was received. Information is in your
3 packet as to the summary. And I will turn it over to Kenny,
4 again, to review the recommendations.

5 MR. WIRTH: Yes. Thank you. So Nursing Home and
6 Hospital Long-Term Care Unit Services were up for the
7 standard review cycle this year. There should be a summary
8 of these public testimony in your packet along with all the
9 testimony received by the permit, I'm sorry, the summary of
10 the public comments. So we received comment from four
11 organizations, all of which along with the Department
12 support continued regulation of Nursing Home and Hospital
13 Long-Term Care Units Beds and Services. The Department is
14 recommending that the formation of work -- that the
15 Commission form a workgroup to look at some issues
16 identified through the public comment period as well as
17 things we found during the review process. So these
18 recommendations include reviewing the definition of
19 replacement beds as well as other definitions for clarity
20 and consistency, adding language to indicate that a change
21 of ownership CON must be complete before replacement or
22 relocations -- or relocation applications can be approved
23 reviewing multiple sections for their ability to be broken
24 down into subsections which would assist applicants in
25 understanding what information needs to be provided to the

1 Department, adding language around the renewal of lease
2 applications, adding a minimum occupancy requirement before
3 an existing nursing home can add new beds or relocate beds
4 from another facility, and adding language to require
5 facilities stay current on taxes, fines, and fees and other
6 technical edits by the Department. Should the Commission
7 decide to form a workgroup, then a written charge will need
8 to be drafted and voted on by the Commission or the
9 Commission may instruct the chair to write the charge
10 consistent with the language presented at today's meeting.
11 The chairperson would also appoint a chairperson for the
12 workgroup. Thank you.

13 DR. MCKENZIE: Thank you for the summary. I will
14 open it up for public comment if we have any public comments
15 on Nursing Home.

16 MR. WIRTH: Yes, we do. We have Pat Anderson from
17 Health Care Association of Michigan. And let me -- sorry.
18 Pat, are you there? Did you want to speak? Don't know if
19 we are hearing Pat.

20 MR. HECKMAN: If we can't get his (sic) audio,
21 have him type the comments.

22 MR. WIRTH: Okay. Oh, Pat, if you are speaking,
23 we are not hearing you, but please type if you don't wish to
24 speak. We have another public comment from Melissa Reitz as
25 well. Melissa would like to speak?

1 MELISSA REITZ

2 MS. MELISSA REITZ: Good morning. This is
3 Melissa. Can you hear me okay?

4 MR. WIRTH: Can everyone hear?

5 DR. MCKENZIE: Yeah.

6 REPORTER: No.

7 MS. GUIDO-ALLEN: It's faint. She'll have to
8 speak up.

9 MS. MELISSA REITZ: And I do see that Pat is on
10 the call and she's still showing as muted. So, Pat, if you
11 can hear me and you can figure out how to unmute, you can go
12 after me maybe.

13 So good morning. This is -- I'm Melissa Reitz
14 from RWC Advocacy, but I'm speaking this morning on behalf
15 of Sienna Health Care, one of the nursing home providers in
16 Michigan. And I just wanted to say that we support the
17 formation of a workgroup, but we would like to see the
18 Department or I guess really the Commission include a charge
19 similar to what has been included in all of the other
20 workgroups and SACs since the start of the pandemic which is
21 basically a charge that just says that the workgroup or SAC
22 should review if there's any changes that should be made to
23 the standards to address -- I think it says something to the
24 effect of addressing a public health epidemic. And that
25 way, you know, because nursing homes have been so

1 significantly impacted by COVID, it would seem like an
2 appropriate thing for a workgroup if it's going to be formed
3 to look into. So that was the only substantive comment we
4 have. Thank you. I'm happy to answer any questions.

5 MR. WIRTH: Any questions? Thank you, Melissa.

6 MS. MELISSA REITZ: Thank you.

7 MR. WIRTH: Pat, if you are there and still would
8 like to speak, please unmute.

9 PAT ANDERSON

10 MS. PAT ANDERSON: All right. Thank you. This is
11 Pat Anderson. I work for the Health Care Association of
12 Michigan and I'd like to comment on the Nursing Home
13 standards. And I would support that the Department do
14 establish a workgroup to look at the areas that have been
15 identified from within our testimony at the hearing, and
16 also the areas that the staff have identified. And I would
17 concur with what Melissa said and would support that we
18 should also look at adding something to review the standards
19 in light of a public health emergency. I think that was
20 included the Psych Bed standards and that seems appropriate
21 to do here also.

22 One disappointment for the Health Care Association
23 is that there was the issue on the building program
24 agreement and this concern they are offered by the
25 Department of Licensing and Regulatory Affairs which is our

1 survey agency that allows a facility to purchase a facility
2 and then close it down, build a brand new one, sometimes on
3 that very site, and then reopen. Obviously it's been closed
4 for awhile. And so there is an issue with doing that with
5 CON. It seems like these two policies should be congruent.
6 Any time we can replace an aging facility is good, it's
7 great for the residents, it's great for the citizens of
8 Michigan. So we would support trying to get that into the
9 standards also, or change some kind of a relationship
10 between those two. But thank you for this opportunity.

11 MR. WIRTH: Thank you, Pat. Some of the
12 Commissioners had a little trouble hearing that. You were
13 speaking about the building program agreements that were
14 detailed in the public comment that was sent in from HCAM;
15 correct?

16 MS. PAT ANDERSON: Right; yes. What I was
17 explaining is the building program agreement allows a --
18 someone to take the facility, close it down, rebuild
19 sometimes right on that same site and stuff it'll take --
20 because it takes a few years to rebuild it and then reopen.
21 For CON to happen, it doesn't work together with that
22 program and it seems like it should be.

23 MR. WIRTH: Any questions for Pat?

24 DR. MCKENZIE: Is there any way --

25 MR. WIRTH: Sorry. Go ahead.

1 DR. MCKENZIE: -- this is Commissioner McKenzie.

2 Were other Commissioners able to hear that comment?

3 MR. HECKMAN: Tell her -- I guess my thought is --

4 DR. MACALLISTER: It's much easier if we -- I
5 mean, the headphones actually you can hear.

6 DR. MCKENZIE: I'm not sure if we can repeat back
7 or summarize for the Commissioners?

8 DR. KONDUR: Kenny, can you summarize it?

9 MR. WIRTH: So I think TJ is going to try bringing
10 his --

11 DR. MCKENZIE: I was unmuted so try again. I was
12 unmuted, so that might have been me.

13 MR. WIRTH: Try now. Is it working? So Pat did
14 type in the chat, Pat agrees or would like to comment in
15 support of a workgroup and concurs with formation of a
16 workgroup and -- is that working? Okay.

17 UNIDENTIFIED SPEAKER: Can Pat repeat her comment?

18 MR. WIRTH: Yeah. Pat, do you want to repeat your
19 comment?

20 REPORTER: Wait. You're going to need to put it
21 by --

22 MS. PAT ANDERSON: Able to hear now?

23 MR. WIRTH: Can you guys hear Pat?

24 DR. MCKENZIE: She's going to have to speak up.

25 MR. WIRTH: Go ahead, Pat.

1 MS. PAT ANDERSON: Okay. Thank you. Appreciate
2 your patience on this. Yeah, Health Care Association of
3 Michigan --

4 MR. HECKMAN: Kenny, she's got to speak directly
5 into the microphone loudly.

6 MS. PAT ANDERSON: (inaudible).

7 MR. WIRTH: Pat?

8 MS. PAT ANDERSON: Yes.

9 MR. WIRTH: If you can speak any louder into your
10 microphone, that would be helpful.

11 MS. PAT ANDERSON: Okay. I'll try that. Does
12 that help?

13 MR. WIRTH: Thank you.

14 MS. PAT ANDERSON: Okay. Will do. Like I said,
15 the Health Care Association of Michigan represents 362 of
16 the 440 nursing facilities here in Michigan, including for
17 profit, nonprofit, and county medical care facilities and
18 hospital long-term care units. We support that the work
19 that the -- has been identified to be reduced with the
20 standards, it will only make the standards better for us.
21 And we also agree with Melissa Reitz's comment about adding
22 a charge within there to reduce standards in light of any
23 type of public health emergency. It seems to be a prudent
24 add to the program.

25 The one issue we did have was on building program

1 agreements. Those are issued by LARA which is our licensing
2 and survey agency, to allow a facility to take and close
3 down and then rebuild sometimes on that same site, sometimes
4 maybe within -- there's restrictions on how far you can
5 build a new one -- but build a new facility and then reopen.
6 We think that building program agreement should coordinate
7 with CON to help facilitate new builds in Michigan. Any
8 time you can replace an aged facility, it's a great move for
9 our citizens and the residents we serve. Thank you for this
10 opportunity to comment.

11 MR. WIRTH: Thank you, Pat.

12 DR. MCKENZIE: Were all Commissioners able to hear
13 that? Because I can repeat what I heard.

14 DR. ENGELHARDT-KALBFLEISCH: I could hear.

15 DR. MCKENZIE: Okay. Are there any questions
16 related to the last comment the Commissioners have? Okay.
17 Hearing none, are there any other comments on Nursing Home?

18 MR. WIRTH: Not that I have, no.

19 DR. MCKENZIE: So the opportunity on the floor is
20 to seat a workgroup with the proposed charges or areas in
21 front of you where the chair and vice-chair would choose the
22 leadership for the workgroup as well as actually work with
23 the Department to draft the charges. We heard two
24 additional public comments around adding to what we have, a
25 charge around addressing the public health pandem-, or

1 epidemics in the nursing home standards as well as the
2 latter comment was around the building program agreements
3 that are issued under LARA and is there an opportunity for
4 the CON standards to coordinate, and so looking at that
5 issue as well, neither of which are in the current proposals
6 right now. So that is what is before the Commission. Is
7 there any discussion?

8 MR. HANEY: This is Commissioner Haney. I guess
9 I'm curious why the charges that HCAM has brought forward
10 weren't included. Was there a reason that the Department
11 didn't feel that those should be looked at, I guess?

12 MR. WIRTH: Yeah. So let me -- let me scroll down
13 to the recommendation that we had there. So there were --
14 the -- so at least from the building program agreement side,
15 I know that -- I believe we've looked at this in the past.
16 I don't know if Tulika could speak to the past experiences
17 we've had looking into that. I think it's -- I don't know,
18 Tulika, do you want to talk about building program
19 agreements?

20 MS. BHATTACHARYA: Sure. This is Tulika. So
21 building program agreements are executed, monitored by a
22 different department, LARA. So to reference the building
23 program agreement in a CON standard, that's where we said if
24 there is an issue with the CON standards and administration
25 of that, let's identify the issue and put appropriate

1 language to address the issue versus just referencing a
2 process that is administered and executed by a different
3 department.

4 MR. HANEY: So if I heard you right, that the --
5 maybe the way to deal with this is to put this charge in the
6 workgroup because it sounds like currently there is a
7 difference between LARA and the CON as it relates to this
8 particular issue. And as we talked earlier about aligning
9 everything, it would make some sense to have the CON not
10 refer to the -- to the LARA language, but at least be
11 cohesive like they did so that they're -- we're not --
12 they're not competing against each other is my opinion.

13 DR. MCKENZIE: So can I -- I'm going to ask a
14 clarifying question to Tulika related to your comment.
15 Tulika, is it the concern of the Department that an actual
16 reference to something that sits outside of CON process
17 would be a real challenge because you don't maintain it, it
18 could be updated and then it's out of date within the CON
19 standard? So that was kind of the key concern.

20 MS. BHATTACHARYA: Yes. Because we don't know
21 what are the requirements to execute a BPA, what are the
22 requirements for a continue approval of a BPA, and things
23 like that whereas our CON standards we have all of the
24 requirements for the different actions that -- for a nursing
25 home and we list the requirements in our standards so we can

1 administer that language because we know what to do. But
2 BPA is completely outside of --

3 MR. YOUNGQUIST: I'm not hearing anything that
4 you're saying.

5 MS. BHATTACHARYA: Can you hear me now?

6 MR. YOUNGQUIST: Yes.

7 MS. BHATTACHARYA: Okay.

8 MR. HANEY: So I guess I'm still a little
9 confused, Haney here again, because I -- what I am hearing
10 the request for is not that the CON standards reference the
11 LARA language, but rather that there is something in the
12 LARA standards that allow them to take a building offline
13 and then rebuild the building onsite whereas the CON
14 standards don't allow that. So while one department says
15 you can do it for nursing homes, the other, our CON process
16 is saying you can't. We don't need to reference the LARA
17 language in our standards, but we could simply make our CON
18 standards consistent with the LARA standards so that they're
19 not in opposition to each other. That's I think what the
20 request is and that makes sense to me.

21 MS. BHATTACHARYA: Yes. So when I read the
22 statement, Kenny, on page 1 of the Nursing Home
23 recommendations, I think it says "review section seven for
24 recognition of arrangements made through LARA BPAs which
25 allow" da, da, da. So that's where our concern comes in.

1 But Commissioner Haney, what you are saying, that if you
2 want a group to look at this process of whatever it is, like
3 closing down homes and rebuilding with one year or five year
4 or 30 years, yeah, that's up to the Commission. They can
5 add any charge to the group to look at it.

6 MR. HANEY: Thank you. I would support that.

7 DR. MCKENZIE: Any other discussion?

8 MR. HANEY: I think the other thing that both Pat
9 and Melissa had referred to was how the pandemic had
10 impacted the standards or in particularly as calculating the
11 bed need methodology. I think that that should be evaluated
12 as well. That makes some sense. And then the last thing I
13 think I saw and that Pat talked about was renewal of leases
14 and having to go through a whole new process when absolutely
15 nothing is changing. The lessor is the same, the leasee is
16 the same, the terms, maybe the financial amount is a little
17 different, the rent's increased. But why go through a whole
18 other long, lengthy CON process when nothing is
19 substantially changing? It's overly burdensome. See if we
20 can add those to the charges.

21 DR. MCKENZIE: So I believe that renewal of lease
22 is listed under bullet four.

23 MR. HANEY: Okay.

24 DR. MCKENZIE: So I think that one is included. I
25 think that --

1 MS. TURNER-BAILEY: No.

2 DR. MCKENZIE: No, it's not?

3 MS. GUIDO-ALLEN: So according to -- Guido-Allen.

4 According to what I'm reading here is that the lease
5 renewals are governed by a statute which CON cannot trump
6 and I believe that's why they're saying that they can't
7 include it in the review. And that the CON standards cannot
8 conflict with the statute.

9 DR. MCKENZIE: Oh, I see what you're talking
10 about.

11 MS. GUIDO-ALLEN: So we can't put something more
12 or make it more -- we can't conflict with that statute.
13 That's what I -- that's how I interpreted it.

14 MR. WIRTH: I believe that would have to be a --
15 and Brien, correct -- thank you. I believe that -- Brien,
16 correct me if I'm wrong, but I believe that would -- if it
17 was a change to the statute, that would have to be a
18 legislature?

19 MR. HECKMAN: If a statute has to change, yes.

20 MR. WIRTH: Okay.

21 MS. BHATTACHARYA: Also, if I can make a comment?

22 I believe in the last workgroup or SAC, whatever it was, I
23 believe we were asked to look at that and we reviewed it
24 with our legal counsel and that's what our position was,
25 that it is in the statute what is the definition of capital

1 expenditure and how the fees are calculated for CON
2 applications.

3 DR. MCKENZIE: So I apologize for my
4 mischaracterization, and thank you Commissioner Guido-Allen
5 for catching that. That you were referencing the
6 application fees for renewal and leases and the response on
7 that was it -- that's a statutory issue and so it's not
8 something that we can include in a workgroup. So
9 Commissioner Haney is I think also advocating for inclusion
10 of the additional charges into the overall charges that have
11 been laid out around addressing the public health epidemic
12 as well as -- and we haven't really laid out what that
13 secondary charge would be, but something related to the
14 building program identifying I think any inconsistencies
15 with other regulations or, you know, the Department will
16 have to work on drafting what that language would be. But
17 the idea that if there is something that's inconsistent in
18 CON related to another regulation, and that would have to be
19 identified, I believe, within the workgroup. So, and I
20 think that's what the Department is saying. If there are
21 specific issues that are inconsistent, identify those and
22 then propose language around it.

23 MR. HANEY: Thank you. I would be in favor of
24 that.

25 DR. MCKENZIE: Okay. So I think we're at the

1 place where -- is there any other discussion on those items?
2 Okay. Then I would like to take a proposal for seating a
3 workgroup with drafting the -- with the responsibilities for
4 drafting the charges as well as selecting the chairperson of
5 the workgroup to the, you know, commissioner or the
6 chairperson as well as the co-chair and the Department
7 around the charges that are -- the items that are laid out
8 for charges as well as if you want to add those two
9 additional areas around addressing the public health
10 epidemic as well as identification of any inconsistencies by
11 the workgroup and proposed language around that.

12 MR. HANEY: I will make that motion, Haney.

13 DR. MCKENZIE: Okay. Do we have a second?

14 DR. MACALLISTER: Commissioner MacAllister,
15 support.

16 DR. MCKENZIE: Okay. Any discussion or questions?

17 Okay. Then we will take a roll call vote.

18 MR. WIRTH: Okay. McKenzie?

19 DR. MCKENZIE: Yes.

20 MR. WIRTH: Engelhardt-Kalbfleisch?

21 DR. ENGELHARDT-KALBFLEISCH: Yes.

22 MR. WIRTH: Ferguson?

23 DR. FERGUSON: Yes.

24 MR. WIRTH: Guido-Allen?

25 MS. GUIDO-ALLEN: Yes.

1 MR. WIRTH: Kondur?

2 DR. KONDUR: Yes.

3 MR. WIRTH: Lalonde?

4 MS. LALONDE: Yes.

5 MR. WIRTH: MacAllister?

6 DR. MACALLISTER: Yes.

7 MR. WIRTH: Turner-Bailey?

8 MS. TURNER-BAILEY: Yes.

9 MR. WIRTH: Haney?

10 MR. HANEY: Yes.

11 MR. WIRTH: Motion carries.

12 DR. MCKENZIE: Thank you all.

13 (Whereupon motion passed at 11:29 a.m.)

14 DR. MCKENZIE: We will move on to Lithotripsy.

15 Again, public comment was received in the month of October.

16 The information is in your packet and I will turn it over to

17 Kenny to walk through the recommendations.

18 MR. WIRTH: Thank you. For item 10 we have

19 Lithotripsy. These review standards were also part of the

20 public comment period from October 8th to October 22nd. We

21 received testimony from five organizations continuing to

22 support regulation with no changes, and the Department is

23 also recommended that Litho continue to be regulated by

24 Certificate of Need and we are recommending that it be

25 reviewed again in 2025 when it's next up for its cycle.

1 Thank you.

2 DR. MCKENZIE: Thank you. Do we have any public
3 comment?

4 MR. YOUNGQUIST: (Shaking head negatively)

5 MR. WIRTH: Not seeing any.

6 DR. MCKENZIE: Okay. No public comment on
7 Lithotripsy. Any Commission discussion around the continued
8 regulation of Lithotripsy with a re-review in 2025?

9 DR. KONDUR: I have one comment on it. Can you
10 hear me?

11 MR. WIRTH: Yes.

12 DR. KONDUR: So during the COVID pandemic,
13 Lithotripsies, most of the time -- correct me if I'm wrong,
14 I think radiologist is here -- it was limited to the
15 hospital. Access was been a issue to where the patients
16 have -- myself, I had an incident and I went to the Beaumont
17 System and it was huge pandemic and access was been a issue
18 because Lithotripsy was mostly tied up to hospital system.
19 There is no outpatient or anything like a CON, like a
20 cellular center or a stone clinics. It was not accessible
21 to the service line and that's my only comment. Is there
22 any way we can expand in the direction? Because right now
23 Lithotripsy is purely limited to the inpatient, mostly
24 hospitals right now.

25 DR. MCKENZIE: Correct me if I'm wrong, within the

1 standard for Lithotripsy I believe that mobile is also
2 regulated; right?

3 DR. KONDUR: Mobile is mostly tied up to the
4 hospitals sector. So there's the only -- that's the mainly
5 concerns.

6 DR. MCKENZIE: Yeah. Is there any other
7 Commission discussion or questions or thoughts around that
8 item? I know that there were a lot of challenges around the
9 pandemic with services, so -- and, you know, the Department
10 as, you know, need for additional services came in -- and I
11 think we talked about this at our prior meetings -- worked
12 to be as flexible as they could within the standards to
13 stand up new services. So I'm not entirely sure how to
14 address the item that Commissioner Kondur is raising.

15 DR. KONDUR: Tulika, can you answer, like, see a
16 need, we can go regulation on our standards to include and
17 expand service length to overcome if this kind of situation
18 arises?

19 MS. GUIDO-ALLEN: This is Guido-Allen. I don't
20 think that they are limited to hospitals only. That is not
21 my recollection. We did a -- when this was last reviewed,
22 there was a lot of discussion I feel like over multiple
23 meetings, but I don't believe that there's -- there's
24 limited to hospital systems or within hospitals themselves.
25 But if Tulika could weigh in, that would be helpful.

1 MS. BHATTACHARYA: Yes. So -- can you hear me?
2 This is Tulika. I know the Lithotripsy host sites are not
3 limited to hospital facilities. You can also have a host
4 site at a surgical center, FSOF ASCs because it's a
5 recommendation that it should be done in an OR. So that's
6 why it's hospital and freestanding surgical facilities.
7 Both can apply and be a host site. And if you look on our
8 web site, our survey report, there are several freestanding
9 host sites in the state. May not be enough, but what I'm
10 trying to say there is no prohibition for a freestanding
11 site to apply.

12 DR. KONDUR: Thank you, Tulika, for clarifying
13 that.

14 DR. MCKENZIE: Thank you, Tulika. So any other
15 discussion on Lithotripsy? Would anybody like to make a
16 proposal?

17 MS. GUIDO-ALLEN: Yup. So this is Guido-Allen.
18 So motion is to continue regulation of Lithotripsy by the C
19 of N with the next, the next review of the standards to
20 follow its normal course in 2025.

21 DR. ENGELHARDT-KALBFLEISCH: Commissioner
22 Engelhardt, second.

23 DR. MCKENZIE: Thank you. Any further discussion?
24 Okay. I'll turn it over to Kenny for a roll call vote.

25 MR. WIRTH: McKenzie?

1 DR. MCKENZIE: Yes.

2 MR. WIRTH: Engelhardt-Kalbfleisch?

3 DR. ENGELHARDT-KALBFLEISCH: Yes.

4 MR. WIRTH: Ferguson?

5 DR. FERGUSON: Yes.

6 MR. WIRTH: Guido-Allen?

7 MS. GUIDO-ALLEN: Yes.

8 MR. WIRTH: Kondur?

9 DR. KONDUR: Yes.

10 MR. WIRTH: Lalonde?

11 MS. LALONDE: Yes.

12 MR. WIRTH: MacAllister?

13 DR. MACALLISTER: Yes.

14 MR. WIRTH: Turner-Bailey?

15 MS. TURNER-BAILEY: Yes.

16 MR. WIRTH: Haney?

17 MR. HANEY: Yes.

18 MR. WIRTH: Motion carries.

19 DR. MCKENZIE: Thank you.

20 (Whereupon motion passed at 11:34 a.m.)

21 DR. MCKENZIE: Next item on the agenda is public

22 comment.

23 MR. WIRTH: We do have a public comment from Matt

24 Biersack. If you want to step up?

25 DR. MCKENZIE: Is he going to be mic'd?

1 MR. HECKMAN: Is that going to work?

2 MR. WIRTH: Are you on the Zoom on your phone?

3 MR. SEAN GEHLE: I am not.

4 MR. WIRTH: Okay. That's okay.

5 MR. SEAN GEHLE: So, and I am not Dr. Matt

6 Biersack.

7 MR. WIRTH: Oh, sorry.

8 MR. SEAN GEHLE: But we're going to let him try --

9 (Off the record interruption)

10 MR. WIRTH: So we should be good. Dr. Biersack,
11 if you are on, you can start talking, I think.

12 MATT BIERSACK, M.D.

13 DR. MATT BIERSACK: All right. Great. Thanks for
14 having me. Hopefully everyone can hear me all right. I'm
15 speaking on behalf of the Trinity Health Ministries, St.
16 Joseph Mercy and Mercy Health. So thank you for allowing
17 comment today. You know, we submitted a public comment back
18 in October of 2021, so I won't repeat everything in that
19 letter.

20 Speaking on regards to the Heart/Lung and Liver
21 Transplant Certificate of Need standards that are not slated
22 for review this year, but we feel there's a compelling
23 reason to review those requirements sooner than 2024 which
24 is when they're scheduled next. Here's what we know. We
25 know that the liver transplant Certificate of Need standard

1 has not changed since 1988. We also know that the
2 underlying causes and incidences of those diseases that are
3 treated with liver transplant have continued to increase,
4 and we know that approximately 200 or so Michiganders or
5 more are routinely on the transplant list which reflects
6 about seven and a half percent of all U.S. residents that
7 are on a transplant list, even though we're only three
8 percent of the total U.S. population. We also know about 30
9 to 50 Michigan patients die each year while waiting liver
10 transport according to the Organ Transplant Network.

11 So our concerns are that the liver transplant
12 standard is unfortunately not responsive to changes in
13 patient need and to population changes. And to be more
14 specific, rather than considering patient need, the current
15 standard simply indicates a cap on the number of liver
16 transplant programs yet west Michigan has seen a 30 percent
17 increase in population growth since 1990 when the standard
18 was last updated as compared to just over five percent
19 growth in southeast Michigan where the current three liver
20 transplant programs are located. Because there's no liver
21 transplant programs outside of southeast Michigan, the
22 current standard actually creates risk for patients because
23 evidence suggests the increased travel time has been known
24 to increase risk of death after listing and reducing
25 likelihood of transplant or recovery. The standard is also

1 MR. WIRTH: Sorry.

2 DR. FERGUSON: I got a question.

3 DR. MCKENZIE: Yeah, go ahead.

4 DR. FERGUSON: So thank you for that summary data.
5 I think it's nicely articulated. I think there is a need to
6 look at our standards, especially if there's not been a
7 substance rework in whenever that worked out at 30 plus
8 years, and that it's confined to southeast Michigan and
9 we're not keeping track with population shifts, medical and
10 practice shifts, et cetera.

11 My question for you is acknowledging that I do
12 think that we need to look at this, if I understand process
13 correctly, every three years we look at this. What happened
14 at the last go-around that we didn't look at it? And there
15 may be good reasons why we didn't. I just -- I don't
16 understand how this has gone 30 years and not gotten
17 reworked. So I don't know if that's a question for you, Dr.
18 Biersack, or if that's a question for the administrative
19 team here at the CON or both.

20 DR. MCKENZIE: So I believe the standard was last
21 looked at, would it have been in 2021? Can Tulika answer
22 that question?

23 MS. BHATTACHARYA: Three years ago, yes, it would
24 be.

25 DR. MCKENZIE: Two years ago. So, and this was

1 not raised at that point that I'm aware of. And so I think
2 the question is, you know, when it was -- when the standard
3 was open, this was not raised. It's been, as you mentioned,
4 you know, backdated to 1988. I think we do understand, you
5 know, the issue. Dr. Biersack I think outlined it nicely.
6 So I don't know if you want to comment on that, Dr.
7 Biersack, on the why now?

8 DR. MATT BIERSACK: (inaudible)

9 DR. MCKENZIE: We can't hear.

10 MR. WIRTH: Oh, sorry.

11 DR. MATT BIERSACK: What's happened in 2020 and
12 then, you know, our distraction as a health system --

13 MR. WIRTH: I'm sorry. Dr. Biersack, could you
14 just start that statement over again? I'm sorry. I didn't
15 unmute.

16 DR. MATT BIERSACK: Oh, my apologies. I can
17 address from our perspective why we didn't bring this
18 forward earlier and that is that, you know, when it was up
19 for review in 2020, you know, our team was focused around
20 meeting the needs of the pandemic first and foremost. But
21 secondly, our leadership team has had considerable change
22 since that time and since I have assumed the role of
23 president just this past year, we looked thoroughly at what
24 our community needs were and this came up as a very
25 important effort for us to pursue as an organization and

1 therefore just several months after that we submitted our
2 public letter in October of last year.

3 DR. FERGUSON: Thank you for that comment.

4 DR. MCKENZIE: Any other questions?

5 DR. FERGUSON: Can -- can -- can I make a
6 follow-up to this? I don't know proper process here.

7 DR. MCKENZIE: There's time for questions. Right
8 now we're in public comment, so we're going to seek all the
9 public comments and questions of, --

10 DR. FERGUSON: And then we'll go back around it?

11 DR. MCKENZIE: -- and then we'll go into
12 discussion, yup.

13 DR. FERGUSON: Yeah. Okay. Thank you.

14 DR. MCKENZIE: Any other questions for Dr.
15 Biersack from the Commission?

16 DR. KONDUR: No.

17 DR. MCKENZIE: Thank you, Dr. Biersack. That was
18 very helpful. Any other public comments?

19 MR. WIRTH: We have one from Amy Barkholz. Oh,
20 sorry. We have one from Amy Barkholz. If you are there,
21 you can start speaking.

22 MS. MELISSA REITZ: Good morning. I know I'm not
23 Amy, but she had some (inaudible), and so she just wanted me
24 to provide some clarity. This is Melissa Reitz.

25 AMY BARKHOLZ via MELISSA REITZ

1 MS. MELISSA REITZ: So I guess technically I'm
2 speaking on behalf of Amy Barkholz, although maybe not super
3 officially. She actually was just trying under the MRT
4 agenda to just express support for the formation of the
5 workgroup, and there was just some miscommunication. So
6 that was all she wanted me to relay. Thank you.

7 MR. WIRTH: And was this Melissa Reitz speaking?

8 MS. MELISSA REITZ: Yes. I'm sorry. Yes, Melissa
9 Reitz from RWC.

10 MR. WIRTH: Thank you.

11 MS. MELISSA REITZ: Thank you.

12 MR. WIRTH: Next we have, let's see -- Melissa,
13 did you have another point you wanted to talk about or was
14 that -- was that what that was? Okay. Melissa, did you
15 have something to announce for the Commission to hear?

16 MS. MELISSA REITZ: This is Melissa Reitz. No, I
17 didn't have anything else.

18 MR. YOUNGQUIST: Melissa, you had said something
19 in the chat and I just wanted to find out if you wanted to
20 say that out loud for Commissioners to consider?

21 MS. MELISSA REITZ: Oh, no. It was just related
22 to the Lithotripsy which you guys have already closed out,
23 so I'm good. Thank you.

24 MR. WIRTH: Thank you. Next we have Dave Walker.

25 MR. DAVE WALKER: Hi. Good morning. Can you hear

1 me okay?

2 MR. WIRTH: Yes.

3 DAVE WALKER

4 MR. DAVE WALKER: Great. Thank you very much. I
5 just wanted to provide some feedback and some thoughts for
6 consideration related to Dr. Biersack's recommendation to
7 open the Heart/Lung/Liver standards. Spectrum Health is not
8 necessarily opposed to opening the standards, we're just not
9 sure if right now is the right time to do it. I understand
10 that people have been focused on the pandemic and that's
11 maybe why it wasn't addressed last time it was up and I
12 think it's coming back up in 2024, that's not that long. I
13 think right now we already have several workgroups on the
14 work plan and I think that adding an additional item that
15 probably should go through a SAC and something that may be
16 highly controversial might not be the best time given
17 everything else that is going on. And I think that looking
18 at it again in 2024 seems reasonable to me. So if I -- I
19 just think that we should continue as we have outlined. And
20 happy to answer any questions that the Commissioners may
21 have. Thank you very much for the opportunity to speak.

22 DR. MCKENZIE: Any questions from the
23 Commissioners? Thank you for that comment, Dave; Dave
24 Walker. Any other comments? Public comments that we have?

25 MR. WIRTH: I believe Tracey Dietz. Thank you.

1 Tracey Dietz?

2 MS. TRACEY DIETZ: Hi. Can you hear me?

3 MR. WIRTH: Yes.

4 TRACEY DIETZ

5 MS. TRACEY DIETZ: Awesome. All right. My name
6 is Tracey Dietz. I am representing Henry Ford Health System
7 and I appreciate the opportunity to make a comment on
8 Heart/Liver/Lung.

9 Henry Ford, we absolutely support the ongoing
10 regulation of Heart/Liver/Lung. We, you know, kind of
11 similar to Dave's comments, we do agree that this probably
12 isn't the right time to open comments. Really when we think
13 of the services, there's a couple of key components that,
14 you know, always come to mind related to CON is cost,
15 quality and access. And, you know, Henry Ford does have
16 this program and the expense and cost of putting the
17 resources and capabilities together is quite significant.
18 And at this point in time adding a program to the current,
19 you know, complemented programs across the state for heart,
20 liver and lung just doesn't necessarily seem like it's
21 necessary. And the reason for that is a couple of things:
22 from the standpoint of access when Henry Ford is offered
23 transplant, we never -- or I should say organs, we never
24 turn it down. Based on the current availability of organs
25 we have plenty of capability to support transplant needs.

1 It's really the lack of organ availability that, you know,
2 potentially causes the long waits and challenges to delivery
3 of the care. It's not the lack of capabilities of the
4 programs that currently exist or lack of resources. And
5 really when you look at some of those -- some of those
6 volumes over the last three years, there has been some
7 fluctuation, some marginal changes in heart and lung and
8 liver has been declining. So between, you know, lack of a
9 significant growth and availability of organs and the
10 capability of existing programs, having that bandwidth to
11 take on additional transplants as organs become available,
12 we don't see a need for the addition of programs across the
13 state. In addition, by adding programs across the state,
14 opening up the standards and potentially adding programs,
15 what that could do is water down the quality of care that
16 patients receive when they receive transplants. And the
17 reason for that is, you know, currently there's a
18 concentration of skills, capabilities, et cetera within the
19 existing programs. And if you take away volume as you
20 spread that across additional services across the state,
21 then you also potentially reduce the number or volume of
22 transplants that are being done in each of those programs
23 which then could potentially lead to reduction and quality
24 of care and transplantation services. I want to say thank
25 you for letting me make comment on this and I'm happy to

1 answer any questions.

2 DR. MCKENZIE: Thank you very much, Tracey. Any
3 questions? Okay. Any other public comments?

4 MR. WIRTH: I believe -- I believe Dr. Biersack
5 would like to respond if that's all right?

6 DR. MCKENZIE: Yes. Go ahead, Dr. Biersack.

7 MATT BIERSACK, M.D.

8 DR. MATT BIERSACK: Yeah. Thanks for the
9 opportunity to respond. So I guess first and foremost I
10 think we ought to take care and caution to not equate
11 capacity and access. And when there's, you know, clear
12 relationship to distance from a transplant center and it's
13 effect on outcomes, both in terms of mortality and in terms
14 of access to actual transplant and recovery. You know,
15 secondly, appreciating that, again, there's quite a bit on
16 the slate already for this calendar year, you know, given
17 the impact that this has on patients and the delay that this
18 would unnecessarily cause, I think the comments made by
19 Spectrum regarding delaying further just pose an unnecessary
20 risk to the patients and those living in west Michigan.
21 Thanks for this.

22 DR. MCKENZIE: Any other questions for Dr.
23 Biersack? Any other public comment?

24 MR. WIRTH: That was all I had.

25 DR. MCKENZIE: So I'm going to open it up for

1 Commission discussion. I will state that, you know, we did
2 not receive a lot, you know, that I recall with this
3 standard when it was open. Understandable that it was open
4 during a pandemic year, but the public comment, remember,
5 that that comes in, in 2019. I just want to remind folks of
6 the cycle. So -- or was it 2021?

7 MS. GUIDO-ALLEN: January 2021.

8 DR. MCKENZIE: Oh, it was 2021? So it would have
9 been fall comment period of 2020. Okay. So thank you for
10 correcting me on that. So it would have come in fall
11 comment period of 2020. So it is understandable. I think
12 that some of the challenges that have been raised around
13 this is, you know, we're going to be talking about the work
14 plan. I mentioned earlier we have had trouble seating SACs.
15 We're now on our third round for a PET SAC. The -- you
16 know, Kenny has outlined that, you know, the Department's,
17 you know, recommendation to us given that we are still in
18 the middle of all of these challenging technical issues,
19 still in the middle of a pandemic, is that we move toward
20 workgroups. The challenge with a workgroup in this space is
21 it for issues that are complex where there are a lot of
22 different varied opinions, oftentimes those are better
23 managed in a SAC or typically managed in a SAC. And my
24 understanding is that this is a standard that tends to have
25 a lot of different viewpoints and feedback and a lot of

1 considerations around it.

2 So the question before the Commission right now
3 is, you know, based on the public comment around opening the
4 Heart and Lung Transplant and Liver Transplant standard or
5 waiting until the standard time frame and certainly public
6 comment can come in later this year again and this can be
7 considered again next year we can be talking about this.
8 The review period is for 2024, the standard review period;
9 correct, Tulika, for the next transplant review period?
10 That's the standard time frame?

11 MR. WIRTH: It would be 2025 -- no, wait, sorry.
12 I will check.

13 DR. MCKENZIE: I think it's 2024, I believe. I'd
14 like confirmation. I just want everybody to have the kind
15 of information as we think about this one.

16 MR. WIRTH: It would be 2024.

17 DR. MCKENZIE: 2024. So -- so the question before
18 us now is, you know, opening it early and if so, then how.
19 So I'll open it up for discussion.

20 DR. FERGUSON: This is Commissioner Ferguson. I
21 don't know about the timelines and why it wasn't opened or
22 was opened, whether it's COVID, whether it's other stuff.
23 Acknowledging that, if we have a need, if there is a
24 problem, I would suggest that we fix the problem. I don't
25 know if there's a problem, but I don't know if we can figure

1 out if there's a problem without looking at it. Right? So
2 if that means we need a SAC to look at it, then I think we
3 should go ahead and open early. I'm -- you know, this --
4 again, why it hasn't been looked at or whatever has been
5 looked at, I have no idea. The state of the state, if you
6 will, delay of medical care across the state is radically
7 different today than it was in the late 80's when the core
8 of this was put in. And I know the thing you just flashed
9 on the screen suggested a revision in '14 or '11 or
10 something, but I understand that was a technical revision,
11 not a meaningful change in the standards. That we don't
12 have a single transplant center in the state on the west
13 side, that they're all clustered in southeast Michigan may
14 be a problem. Again, I don't know without having Commission
15 look at it. And just to be clear, I live in southeast
16 Michigan so, you know, I can -- heaven forbid I need a
17 transplant, I can get a transplant, you know, ten minutes
18 from my house but I feel for the rest of the state. So I
19 would move that we open a SAC early to explore this. And
20 maybe we got the right standards. You know? Maybe the SAC
21 comes back and says this is good. But I think we need to
22 have somebody look at it.

23 DR. MCKENZIE: So is that a motion that you want
24 to make?

25 DR. FERGUSON: Yes, that's a motion.

1 DR. MCKENZIE: Okay. So we have a motion on the
2 floor. Is there any further discussion?

3 DR. MACALLISTER: Commissioner MacAllister. I
4 would support that motion as well.

5 DR. MCKENZIE: Okay. So we have a motion on the
6 floor from Dr. Ferguson and that motion has been seconded.
7 Any further discussion or questions?

8 DR. ENGELHARDT-KALBFLEISCH: I have a comment. So
9 this is Commissioner Engelhardt. In referencing our packet,
10 on page 26 it says, "According to state data, 30 to 50
11 Michigan patients die each year while waiting." But to
12 stress the point, the current transplant centers aren't
13 saturated. It's just there's not enough organs available.
14 If there were 50 additional livers, we would be able to do
15 the 50 additional transplants. So I want to be careful of a
16 couple things. One issue that's inferred that there's
17 already a number of workgroups and given the timing it's
18 very difficult right now I think to seat a SAC. And then,
19 two, I have the same concerns about diluting the quality. I
20 think Tracey mentioned that in the public comments. A lot
21 of resources to launch these programs and I share the
22 concerns about the potential reduction in quality. The
23 other comment, there are some transplants available on the
24 web site at this date is how I understand. I think liver is
25 just one of those organs that currently is not available.

1 DR. MCKENZIE: So before we take a vote, I'm going
2 to make another comment. Oh, do you have a comment,
3 Commissioner Haney?

4 MR. HANEY: Yes.

5 DR. MCKENZIE: I'll let you comment first.

6 MR. HANEY: So there was a link put into the chat
7 and it pulled up a 2020 Michigan Certificate of Need annual
8 survey for organ transplants. So I'm assuming this is a
9 state document. And it indicates that there were 192 -- and
10 we're talking strictly liver today, or heart, lung and
11 liver? Because what I'm confused about is they have two
12 west Michigan hospitals, Spectrum Health Butterworth and St.
13 Mary's Health Care that have done some heart and some lung
14 transplants, but no liver. So I don't know if they're able
15 to do liver and haven't done any or not certified to do the
16 liver transplants? I guess just looking for some
17 information here.

18 DR. MCKENZIE: My understanding -- and Tulika, I'm
19 going to ask you to weigh in here. But my understanding
20 what was communicated to me was that there was a cap on the
21 liver within the standard and so there are three programs.
22 Tulika, can you comment on that?

23 MS. BHATTACHARYA: I'm sorry. Could you -- could
24 you please say that again?

25 DR. MCKENZIE: The question was that Commissioner

1 Haney was looking and that there are heart and lung
2 transplants that are available on the west side, but there
3 is no one doing liver transplants and whether there was
4 something different within the standards that related to
5 that not having any liver transplants on the west side. Was
6 there a cap or something related within the particular
7 standards?

8 MS. BHATTACHARYA: There is a cap in the standards
9 on the maximum number of programs in the state.

10 DR. MCKENZIE: Is that -- and that's different
11 for -- that's based upon each type of service?

12 MS. BHATTACHARYA: Yes.

13 DR. MCKENZIE: So there's one for heart, there's
14 one for lung, there's one for liver?

15 MS. BHATTACHARYA: That is correct.

16 DR. MACALLISTER: Yeah. In section 5(2), it
17 identifies 12 is the limit.

18 DR. MCKENZIE: Does that answer your question?

19 MR. HANEY: So I guess my question -- I'm still
20 not clear. You have Spectrum Health and St. Mary's
21 (inaudible) --

22 UNIDENTIFIED SPEAKER: Unmute.

23 MR. YOUNGQUIST: Your audio.

24 MR. HANEY: I'm sorry. This is Haney. So I'm
25 still unclear as to whether or not because Spectrum Health

1 and St. Mary's, that they could do liver transplants and
2 didn't do any or if they are not allowed to do any because
3 they're not certified?

4 MS. GUIDO-ALLEN: This is Guido-Allen. Neither of
5 those centers are able to do liver transplants.

6 DR. FERGUSON: Each organ is separately regulated.

7 MR. HANEY: Thank you.

8 DR. MCKENZIE: Any other comments? I'm going to
9 make a comment in one minute, but --

10 MR. WIRTH: Chairperson McKenzie?

11 DR. MCKENZIE: Yes.

12 MR. WIRTH: I just -- I want to add that, you
13 know, from the Department side we're okay -- if the
14 Commission does want to seat a workgroup, we can make that
15 happen. We would just prefer a workgroup first as opposed
16 to a SAC to make sure that we can try the workgroup process
17 first and if no progress is made, then a SAC. But I just
18 wanted to add that in there that if there's a vote to seat a
19 workgroup, that we're okay with that.

20 DR. MCKENZIE: So one item I also would like to
21 raise just for the Commission's awareness as well is, you
22 know, we have a public comment period every year so that
23 people are aware of what's coming, what's on the agenda.
24 And so individuals can come and provide public comment from
25 all around the state. With this particular issue, it was

1 what I would call like a late breaking item -- right? --
2 that came into public comment and so there wasn't broad
3 awareness that maybe this was going to be discussed today,
4 and potentially voted on and opening up the standards early,
5 all the things that we're talking about. And so one of the
6 options could be for the Commission to also take action to
7 place this on the next agenda to determine, to open up for a
8 workgroup or a SAC to allow others to be aware that we're
9 going to be discussing this and allow broader input from the
10 public comment space. And the reason I'm bringing this
11 awareness is, you know, sometimes we get these later issues
12 and one of them was the MRT issue. That came in enough time
13 that the Department was able to digest it, get it on the
14 agenda that was sent out in advance so that all facilities
15 and interested parties were aware and able to comment on
16 that today. So because this came up and it wasn't a
17 specific agenda item, it is a very -- you know, clearly a
18 topic that people have a lot of, you know, different
19 opinions on and we are trying to balance access and quality
20 and we're raising issues around limitations of, you know,
21 organ, you know, supply as well. There's just a lot that
22 goes into this consideration. So it's another option. We
23 do have a motion on the floor to seat a SAC with a second,
24 so we will have to vote on that, but I also wanted to
25 provide the opportunity for the Commission to take action to

1 potentially put this on the next agenda for further
2 discussion and consideration as another option. So I do
3 think because we have a second on the floor, that we do need
4 to go around and vote on that.

5 DR. FERGUSON: Can I comment before we vote as
6 further discussion?

7 DR. MCKENZIE: Yes.

8 DR. FERGUSON: So if the Department would like
9 time to digest this and come up with a more thoughtful
10 approach and we'll commit to putting it on the next agenda,
11 I'm fine with that and so I'm fine voting down the proposal
12 that I've put on the floor. All right. So I just want to
13 acknowledge --

14 MS. TURNER-BAILEY: Commissioner Turner-Bailey.
15 The motion can be withdrawn; right?

16 MR. HECKMAN: Yeah, just -- we'll take it as a
17 withdrawal. That's fine.

18 MS. TURNER-BAILEY: Okay.

19 DR. FERGUSON: I can withdraw the motion?

20 DR. MCKENZIE: Yes, you can withdraw the motion.

21 DR. FERGUSON: Yeah. So I'm willing to withdraw
22 the motion, but, yeah.

23 DR. MCKENZIE: Okay.

24 DR. FERGUSON: Do I need to then make a motion to
25 put it on the agenda for the next go around?

1 DR. MCKENZIE: We will need -- we will need a
2 motion, yes.

3 DR. FERGUSON: Yeah. Okay. Coach me here. We'll
4 get there. We'll get across the finish line one way or
5 another.

6 DR. MCKENZIE: I will take a motion of taking the
7 item of, you know, the Heart/Lung/Liver Transplant standard
8 for consideration as to a potential, you know, workgroup or
9 SAC and placing that on the next, March agenda for
10 consideration.

11 DR. FERGUSON: I'll make that motion.

12 DR. MCKENZIE: Okay. Do I have a second?

13 DR. KONDUR: Commissioner Kondur, second.

14 DR. MCKENZIE: Thank you. Any discussion? Okay.
15 We will do a roll call vote then. I'll turn it over to
16 Kenny.

17 MR. WIRTH: McKenzie?

18 DR. MCKENZIE: Yes.

19 MR. WIRTH: McKenzie? Sorry.

20 DR. MCKENZIE: Yes.

21 MR. WIRTH: Thank you. Engelhardt?

22 DR. ENGELHARDT-KALBFLEISCH: Yes.

23 MR. WIRTH: Ferguson?

24 DR. FERGUSON: Yes.

25 MR. WIRTH: Guido-Allen?

1 MS. GUIDO-ALLEN: Yes.

2 MR. WIRTH: Kondur?

3 DR. KONDUR: Yes.

4 MR. WIRTH: Lalonde?

5 MS. LALONDE: Yes.

6 MR. WIRTH: MacAllister?

7 DR. MACALLISTER: Yes.

8 MR. WIRTH: Turner-Bailey?

9 MS. TURNER-BAILEY: Yes.

10 MR. WIRTH: Haney?

11 MR. HANEY: Yes.

12 MR. WIRTH: Motion carries.

13 DR. MCKENZIE: Thank you all.

14 (Whereupon motion passed at 12:05 p.m.)

15 DR. MCKENZIE: Okay. Next item is the future
16 meeting dates. Are we do -- we're not doing any work plan
17 today?

18 MR. WIRTH: Nope. Work plan is on there, I think.

19 MR. HECKMAN: It's on the agenda.

20 MR. WIRTH: Yeah, in --

21 DR. MCKENZIE: Oh, I think it was on the
22 preliminary. I don't see it on my final. But we'll move to
23 work plan review.

24 MR. WIRTH: I got that. Apologies. So there
25 should be a draft work plan in front of you in your packets.

1 So we'll update this based on the actions taken today which
2 include -- make sure I got those down right. We're going to
3 seat a workgroup for Nursing Home and Hospital Long-Term
4 Care Units, and we are also going to -- I believe there was
5 one for -- sorry, everyone --

6 MS. TURNER-BAILEY: CT.

7 MR. WIRTH: -- for CT. Thank you. We'll add CT
8 to that. And then we are adding to the agenda next time the
9 Heart/Liver/Lung concern. Tulika?

10 MS. BHATTACHARYA: We'll do for MRT.

11 MR. WIRTH: MRT is we are drafting language to
12 present to the Commission, I believe that was the vote. I
13 have it here. Sorry. I've got papers scattered everywhere.

14 MS. TURNER-BAILEY: Workgroup. We said workgroup.

15 MR. WIRTH: Workgroup. Thank you. Thank you.

16 DR. MCKENZIE: It was a workgroup, yeah.

17 MR. WIRTH: We'll work on a workgroup for MRT and
18 schedule that. I think we'll put that at the front just
19 since it'll probably hopefully be a quicker workgroup than
20 the rest. So we'll get that started right away. I will
21 update the work plan for approval at the next meeting as
22 well.

23 DR. MCKENZIE: Thank you, Kenny. I just would,
24 again, to those that are attending virtually as well as here
25 in person, we're on our third round for PET SAC. We would

1 really hope to seat this next time. So please, you know,
2 solicit those who can attend to attend and put their names
3 forth. We really do appreciate that. And thank you to the
4 Department for all the great work that they do in helping to
5 seat the workgroups and the SACs throughout the year.

6 Our next item is future meeting dates. We have
7 those as March 17th, June 16th, September 15th, and December
8 8th, so please mark your calendars for those. And the last
9 agenda item is to adjourn. So I'll take a motion.

10 MS. TURNER-BAILEY: So moved, Commissioner
11 Turner-Bailey.

12 DR. MCKENZIE: Thank you.

13 MS. LALONDE: Lalonde, second.

14 DR. MCKENZIE: Do we have a second?

15 MS. LALONDE: Lalonde.

16 DR. MCKENZIE: Lalonde seconded? Okay. All in
17 favor?

18 ALL: Aye.

19 DR. MCKENZIE: Any against? Okay. Adjourned.
20 Thank you all. Appreciate your time today.

21 (Proceedings concluded at 12:08 p.m.)

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