1 STATE OF MICHIGAN
2 MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
3 CERTIFICATE OF NEED COMMISSION
4
COMMISSION MEETING
5
BEFORE JAMES FALAHEE, CHAIRPERSON
6
Via Zoom Video Conference
7
Thursday, December 10, 2020, 9:30 a.m.
8
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1 Via Zoom Video Conference
2 Thursday, December 10, 2020 - 9:30 a.m.
3 MR. FALAHEE: Well, it's 9:30 on my computer
4 clock, so why don't we go ahead and get started? This is
5 Chip Falahee, the chairman of the CON Commission for those
6 that are new to the attendee list. I'll go ahead and get
7 started. The first order of business really is something
8 that we all as Commissioners need to do to properly sign in,
9 if you will, and pursuant to executive orders or rules or
10 public acts. So what I'm going to do is start off and then
11 I'm going to have Brenda go through each Commissioner name
12 so that you, too, can say the magic words to sign in,
13 please. So I'll start off. This is James Chip Falahee.
14 I'm attending this meeting remotely from Kalamazoo County,
15 Michigan. Brenda, if you could go through the list after
16 that?
17 MS. ROGERS: Good morning. This is Brenda. So I
18 will go down through the list. Thomas Mittelbrun?
19 MR. MITTELBRUN: This is Tom Mittelbrun. I'm
20 attending remotely from Orion Township, Michigan.
21 MS. ROGERS: Justin Dimick? Lindsey Dood?
22 MR. DOOD: Good morning. This is Lindsey Dood.
23 I'm attending remotely from the city of Traverse City.
24 MS. ROGERS: Amy Engelhardt-Kalbfleisch. Sorry if
25 I mispronounced that.

1 DR. ENGELHARDT-KALBFLEISCH: You did not. You
2 were spot on. So this is Commissioner Amy
3 Engelhardt-Kalbfleisch and I am calling in remotely from
4 Wayne County. Thank you.
5 MS. ROGERS: Debra Guido-Allen?
6 MS. GUIDO-ALLEN: Good morning. This is Debbie
7 Guido-Allen and I'm attending this meeting remotely from
8 Oakland County, Michigan.
9 MS. ROGERS: Ashok Kondur?
10 DR. KONDUR: Yes. Good morning. This is Ashok
11 Kondur attending meeting remotely from Oakland County,
12 Michigan.
13 MS. ROGERS: Melanie LaLonde?
14 MS. LALONDE: Good morning. This is Melanie
15 LaLonde. I'm attending this remotely from Wayne County.
16 MS. ROGERS: Lorissa MacAllister? Amy McKenzie?
17 DR. MCKENZIE: Morning. It's Amy McKenzie. I'm
18 attending the meeting remotely from Washington Township,
19 Michigan.
20 MS. ROGERS: Okay. And Melisa Oca I know is
21 absent today. So it looks like you have a quorum. Looks
22 like Dimick and MacAllister and Oca are absent.
23 MR. FALAHEE: Okay. Thank you, Brenda. And if
24 those others join, we'll require them to say the magic words
25 as well. So good morning, everyone. First item was call to

1 order, second item review of the agenda. We as the
2 Commissioners have the agenda in front of us and there's
3 been really no substantive tweets that came out last night.
4 The revised agenda Tania or Brenda or somebody just posted
5 it there on the screen. I would entertain a motion to
6 accept the agenda as posted and as presented on the screen
7 here.
8 MS. GUIDO-ALLEN: Commissioner Guido-Allen, move
9 to accept agenda as posted and written.
10 MR. FALAHEE: Support?
11 MR. MITTELBRUN: Commissioner Mittelbrun, second.
12 MR. FALAHEE: Thank you. Any questions? There's
13 a motion on the floor. As what I usually do, is I ask if
14 anybody is opposed because then we'll be able to call out if
15 there's any opposition. So is there anyone opposed to
16 accepting the agenda as presented? Hearing no opposition,
17 that's approved.
18 (Whereupon motion passed at 9:34 a.m.)
19 MR. FALAHEE: Next, declaration of conflicts of
20 interests. I have one to declare, but does anyone else have
21 any conflict of interest to declare? Okay. Hearing none,
22 I'll just bring one up and I've already discussed this with
23 Beth and Brenda and others as well. So there is an agenda
24 item here, agenda item seven, Psychiatric Beds and Services.
25 As you'll hear, the state, the Department is proposing to

1 add some beds because of an oversupply of applications that
2 would exhaust the available supply of beds. Bronson is one
3 of those that have -- has applied for general psychiatric
4 beds. There are three other applications between the four
5 applications, they would exhaust the supply. I'm just
6 pointing that out. It's an issue of general applicability,
7 so it's not really a conflict of interest the way the CON
8 rules are interpreted. And since a general applicability, I
9 can speak to the issue. I can't advocate on the issue
10 because I'm one of two hospital representatives on the
11 Commission. I can speak to the issue to the extent I need
12 to, but I just want to make sure everyone's aware of that
13 when we get to that agenda item. And be glad to answer any
14 questions at this point if anybody has any questions and
15 look to Attorney Berels to see if I need to add anything to
16 my disclosure.
17 MS. BERELS: I think that covers it.
18 MR. FALAHEE: Okay. Thanks, Becky. Okay.
19 Hearing none, we'll move on to the next agenda item. Review
20 of the minutes of our September 17 meeting. Any questions?
21 Otherwise, I'd entertain a motion to approve the minutes as
22 presented.
23 MR. MITTELBRUN: Commissioner Mittelbrun, motion
24 to approve minutes as presented.
25 DR. MCKENZIE: McKenzie, I'll second that.

1 MR. FALAHEE: Any questions? Anyone in opposition
2 to that motion? Hearing none, that motion passes. The
3 minutes are approved.
4 (Whereupon motion passed at 9:36 a.m.)
5 MR. FALAHEE: Next we'll move into agenda item
6 five, the NICU Public Hearing Summary. Brenda, as always,
7 I'll turn it over to you to summarize what the options are
8 and what a potential resolution is after we have discussion
9 and any public comment.
10 MS. ROGERS: Again, this is Brenda. The
11 Commission took proposed action at its September Commission
12 meeting. Public hearing was held in October and we received
13 written testimony from one organization which you should
14 have received in your packet of information and has also
15 been posted on the web site. Testimony that was received
16 was in support of the proposed language. So today, if the
17 Commission takes final action, then the language will be
18 forwarded to the Joint Legislative Committee and the
19 Governor for the 45-day review period. And the Department
20 does support moving the language forward as presented.
21 MR. FALAHEE: Brenda, thank you. One point of
22 order. I forgot to mention at the beginning and I
23 apologize. To the extent anyone on the call here has a
24 public comment they would like to make, normally if we were
25 in our meeting room in Lansing you would submit a green card

1 to Tania Rodriguez who is on the call. What I'd like to do
2 is if you think you want to testify, please privately chat
3 with Tania to say your name, whom you represent, which
4 entity or whatever, and the topic you would like to present
5 on. And that way when we get to that agenda item, I'll turn
6 it to Tania so she could go through the list of people that
7 would like to present on that specific issue in front of us.
8 So that's the procedure I'd like to follow if you can do
9 that, please. Thank you. So apologies, Brenda, for getting
10 in the way.
11 MS. NAGEL: Sorry, Chip.
12 MR. FALAHEE: Beth?
13 MS. NAGEL: Could I just add? Some people are on
14 the phone and may not have the chat capability and so I
15 believe it is -- oh, I just -- is it *6 to unmute?
16 MS. ROGERS: I think it's *9. Hang on a minute.
17 Let me look at my notes.
18 MS. NAGEL: We'll get that for (inaudible).
19 MR. FALAHEE: Okay. All right.
20 MS. NAGEL: But just point out that some folks may
21 not have the ability to message.
22 MR. FALAHEE: Okay. Thank you, Beth. I
23 appreciate that. And when we figure it out, whatever it
24 is --
25 MS. ROGERS: This is Brenda. It's *9.

1 MR. FALAHEE: *9. Okay. Thank you. So now back
2 to where I -- before I interrupted Brenda. So she's laid
3 out the options in front of us regarding the NICU standards.
4 And I'll start off, you may not had time to privately chat
5 with Tania about it, but does anyone want to speak to those
6 standards before we get into Commission discussion? Okay.
7 Hearing or seeing none, I'll assume there's no public
8 comment on that. Any Commission discussion about these
9 standards? I want to thank Commissioner Oca who's not on
10 the call today. She couldn't be here because of patient
11 matters. But I want to thank she and everybody else that
12 worked on these. It was a lot of work and I think they
13 pulled together a lot of different issues and did a very
14 good job.
15 Hearing no Commission discussion, would any of the
16 Commissioners like to make a recommended proposal along the
17 lines of what Brenda mentioned?
18 MS. GUIDO-ALLEN: This is Commissioner
19 Guido-Allen. Support the language as presented for the NICU
20 changes.
21 MR. FALAHEE: And then, Commissioner Guido-Allen,
22 I would assume that you would like to then also add to the
23 motion to forward the language to the Joint Legislative
24 Committee and the Governor for the typical 45-day review
25 period?

1 MS. GUIDO-ALLEN: You are exactly correct. Do I
2 have to say that --
3 MR. FALAHEE: Any support?
4 MS. GUIDO-ALLEN: Yeah.
5 MR. FALAHEE: No, you're good, Debbie. Thank you.
6 Any support for that motion?
7 MR. MITTELBRUN: Commissioner Mittelbrun, support.
8 MR. FALAHEE: Remind people to mute their phones
9 so we don't get any background noises. Thank you. So we
10 have a motion on the floor. Any comments about the motion?
11 Hearing no comments, then I'll ask is anyone opposed to the
12 motion? If not, we will treat the motion as being approved.
13 Any opposition to the motion? Hearing none, that motion is
14 approved and they'll move on to the JLC and the Governor.
15 Thank you very much.
16 (Whereupon motion passed at 9:41 a.m.)
17 MR. FALAHEE: Next item is the Nursing Home
18 Long-Term Care Unit Beds. And, again, Brenda, I'll turn it
19 over to you to do the description and list options for us,
20 please.
21 MS. ROGERS: Morning. Again, this is Brenda. You
22 have the Nursing Home language in front of you. You took
23 proposed action at your September Commission meeting.
24 Public hearing was held in October and written testimony was
25 received from one organization in support of the language.

1 The public hearing transcript as well as the testimony was
2 in the binder and also has been posted on the web site.
3 Today if the Commission takes final action, again, it would
4 move forward to the Joint Legislative Committee and the
5 Governor for the 45-day review period. And along with this,
6 because the language revised the bed need methodology in the
7 standards, the bed need numbers have been updated based on
8 this new methodology, so we would also ask the Commission to
9 set the effective date concurrent with the effective date of
10 the new standards for those new bed need numbers.
11 MR. FALAHEE: And Brenda, this is Chip. Just to
12 remind everyone, we don't know what the effective date of
13 the new standards would be. It has to do with when it gets
14 to the legislature and having enough session days for
15 approval. Is that correct, Brenda?
16 MS. ROGERS: That is correct. And also, just a
17 reminder, and especially for those Commissioners that are
18 newer to the Commission, that -- the 45-day review period
19 this time around, because we will be entering lame duck, we
20 will not be able to submit the standards to the Joint
21 Legislative Committee and the Governor until after the new
22 year and once the new Joint Legislative Committee has been
23 seated. So once that happens, then we will submit the
24 language and the corresponding memos that go with it.
25 MR. FALAHEE: Thank you, Brenda. So let me begin

1 regarding public comment. I have received one message
2 directly to me before I asked people to send messages to
3 Tania, and that's from Pat Anderson from HCAM. We all know
4 Pat. Pat, thank you. She's voicing her support on behalf
5 of HCAM for the standard. I just want everyone to know
6 that. No need for Pat to speak, just wanted to show
7 support. Tania, are there other people that would like to
8 make public comment on this agenda item?
9 MS. RODRIGUEZ: No. I only had Pat's.
10 MR. FALAHEE: Okay. Thank you very much. And
11 Pat, thank you very much for following the procedure. So no
12 public comment. Any Commission discussion, Commission
13 questions? If not, I'd entertain a motion along the lines
14 that Brenda just presented.
15 MR. MITTELBRUN: Commissioner Mittelbrun. I'll
16 make a motion to take final action and move it forward to
17 the JLC and Governor for the 45-day review period concurrent
18 with the new bed need methodology.
19 MR. DOOD: This is Commissioner Dood and I would
20 support with a friendly amendment, with the effective date
21 of those standards to be the same as when they're approved.
22 MR. MITTELBRUN: Thank you, Lindsey.
23 MR. FALAHEE: Thank you both. Any questions about
24 that motion and the friendly amendment? Okay. Hearing
25 none, following what I've done in the past, is anyone

1 opposed to that motion? Hearing no opposition, that motion
2 is approved and the standards will advance as outlined in
3 the motion. Thank you very much.
4 (Whereupon motion passed at 9:46 a.m.)
5 MR. FALAHEE: For those new Commissioners, don't
6 assume that every meeting moves this quickly. We will march
7 through it and we'll take the time we need to get through
8 the items. Next item, Psychiatric Beds and Services Special
9 Pool Beds Draft Language. And for this, I'm going to look
10 to Beth or Brenda or I don't know who, but I'm sure they'll
11 figure it out. Thank you.
12 MS. NAGEL: Thanks, Chip. Probably a combination
13 of myself, Brenda, and Tulika.
14 MS. ROGERS: Beth, do you want me just to give the
15 quick and then --
16 MS. NAGEL: Yeah. Let's do that.
17 MS. ROGERS: Does that help?
18 MS. NAGEL: Yes.
19 MS. ROGERS: Okay. Great. This is Brenda. So
20 this language that you have in front of you today for
21 Psychiatric Beds and Services is a result of the Department
22 noticing an increase in requests for psychiatric beds which
23 may or may not be a direct result of COVID-19. However,
24 with this increase need for psych beds, the Department is
25 asking the Commission to consider a change in the standards

1 to increase the percentages of the special pool beds. Based
2 on the number of emergency CONs that the Department has
3 received, we are recommending a three percent increase
4 statewide for the special pools. We also want to
5 acknowledge that these standards are up for review here in
6 2021 and will be on the Commission's January meeting agenda
7 as well as the bed need is due to be re-run in April -- it's
8 biannual rerun -- of 2021 as well. The percentages are
9 based on the statewide bed need, so when those bed need
10 numbers are re-run this spring, there could potentially be
11 an increase to the special pool beds at that time as well.
12 But this is to try and get some more available beds out
13 there based on the need that we are seeing ahead of time.
14 And so the language is in the binder and this
15 language would be proposed action today. And if the
16 Commission does take proposed action, then a public hearing
17 will be scheduled and at the same time it will be sent to
18 the Joint Legislative Committee. And then, again, as I
19 stated earlier due to the lame duck session, we can't do
20 that until that new Joint Legislative Committee or JLC is
21 seated. But once that happens, then we would take that
22 action and schedule a hearing and forward the language.
23 Thank you.
24 MS. NAGEL: That was great, Brenda. Thank you.
25 The only editorial comments I would make are that, you know,

1 Brenda noted that there are two actions coming up fairly
2 soon in '21 which is these standards come up for review and
3 the bed need gets re-run. So at that time would normally be
4 when the Department would ask you to look at this. We
5 normally would wait until those, you know, sort of natural
6 points in time came up. However, just given the situation
7 that we're -- you know, we're seeing in the state and the
8 repeated need, call for, you know, additional psych beds, we
9 wanted to bring this to you sooner rather than later and so
10 that is why it's on the agenda today. Again, not normally
11 how we operate, but given the circumstances we're in, we
12 just wanted to put the options in front of you.
13 MR. FALAHEE: Thank you Brenda and Beth. Tulika,
14 did you have any comments you'd like to make at this point?
15 MS. BHATTACHARYA: No. I think Brenda and Beth
16 summarized it well.
17 MR. FALAHEE: Thank you. Let me just add my
18 comments just not to advocate, but just to explain. For
19 example, in Bronson's case we're seeing a growth in the need
20 for geriatric psychiatric beds and this is unrelated to
21 COVID. This is something we saw going back a year or two
22 years ago. Others must have seen the same because I
23 think -- Tulika will correct me if I'm really wrong -- I
24 think there's at least four applications right now for
25 geriatric psych beds that would totally blow through the

1 current capacity limit for those beds under the CON
2 standards. And in our case, what we're seeing and maybe
3 others as well, as people get older and they get demential
4 or Alzheimer's there's a real need because they can
5 sometimes lash out at their spouse, become physically
6 challenging, and we're finding an increased need for
7 geriatric psych beds because of that. Maybe COVID will
8 impact that, I'm not sure, but I think we're seeing it here
9 in southwest Michigan. The other applications are up in the
10 Flint area, Grand Rapids, and the Detroit area. So that's
11 just what's going on at least from my perspective out there
12 and just so you all know that.
13 At that point, I'll see if there's any public
14 comment. Tania, do you have anyone that would like to make
15 public comment about this?
16 MS. RODRIGUEZ: I do not.
17 MR. FALAHEE: Okay. Thank you. Any questions
18 from the Commissioners either of myself or Brenda or Beth or
19 Tulika?
20 DR. MCKENZIE: This is Commissioner McKenzie. I
21 do have one question. I notice that -- and I may not be
22 interpreting it correctly, but hopefully you guys can help
23 guide me. I know that in the past we've talked about
24 pediatric psychiatry and the need for beds. And as I'm
25 looking at the breakout, it looks like the majority of the

1 changes are to adult beds. Is that based upon what the
2 emergency applications that you guys are seeing is largely
3 related to those adult beds and that's why the
4 recommendation is sitting in that space?
5 MS. NAGEL: That's a great question and the answer
6 is a little bit yes and no. Tania, if you could scroll down
7 to where the changes are?
8 The way that the special bed need pools are broken
9 out between child, adolescent, and adult, there is a
10 specific percentage for the adult, and in this case we are
11 asking for it to be increased three percent. And when we
12 applied that same -- a little bit further Tania, it's in the
13 addendum. When we applied that same increase to the
14 child/adolescent, we came up against another part in the --
15 yup, right there; yup -- we came up with another -- we saw
16 that there's another safety net sort of already written into
17 the standard which is on lines 945 and 946 that says that
18 the special pools for child/adolescent have a minimum of 50.
19 And in this case, what we're asking for is actually the
20 calculation comes up below 50. And so when we added three
21 percent, I can't remember, I think it was like 26 or 27 beds
22 or something. And so that specific safety net line kind of
23 covered child/adolescent. Tulika or Brenda, if I didn't
24 explain that correctly, please jump in.
25 MS. ROGERS: No. This is Brenda. That's correct.

1 MS. BHATTACHARYA: Yeah, you're absolutely right.
2 I will just address Commissioner's question about the
3 emergency CON. So our observation so far has been that all
4 of the request for additional capacity are for adult psych
5 beds; however, there's a concept of flex beds in the psych
6 standards where if you have adult beds, you can set those up
7 or use them for child/adolescent patients as needed. So we
8 did receive requests for flex beds utilizing, you know,
9 existing adult beds or the emergency CON beds.
10 DR. MCKENZIE: Thank you. That was very helpful.
11 MS. GUIDO-ALLEN: Yes. I appreciate that
12 explanation because I was a little bit worried about the
13 child/adolescent numbers myself. Thank you. Sorry. That
14 was Commissioner Guido-Allen.
15 MR. FALAHEE: Thanks. Great questions.
16 MR. DOOD: This is Commissioner Dood. I see that
17 or I hear that there's quite a few new applications. Is the
18 underlying occupancy of the beds, has that increased as well
19 or just the demand to build new ones?
20 MR. FALAHEE: I'll give my perspective,
21 Commissioner Dood. I think the answer is both. We're
22 seeing increased capacity and just -- I'll give you an
23 example here in Kalamazoo. There have been two applications
24 for new psychiatric facilities. There had been no
25 applications for decades, right? Within the last six months

1 there were two applications for psychiatric facilities
2 unrelated to the hospitals here and they were both going to
3 be on the same street within a few hundred yards of each
4 other, and within a few hundred yards of the Bronson
5 Athletic Club even. So, and I believe both of those
6 applications were approved, one may be slightly lagging in
7 the approval. So there is -- Commissioner Dood, we're
8 seeing an increase in patient volume for those facilities
9 that are in existence now and we're seeing new entries into
10 the market from people from out of state that see that there
11 is a need for more psychiatric services in Michigan. I hope
12 that answered your question. And others can chime in if
13 they'd like to as well.
14 MR. DOOD: Does the staff have any statewide data
15 that kind of reinforces that point or is that what would
16 come up naturally next year?
17 MS. NAGEL: That's a great question. And these
18 special pools are a relatively new concept in the -- you
19 know, the scheme of CON relatively new, within the last, you
20 know, three to -- I think three years actually. And so we
21 are just now seeing these beds get implemented and we're
22 collecting the occupancy, the data on those beds. Now, I
23 don't think we have a great handle on -- just because of
24 the -- that most of the special pool beds have just been
25 initiated recently. I don't think we know enough to fully

1 answer your question about the occupancy rates of these
2 special pool beds.
3 MR. DOOD: Commissioner Dood again. Is there a
4 risk by approving this that we'll end up with a lot more
5 beds than we need?
6 MS. GUIDO-ALLEN: Commissioner Guido-Allen. This
7 is just my opinion, no. Not based on what we're seeing.
8 MR. FALAHEE: I would echo Commissioner
9 Guido-Allen's comment, Commissioner Dood. What we're seeing
10 in our facilities at least is we don't have enough geriatric
11 psych beds for sure and we're seeing an increased need for
12 those as the population gets older and dementia and
13 Alzheimer's kick in. And so especially with psych, you
14 don't want to overbuild because then you have a built in
15 expense and if you don't have the patients to fill it,
16 that's not a good situation economically or patient
17 care-wise.
18 MR. DOOD: Yeah, that was my concern.
19 MR. FALAHEE: Yeah. No, great, great concern.
20 Other comments? Good discussion. Thank you. As Brenda
21 said, one of the options here is if the Commission chooses
22 to take the proposed language and proposed action, it move
23 forward to public hearing and then to the Joint Legislative
24 Committee. If there's no other Commission discussions or
25 questions or clarifications from our friends in the

1 Department, I'd entertain a motion from the Commission,
2 please.
3 DR. KONDUR: Approve. Commissioner Ashok Kondur.
4 I approve as it is.
5 MR. FALAHEE: Support?
6 DR. KONDUR: Support, yes. Thank you.
7 MR. FALAHEE: We need someone else to support
8 Commissioner Kondur's motion.
9 MS. GUIDO-ALLEN: Commissioner Guido-Allen,
10 second.
11 MR. FALAHEE: Great. Thank you very much. Any
12 questions? Any discussion?
13 MR. DOOD: Commissioner Dood. Just one more
14 question. If this is not enough, we would find that out
15 through our normal process in 2021? Is that a correct
16 assumption? When we seat a work group and get the data?
17 MS. ROGERS: Yeah. This is Brenda. Definitely.
18 And as I stated earlier, we -- it will be also the time to
19 re-run the full bed need methodology and so obvi- -- if
20 those -- the statewide bed need increases, then obviously
21 then the special pools could potentially have beds added at
22 that time as well and the Commission would have the option
23 to add those beds to the special pool when that is done. If
24 for some reason the statewide bed need comes in at a lower
25 number, then that could potentially cause a decrease in the

1 special pool beds. But, again, it would be up to the
2 Commission at that time if it would want to put -- decrease
3 those beds accordingly. So when you look at the way those
4 standards are written at the timing, at the running of the
5 statewide bed need, the Commission may increase or decrease
6 those special pools at the time.
7 MR. DOOD: Thank you.
8 MR. FALAHEE: Thank you, Brenda. Beth or Tulika,
9 did you want to add to that at all?
10 MS. NAGEL: (Shaking head negatively)
11 MS. BHATTACHARYA: This is Tulika, no.
12 MR. FALAHEE: I'm seeing heads -- okay. Thank
13 you. Any other questions from the Commissioners? Okay. We
14 have a motion in front of us. As usual I'll go -- follow
15 the usual format here for Zoom calls. Is anyone opposed to
16 that motion? Hearing none, that motion is approved and it
17 will go forward for public comment and to the JLC. Thank
18 you very much for a very good discussion about it. Thank
19 you.
20 (Whereupon motion approved at 10:01 a.m.)
21 MR. FALAHEE: Moving on next, agenda item eight,
22 MRI Services Draft Language. And I know that we do have
23 public comment on this, but I want to turn it over to Brenda
24 or Beth or Tulika or all three to explain and summarize.
25 MS. ROGERS: Sure. This is Brenda. I'll kick us

1 off and then Beth and Tulika, feel free to add. So, again,
2 as we've all been impacted by COVID-19 this year, the
3 Department has discovered that the MRI standards are having
4 a direct impact as a result of COVID-19. MRIs, the only
5 standard right now that requires the use of specific data,
6 meaning that it has to utilize the May and November MRI
7 utilization lists. Given that there were a period of months
8 where only urgent and emergent MRIs could be done earlier
9 this year, that has reduced the number of available adjusted
10 MRI procedures that can be used for applications. We -- the
11 Department is recommending language that would provide a 10
12 percent reduction for the number of available MRI adjusted
13 procedures that would be needed for initiation if the
14 application is utilizing an MRI list where the report period
15 was impacted by a public health epidemic and that is defined
16 in this proposed draft. It would also allow providers to
17 annualize their procedure data that's impacted by a public
18 health epidemic, and it would also remove requirements to
19 provide commitments for -- when adding host sites to an
20 already approved mobile route. This is similar to other
21 mobile imaging standards.
22 Again, we recognize that these standards are up
23 for review in 2021 and we know that there will be at least a
24 work group seated for the MRI standards based on some
25 Commission approval earlier this year. However, again, due

1 to the unforeseen circumstances of COVID this year, the
2 Department is recommending approval of this language to
3 provide some assistance and relief to the providers due to
4 the current epidemic.
5 MR. FALAHEE: Brenda, thank you. Beth, I see
6 you've taken yourself off mute, so go ahead.
7 MS. NAGEL: I think Brenda did a great job of
8 explaining it. I will just say, again, kind of echoing the
9 last agenda item. This is not normally how we bring
10 language to the Commission. We normally have a group of
11 experts, many of whom I'm sure you will hear about, or hear
12 from today that hash this stuff out and what we bring you is
13 kind of consensus and that's not what you have in front of
14 you today. What you have is something that the staff at
15 MDHHS along with Assistant Attorney General Becky Berels
16 worked diligently on over the course of several weeks to
17 give you some options, to put in front of the Commission a
18 discussion of what can be done to remedy some of the effects
19 of COVID-19. That said, I'm sure you will hear if you
20 haven't already some potential changes that many in the
21 community would like to make and I just want to make it
22 clear that the Department is certainly open to those changes
23 and, well, potentially I'll say open to those changes
24 depending on what they are. But the ones we've heard so
25 far, you know, we're not wed to this language as it's

1 written. It really is meant as a starting point for the
2 Commission to have some options to adjust for the pandemic.
3 MR. FALAHEE: I'll just add, Beth, on behalf of
4 the health care community and the patients out there, thank
5 you for, you know, this first draft. To you and Tulika and
6 Brenda and Becky, just it's lot of work. We're very
7 grateful that you've seen the issue, you've heard it
8 yourself. And the impact that -- from about the middle of
9 March until -- what? -- June, we couldn't do procedures,
10 couldn't do surgeries unless they were emergent, so -- and
11 even then the patients had not come back. So thank you for
12 addressing it. Other comments? Tulika, did you have
13 anything to add at this point?
14 MS. BHATTACHARYA: No, I don't. Thanks, Chip.
15 MR. FALAHEE: Okay. Thank you.
16 MS. NAGEL: If I could add one more item?
17 MR. FALAHEE: Sure.
18 MS. NAGEL: We also have Marcus Connolly on the
19 call today and Marcus is really our front line where these
20 phone calls from people, from providers in the state that
21 have raised this issue. And so I just wanted to make that
22 clear because Marcus will be a great resource as part of
23 this conversation.
24 MR. FALAHEE: Great. Thank you. And thank you,
25 Marcus, for taking probably more than a few phone calls or

1 e-mails about that. Thank you. Let's move in to public
2 comment. I know we have some public comment because before
3 I laid out the procedure to follow, I had already received
4 one, let's call it, virtual green card from Melissa. And
5 Melissa, I'm not going to try to pronounce your last name.
6 You can correctly pronounce it. But I'll -- I'll first turn
7 it to Melissa, formerly known Melissa Cupp, now Melissa
8 Reitz, I think. But -- and then after that, Tania, just a
9 heads up. What I'll do is turn it over to you to say here's
10 who else is on the list to give public comment. Does that
11 work for everybody?
12 MS. RODRIGUEZ: Sounds good.
13 MR. FALAHEE: Okay. Thank you. So, Melissa, I'll
14 turn it over to you.
15 MELISSA REITZ
16 MS. MELISSA REITZ: Great. Thanks so much, Chip.
17 Good morning. I am Melissa Reitz. You were right on with
18 that pronunciation. Used to be Melissa Cupp. So I first
19 thank you for the opportunity to make comments on these
20 proposed MRI changes. Secondly, I just want to echo Chip's
21 comments regarding the Department's efforts, not just in
22 these proposed changes, but just overall helping our state
23 to respond to this pandemic in a really amazing way. So I
24 know it's not been easy, it's taken a lot of effort, and so
25 thank you for that.

1 With that said, I did want to -- I think that the
2 idea and the concept behind these proposed changes is
3 absolutely in the right place and headed in the right
4 direction, but I did want to take hopefully just three
5 minutes to express just a couple of concerns. The first one
6 is related to the MRI host site changes that are proposed
7 here, removing the requirement for a new MRI host site to
8 demonstrate need through physician commitments of available
9 adjusted procedures when adding to an existing mobile MRI
10 route. One, I'm not sure that that is really -- it doesn't
11 seem -- unlike the other two proposals, it doesn't seem
12 specifically connected to the pandemic. And because we do
13 have this MRI work group that is already slated to start
14 hopefully soon, I would like to suggest that that particular
15 issue get added to the charge of that MRI work group to just
16 talk through the potential ramifications of that more
17 because I do think that there are potential unintended
18 consequences to making that change. Although it is allowed
19 in the other imaging mobile (inaudible) modalities, there
20 are other differences in those modalities that I think are
21 impactful. And so I don't have time to go into all of that
22 here, but I do think it would be great for the work group to
23 have an opportunity to discuss this before the Commission
24 takes any action on it.
25 The other two, on the annualization and the

1 percentage reduction for initiations, I think those are
2 great ideas. I understand completely where -- I think --
3 where the Department came up with the 10 percent reduction
4 in the initiation volume requirements, and that's because
5 when you compare the November 2019 list to the November 2020
6 utilization list, you do see a 10 percent reduction
7 statewide in volumes. But I think that by the time these
8 standards go into the effect, the May list will be
9 published, I believe. And I think what we'll see when we
10 compare May of 2020 to May of 2021, I think we'll see a much
11 bigger reduction because of exactly what Chip was saying.
12 Although the executive order was lifted at the beginning of
13 June, the patients haven't -- they didn't just run back to
14 the facilities and patients are still today I think delaying
15 these MRI procedures until after a vaccine is here and they
16 feel safer going into health care facilities. And so I
17 think we should maybe look ahead to that and try to aim at
18 something a little bit higher that will have similar impact
19 once that list is published.
20 And then I would just throw out the idea that
21 perhaps that reduction could just be the solution across the
22 board instead of doing the annualization because I'm nervous
23 about -- I have full faith in the Department's ability, but
24 the way that the utilization list is published, it's not by
25 month and so I think it might be difficult to pull out those

1 months and then annualize what's left unless the Department
2 is preparing to, you know, publish like a monthly available
3 adjusted procedures list and that just feels like an awful
4 lot of work. Or maybe that percentage reduction could just
5 apply to expansion, apply to initiation, apply to
6 relocation. And I'd also just mention that we've left out
7 acquisition. We've covered all the different types of
8 applications, but we haven't covered acquisition. So maybe
9 we could just apply that reduction to the acquisition
10 requirement as well. So I'm probably over my three minutes.
11 I apologize. I'm happy to answer any questions.
12 MR. FALAHEE: You were just about to get my hook,
13 so thanks, Melissa. I appreciate. No, some very good
14 questions, points you made. Before I turn it over to the
15 Commissioners to see if they've got questions, Beth or
16 Brenda, Tulika, Becky, do you have any questions of Melissa?
17 Any clarifying points?
18 MS. NAGEL: Tulika, if you want to be able to
19 discuss a little bit of how we envision operating --
20 operationalizing the annualization, maybe that's helpful?
21 MS. BHATTACHARYA: Yeah, definitely. And Marcus,
22 I know you are in the meeting. Please feel free to chime
23 in.
24 Just one -- okay. I would start with our
25 recommendation of why we said 10 percent. So Melissa,

1 actually, we took the four quarters for the November list,
2 which starts from July 1 of 2019 through June 30 of 2020.
3 So -- and then we know that only one of the quarter, the
4 last quarter, April, May, June of 2020 was affected heavily
5 by COVID, practically the lockdown happened. So we took --
6 we looked at the first three quarters, took their average,
7 and then compared that to the fourth quarter and we saw that
8 across the board statewide, the reduction is 10 percent. If
9 we applied that same rate of reduction, let's say in the May
10 list, the two quarters will be affected the same way, then
11 the statewide reduction will be about 17 percent instead of
12 10. So that was the basis of 10 percent reduction.
13 Now, why are we not saying 10 percent for
14 everything instead of annualizing? So like I said, the
15 statewide, the average reduction was 10 percent, but when we
16 looked at individual facilities, we did look at facility by
17 facility. Some facilities saw a reduction of up to -- oh,
18 my gosh -- maybe up to 25 or 30 percent, and then there were
19 a couple which saw an increase of one percent or two
20 percent. So what I'm trying to say is the reduction in the
21 volume varied from facility to facility and so that was the
22 rationale behind proposing the annualization because, I
23 mean, like Beth said, we are open to suggestions, but that
24 was our rationale for that annualization.
25 Now, the other point, a very good point that you

1 raised about the annualization, how the Department will do
2 that? Yes, you are absolutely right. We do not have data
3 month by month, but that is true for any service. Like when
4 you submit your data for the annual survey, it's for the
5 whole calendar year: Patient days of care, surgical volume,
6 CT, open heart. We have no data based on months. But for
7 MRI we do have quarterly data submitted by the providers
8 because in the standards, the data submission requirement is
9 for every quarter. So we don't have month by month data,
10 but we do have quarterly data, the number of visits, not
11 quite the number of adjusted procedures per quarter, but the
12 number of visits.
13 So that gives us some options or ways to kind of
14 break down. So if you had 10,000 adjusted procedures for
15 the whole recording period and we know what -- where your
16 quarterly number of visits, so that will give us some ideas
17 as to what -- where the -- or what was the volume in that
18 quarter. And then, you know, just like everything else in
19 CON, data is there but when it comes or boils down to this
20 type of give us 12 month of data or month by month data, so
21 it's an honor system. We -- the Department respects the
22 provider and I know that providers respect that and they do
23 their best to give us the best data possible looking down on
24 a month by month basis. And that's not unheard of. Like
25 even without any change in MRI standard, but as you know

1 like in Surgical standard we allow for more recent data than
2 the annual survey if that helps the provider and if they can
3 show an increase in volume by doing month to month, of
4 course we will compare. Like if, for example, somebody
5 said, "Oh, we saw an increase of 40 percent in our volume,"
6 know that the Department will come back with some more
7 request for more information. So that is the reason we
8 thought of annualizing so that, you know, because we did
9 observe some are more affected than others. Did I miss any
10 other point that you wanted me to address?
11 MR. FALAHEE: There was one that I had. Melissa,
12 excuse me if I step on your toes. The one that I had a
13 question about, Tulika or Beth, was the one where remove
14 requirements to get commitment letters when adding a host
15 site to an already approved mobile route. I don't know if
16 that's COVID driven or not. And as former CON director Mr.
17 Horvath knows, I love to figure out how can I game this,
18 right? How can I game any standard? What I worry about
19 is -- nothing wrong with these providers, but if you don't
20 have to get commitment letters and you can add to a mobile
21 route, is that appropriate? Is that really tied to COVID?
22 I don't see how and shouldn't that be turfed to the MRI work
23 group that we've authorized but we haven't formed yet? Long
24 question or long comment. I apologize.
25 MS. GUIDO-ALLEN: Commissioner Guido-Allen. Thank

1 you, Chip, because that's my -- that's exactly what I was
2 going to ask or say if you want a question or comment. I
3 have concern around that and I don't know how it ties to the
4 pandemic.
5 MS. BHATTACHARYA: Excellent question and I would
6 just repeat what Beth said in the beginning of the
7 discussion that we are not married to these ideas. And
8 Marcus and I have received calls and we have had meetings
9 with providers that are trying to, or planning to submit an
10 application and they expressed their concerns that in this
11 COVID world, number one, the available commitment forms
12 are -- have reduced. They're limited so they're having
13 trouble in collecting physician commitments. And number
14 two, with COVID, I mean, it is a process to send forms, get
15 them signed, get them back. And these are paper forms. We
16 do not accept -- there is no way to do it electronically.
17 So that is a problem and that is being affected because of
18 COVID. And we have had this concern raised by providers and
19 that was the reason behind our proposal.
20 And just one more explanation, if I may offer? So
21 the change we are proposing will not start any new network
22 in the state. If you look at the MRI utilization list on
23 our public web site, we have -- I don't know off the top --
24 maybe 50 or 80 mobile networks in the state. So what this
25 will do, this will only allow a provider to add a host site

1 to one of those existing network and which will improve in
2 our view access to care because those units are already
3 operating in our state, and, if I may say so, most of them
4 are severely deficient in meeting their volume requirements
5 for maintaining the networks. Now, I don't know if that is
6 because there is no need or it is a combination of people
7 are having trouble filing applications because of, you know,
8 the commitment form process, but that's the differentiation
9 between what we are proposing. And so if somebody wants to
10 start a new service, a new fixed service or a new mobile
11 unit in the state, they'll still need to go to the
12 commitment process.
13 MS. MELISSA REITZ: Chip, I don't know if I'm off
14 the clock or if I can make an additional comment?
15 MR. FALAHEE: You can respond -- you can respond
16 to questions.
17 MS. MELISSA REITZ: Thank you. I just wanted to
18 note that I -- I mean, I have seen that huge decrease in the
19 volumes on existing mobile routes because -- because we
20 allow a host site to build up their volume and convert to
21 fixed. And so -- and that's, you know, honestly my biggest
22 concern is that when you allow a bunch of new host sites and
23 then those host sites siphon volume off of existing services
24 and then they convert their host site to a fixed unit, then
25 that pulls even more volume out of, you know, the routes and

1 then also out of existing services that we've already
2 invested in. And so it's not necessarily the host site
3 itself that's the huge concern, but it's the fact that they
4 can then convert to fixed and that conversion is what I have
5 seen contribute most significantly to the perpetual decline
6 in volumes on existing mobile routes.
7 MR. FALAHEE: Thank you, Melissa. Other questions
8 of Melissa or of anyone else? I will add that, to Tulika's
9 point about commitment letters during COVID. It can be
10 done. We've done it. And, yes, you still have to get, you
11 know, the blue signatures and the hard copies, but it can be
12 done. And I do worry about a proliferation of more sites as
13 we saw in a study that Michigan State University did a
14 number of years ago in health care: If you build it, they
15 will come. Our role as a CON Commission is try to balance
16 quality, access, and cost. There may be sufficient access
17 already. To the extent we add to that access unnecessarily,
18 it increases cost and we have to be sensitive to all of
19 that.
20 Other questions of Melissa? Because I know there
21 are others that would like to make public comment as well.
22 MR. MITTELBRUN: Chip, I don't -- I don't really
23 have a question. But one of the things from the very
24 beginning, my question was as someone who pays for health
25 care, pays claims, I am not remembering, as Tulika pointed

1 out, where some providers saw a decrease and some had a
2 small increase. I saw the overall decrease. My curiosity
3 was -- and Melissa talked about it and Tulika addressed
4 it -- it just seemed to me at first glance that the 10
5 percent was too low. And I know that was talked about, but
6 I'm sure we're going to hear more from the other people, but
7 I know Tulika, you know -- and both Tulika and Melissa
8 answered that question or commented on that and I'm still
9 not quite convinced that 10 percent is enough, but --
10 MR. FALAHEE: I'll selfishly add, Tom, that I
11 think the more you go on and get more current data, you're
12 going to see that 10 percent is the low end, that most
13 providers took 20, 30, 40 percent, 50 percent hits. So I
14 think you're exactly right. And that was one of the items I
15 was going to address, but I wanted to make sure we closed it
16 up with Melissa first. But thank you. We'll get to --
17 let's -- any other questions? We'll get to Tom's question
18 here in a second. Okay. Anyone want to respond to what
19 Commissioner Mittelbrun just raised about 10 percent being
20 too low, too high, just right?
21 DR. KONDUR: Commissioner Falahee, I think I heard
22 Mittelbrun, this 10 percent is very low. A lot of people,
23 you know, provider site hospital they had more, actually.
24 They have lower numbers.
25 MR. FALAHEE: Thank you very much, Commissioner

1 Kondur. Let me ask if -- would these numbers be tweaked?
2 Just a normal process, as we get more current numbers, would
3 that 10 percent potentially -- and Tulika, you touched on
4 this earlier -- would that number potentially go up as we
5 process through and time marches on with these standards?
6 MS. NAGEL: So if I could ask Tania to go to
7 scroll down, to kind of our first changes in the standard?
8 To answer your question, Chip -- yeah, probably there, I
9 think. Yeah. So you can see where we have adjusted the
10 numbers in the standard. We would need these numbers
11 adjusted. So if we saw -- if you want to base it on the
12 decrease from published reporting list to published
13 reporting list, you would need to -- we would need to update
14 these numbers in the standard and go through the reporting
15 process or the standard rule making process. So if these
16 numbers look too low to you today to fix the issue going
17 forward, I would suggest that we change the numbers in the
18 standard today. And I understand that I'm asking you to
19 have a bit of a crystal ball, but that's -- you know,
20 essentially if we waited until we got the next data
21 available to us, these standards would already be effective.
22 MS. MELISSA REITZ: If it's at all helpful, I'll
23 just add that I know that someone else that's going to speak
24 has looked the decreases that they have seen in their data
25 year to date and I think that it will -- it's not going to

1 be a crystal ball, but it will help to enlighten, you know,
2 provide more information. That might help the Commission
3 make that decision.
4 MS. BHATTACHARYA: Beth, this is Tulika. If I
5 could make one comment? So the 10 percent if you see --
6 look at the language, we applied the 10 percent only to the
7 initiation volume threshold when somebody is trying to
8 establish a new fixed MRI, mobile MRI, or host site. But
9 when it comes to expansion, relocation, or maybe even
10 acquisition, that's where we are proposing annualizing for
11 this exact same reason because we observe that it is not 10
12 percent across the board for all providers. So if someone
13 saw a decrease of 45 percent, they should have the right to
14 annualize their data based on that reduction. So for
15 existing providers when they're applying for or trying to
16 apply for expansion or relocation, they're not bound by that
17 10 percent and that was the reason for proposing
18 annualization of volume.
19 MS. NAGEL: I'm so glad you brought up that
20 nuanced point Tulika, because we did spend a great deal of
21 time discussing exactly this; that the annualization is
22 meant to flex for our existing providers for that exact
23 reason and the initiation volume is meant to be just for the
24 starting, you know, initiating a service.
25 MR. FALAHEE: Okay. That's, that's helpful. So

1 if you -- so that way, let's say that the 10 percent is too
2 low, let's just assume that for the sake of argument. This
3 is Falahee again. If someone had actually seen a 43 percent
4 drop, they could account for that pursuant to your Proposal
5 3 that would allow them to annualize it without taking into
6 account that drop during that pandemic period; right?
7 MS. NAGEL: If they're a current provider and
8 they're looking to expand, yes.
9 MR. FALAHEE: Right.
10 MS. BHATTACHARYA: So I'll give you just an
11 example because like Beth said, we talked for hours about
12 this. So let's say a hospital -- which not a hospital, they
13 would not share -- let's say a freestanding center was shut
14 down for three months during the lockdown, so they have nine
15 months' worth of data, right. So they can take that nine
16 months' worth of data and annualize it, what it should be
17 for 12 months.
18 MR. FALAHEE: Right.
19 MS. BHATTACHARYA: Let's take another example. A
20 hospital, so they were open for all 12 months, but for three
21 months they were shut down or operating at reduced capacity
22 legally, then they also have the option to take those nine
23 months and annualize it to be what it will be for a 12-month
24 period.
25 MR. FALAHEE: Okay. Thank you, Tulika. Thank

1 you, Beth.
2 MS. BHATTACHARYA: And Becky, please feel free to
3 jump in if what we are saying is not what the language is
4 saying.
5 MS. MELISSA REITZ: Sorry. I want to just make
6 one more comment just specifically in response to that. The
7 other thing that I did notice as Tulika pointed out, that
8 language for annualizing is super specific that it's
9 allowing you to take out the months where you were
10 prohibited by law from doing, you know, anything but
11 emergent or urgent cases. And I think as -- just as you
12 pointed out, although there are, you know, more prohibited
13 by law starting in June, you know, patients don't -- they
14 don't want to come back. And so even now, six months later
15 facilities still aren't back up to their 2019 volumes
16 because patients are just saying, "You know what? It's not
17 worth the risk. My hip hurts, but I'm going to wait and I'm
18 going to come in after the vaccine is here." And so I am
19 nervous that that annualization -- I don't know if there's
20 any ability to make that a little bit less specific or a
21 little bit -- you know, a little bit more flexible, but that
22 was another concern that I didn't have time to raise
23 earlier.
24 MR. FALAHEE: Which could be brought up during
25 public comment obviously. A personal note here, one of our

1 electrophysiologists personally called 41 patients saying,
2 "It's safe. You can come in and get your electrophysiology
3 procedure." Out of the 41 calls that he made, one patient
4 said yes.
5 DR. ENGELHARDT-KALBFLEISCH: It's Commissioner
6 Engelhardt. Can I ask a clarifying question?
7 MR. FALAHEE: Sure.
8 DR. ENGELHARDT-KALBFLEISCH: I just -- when you
9 talk about annualizing the data, I just want to make sure I
10 understand. So I understand that three months of the
11 lockdown can be excluded, but are we looking -- discussing
12 only pre-pandemic 2019 or are we also -- will this impact
13 2020? Because I can see in southeastern Michigan we saw a
14 much larger decrease than 10 percent and we're still seeing
15 that decrease, especially as we're now well into our second
16 wave of the surge. So I just want to make sure I understand
17 exactly the time frame we're talking about.
18 MS. NAGEL: Yes. So this is Beth and you
19 mentioned the 10 percent and that is just for the initiation
20 and that is -- the way it's listed in the standard is that
21 if you're initiating, it's for a time that the Department
22 determines that the reporting period is impacted by a public
23 health epidemic. So that would certainly impact, you know,
24 a reporting period that included the early spring, that
25 includes potentially right now and going forward. So that

1 is meant to identify any time that there's a -- the
2 reporting period is impacted by a public health pandemic.
3 However, I think what you're talking about also is the
4 annualization. And Tania, if you could scroll down so that
5 I could see that language to help answer this question? Oh,
6 I think -- okay. Yup, just a little bit more. It's the
7 same language that we repeated there that the Department
8 determines that the reporting period is acted by -- impacted
9 by a public health pandemic. So, again, that answers your
10 ques- -- hopefully that answers your question. That it's
11 any time, including the spring and including now. However,
12 Melissa just made the point that is current that we included
13 also -- I'm looking for the language. Pardon me.
14 MR. FALAHEE: Where it says "and."
15 MS. MELISSA REITZ: (inaudible)
16 MS. NAGEL: I'm sorry. I didn't hear that.
17 MS. MELISSA REITZ: Line 373.
18 MS. NAGEL: 373, that talks about specifically
19 when the facility was prevented by law from operating at
20 full capacity. And, again, we chose that just as a point of
21 discussion for the Commission. We -- you know, from the
22 Department's perspective, that's a very provable period of
23 time; however, with your input and the input of others, that
24 may not be the appropriate period of time. So that's really
25 we were trying to sort of draw a circle around this specific

1 period of time and, you know, others may share input that
2 that's not possible.
3 MR. FALAHEE: I'll -- thank you for the attempt.
4 It's never easy to draft anything let alone trying to
5 predict what impact of once every 100 years pandemic is
6 having. So, again, thanks for the effort. I think that
7 you've heard from a number of people now about the -- you
8 know, "and the facility was prevented by law." Well, it's
9 not being prevented by law anymore. It's being prevented by
10 patients being afraid to come in. And I see Dr. Kondur
11 shaking his head. He's probably run into it with some of
12 his patients as well. So if we could maybe acknowledge that
13 and I guarantee you during public comment you may hear more
14 about that, and you'll probably hear more about it today,
15 but that's one that's out there as maybe it needs to be
16 tweaked.
17 I think the other one that maybe needs to be
18 tweaked and we may hear more public comment about is the bit
19 about removing the requirement to provide commitments when
20 adding a host site to an already approved mobile route. I
21 know I've received comments about that. There may be more
22 coming down the pipeline today. But those are two that are
23 out there right now. And I know the Department has said and
24 I know they will be flexible and I appreciate the chance for
25 all of us to give input to the Department and all the people

1 who have worked so hard to put this language together and
2 being brave enough to share the language with this group.
3 Thank you. Any other -- we still have Melissa here. Any
4 other questions for her?
5 DR. MACALLISTER: Commissioner Falahee, Chairman,
6 this is Commissioner MacAllister. I am just concerned in
7 regards to the precedent setting that this would be that we
8 identify this specific modality without necessarily a full
9 plan of impact of COVID on other modalities in other systems
10 with -- that we -- I would hope that we could provide
11 guidance or at least have a plan of how others would be
12 attacked and timeline of when that could -- or when those
13 would be -- if they are planned to be modified at all or
14 addressed.
15 MR. FALAHEE: Thank you very much. Beth, you may
16 have -- I'm anticipating a comment, Beth.
17 MS. NAGEL: I think that's a great point,
18 Commissioner MacAllister, and one that we certainly have
19 talked about quite a bit as well. The issue of why we're
20 looking at MRI right now is because it is different from all
21 other services in that it is extremely specific in the
22 standard what data the Department must use to evaluate our
23 applications. In other standards it is not as explicit what
24 data must be used and from what time period. That's
25 something that we have been able to work through without

1 having specific language in the standard. And so, yes,
2 there certainly -- we are anticipating that as COVID has
3 impacted everything, that it will also impact the other
4 standards as well. However, at this point we're not seeing
5 a specific impact because of the flexibility we have with
6 data. We will guaranteed have more fixes that -- or fixes
7 that need to be made because of COVID, but at this point we
8 are anticipating those will be further down the line into
9 next year for the Commission to look at.
10 DR. MACALLISTER: Thank you. Chairman, can I just
11 have a follow-up question?
12 MR. FALAHEE: Sure. Follow up, please.
13 DR. MACALLISTER: So Commissioner MacAllister. I
14 do feel as though it's -- it would be prudent if that is the
15 intent that if there could be at least a high level audit of
16 what potentially we could provide some guidance for
17 understanding of when that release would occur time-wise. I
18 do think that there are a lot of organizations that are
19 wondering how that could impact them and to have that
20 guidance and understanding to the greater public to
21 recognize when that should be anticipated and I think it
22 would calm some of the concerns that I've been hearing at
23 least.
24 MR. FALAHEE: Thank you for that comment. I'm
25 sure that Marcus is getting calls about that and Tulika and

1 others in the Department as well. So I think that -- I
2 think Commissioner MacAllister raises a good point. People
3 in the health care community are wanting to know what's
4 going to happen and just something from the Department,
5 nothing specific, but just in general how you're planning to
6 address it on a general basis might be a good idea. It
7 might cut down on the number of phone calls or e-mails.
8 Okay. Melissa, I'm trying to enable you to leave
9 the podium, if you will. Any other questions of Melissa?
10 Okay. Thank you very much for raising this. Tania, I'm
11 going to turn it over to you because I know there are others
12 I think waiting in the queue on this issue.
13 MS. RODRIGUEZ: Yes. Next we have David Walker
14 from Spectrum Health.
15 MR. FALAHEE: David, go ahead.
16 DAVID WALKER
17 MR. DAVID WALKER: Thank you, Mr. Chairman, and
18 members of the Commission for the opportunity to provide
19 comment today. My name is David Walker and I'm here on
20 behalf of Spectrum Health. I think I can keep my comments
21 brief because the previous conversation brought up a lot of
22 the issues and concerns and thoughts that I had. But I
23 also, I just want to start by thanking the Department for
24 their partnership during this pandemic to help us providers
25 care for our communities. I could go well past my three

1 minutes expressing our appreciation. So let me just say
2 that the assistance has been stellar and I certainly
3 appreciate these proactive proposals before the Commission
4 today.
5 I really appreciate the Chairman's and
6 Commissioner Guido-Allen's and Melissa's comments related to
7 the host site initiation changes and Spectrum Health would
8 appreciate them being deferred to the work group; however,
9 if they were to move forward, I think that the language
10 should be a little more clear that it is tied to the
11 pandemic and that perhaps it could be written into the
12 standards that the host site if initiated under these
13 standards would expire at the end of the pandemic unless the
14 commitments were ultimately provided. My imaging team also
15 thinks that the 10 percent initiation reduction is a little
16 low; however, I do not have a good recommendation for what
17 that number is.
18 Since most of my other comments have already been
19 addressed, I just want to thank again -- end by thanking the
20 Department for these proactive suggestions and for the
21 Commission for the time to provide comments today. Thank
22 you very much.
23 MR. FALAHEE: Thank you, David. Appreciate it.
24 Any Commissioner questions of Mr. Walker?
25 MR. DOOD: Commissioner Dood. David, good

1 morning. Wondered your thoughts on the urgency of adopting
2 some form of these changes or whether this could just wait
3 to go through the work group as scheduled next year?
4 MR. DAVID WALKER: Thank you, Commissioner Dood.
5 Very good question. I -- I have not put a lot of thought to
6 it. I think that the -- I'm not alarmed or concerned that
7 this proposal is coming through right now. I think
8 especially the 10 percent reduction and the annualization
9 proposals are good proposals to bring forward now to help
10 providers navigating this pandemic. I think that the host
11 site initiation changes is a little bit more substantive and
12 probably best suited for the work group. But otherwise, I
13 think it's completely appropriate to bring these through at
14 this time.
15 MR. FALAHEE: Other questions of David?
16 Commissioner Dood, I'll just add for what it's worth. I
17 think I agree with where Mr. Walker is at on the 10 percent
18 might be too low, but that can be accounted for with the
19 annualization as it's laid out there and potentially tweaked
20 by "and required by law" or something. That language might
21 need to change. The bit about the -- or the language about
22 host sites and all, I think that may be something that could
23 be deferred to a work group or, as Mr. Walker said, add some
24 more clarification and requirements for a commitment letter
25 or letters afterwards. Other questions of Mr. Walker?

1 David, thank you very much. Appreciate your input.
2 MR. DAVID WALKER: Thank you.
3 MR. FALAHEE: Tania?
4 MS. RODRIGUEZ: Next up we have Sean Gehle with
5 Trinity Health Michigan.
6 MR. FALAHEE: Sean, the floor is yours. Good to
7 see you.
8 SEAN GEHLE
9 MR. SEAN GEHLE: Good to see you. Good morning,
10 Mr. Chairman and Commission members. I'm Sean Gehle and I'm
11 here on behalf of Trinity Health Michigan. I did have
12 prepared comments, but given all the conversation, I'll try
13 to be even brief -- more brief than I was planning to be. I
14 also want to add to our appreciation for the Department's
15 efforts to try to be responsive to the pandemic. So please
16 accept our appreciation for everything that they are doing.
17 We do support the Department's ability to reduce
18 volume requirements. We would agree that the 10 percent
19 seems to be low and would really appreciate having some
20 further conversation about what that figure ought to be, or
21 as the chairman indicated, maybe that can be handled through
22 the annualization. We additionally have significant concern
23 with the mobile host site language and would advocate that
24 that be deferred to the work group for further review. We
25 question how that's related to COVID as well.

1 I guess I would ask of the chairman and the
2 Commission whether there might be an opportunity between now
3 and your January Commission meeting to maybe try to iron out
4 some of the language. I know that Melissa probably has done
5 a lot of thinking as has Arlene Nelly (phonetic), our
6 consultant and our expert on ways in which this could
7 potentially be done and just offer that as a possibility.
8 We do think there's some reason to expedite some of that
9 language. As I mentioned, the mobile host site language we
10 think can be put off further. And incidentally, we're in
11 the process of filing an application and we're going through
12 the regular commitment process on a mobile host site as
13 well.
14 So I'll leave it at that, but appreciate having
15 the opportunity to weigh in on the issue.
16 MR. FALAHEE: Thanks, Sean, appreciate it. Any
17 questions of Mr. Gehle? Sean, I for one thank you for
18 raising the idea. We do meet again in January. Part of
19 this I would be open to, if the Department was open to it,
20 listening to other potential tweaks, edits, whatever that
21 could then be, if possible between now and the January
22 meeting, discussed with the Department, maybe some potential
23 new language. I'm just -- I'm wide open to anything here
24 because as Beth said when she started, here's the language,
25 we welcome any comment, we welcome any constructive

1 comments, criticism, suggested edits. I'm wide open to that
2 as the chairman of this group. And I don't know where the
3 Department is, but I'm sure I'll hear in a few seconds.
4 MS. NAGEL: We're in the same place, Chip.
5 MR. FALAHEE: Okay. Thanks. Thanks, Beth. Any
6 other questions of Sean or any questions regarding the
7 issues he raised? Okay. Thank you. Sean, great, thank
8 you. Tania?
9 MS. RODRIGUEZ: Okay. It looks like we have
10 Cheryl Martin and Tracey Dietz from Henry Ford Health
11 System. They also would like to provide a couple slides to
12 share.
13 MR. FALAHEE: Okay. That's fine. I don't know
14 which of the two will speak. I see Tracey's face appearing,
15 so --
16 TRACEY DIETZ
17 MS. TRACEY DIETZ: Hi. Good morning. Thank you.
18 I appreciate the opportunity to talk with the team. No.
19 I'm not sharing the right screen. So let me make sure. I'm
20 trying to get back in. Can you hear me?
21 MR. FALAHEE: Yes. And we see the -- we see a
22 slide, too.
23 MS. TRACEY DIETZ: Okay. Good; good. So what
24 I -- I -- I first of all want to say is thank you very much
25 to everybody for the opportunity to make comment. Both

1 Cheryl and I have spent some time together talking through
2 the recommendations and I'm hoping what you see right now is
3 some slides that we've pulled together to kind of illustrate
4 some of the points I think we have already heard today.
5 Cheryl might jump in. I'm not sure if Cheryl's on video
6 herself. But between the two of us, we wanted to be able to
7 talk through some of our thoughts.
8 First of all, again, just want to echo the
9 appreciation for the CON team. Through the emergency bed
10 requests, all the other questions we've had and then the
11 proposals that have come out here for MRI, we truly
12 appreciate what Tulika, Beth, Marcus, and so many others
13 have been doing to support us. So first of all, thank you
14 there.
15 Secondly, just want to say that we do agree with a
16 lot of the comments that have already been made. The
17 comments in regards to is 10 percent enough or not, we're
18 hoping that to demonstrate today why we think you need to
19 change that number, as well as the recommendations for our
20 mobile host sites where we would like to also kind of concur
21 and share our thoughts that the unintended consequences on
22 that that Melissa and others have raised are concerning to
23 Henry Ford as well and we have some thoughts around that as
24 well as we go through this.
25 The first slide, though, just to kind of pull

1 everybody's attention to this is we were looking at
2 specifically in southeastern Michigan what kind of impact we
3 experienced during the first COVID surge and how that
4 impacted the data that currently is being required for any
5 applications that might be submitted going forward here. So
6 what you see is for specifically the southeastern Michigan
7 hospitals comparing 2019 volumes to 2020 volumes. We had
8 about a 13 percent reduction in the volume for the 2020 data
9 that was just recently published. And that period of time
10 for 2020 data is July 1st of 2019 through June 30th of 2020.
11 So there's four months of COVID activity in those volumes.
12 That's only specific to hospitals. That doesn't include
13 your medical centers that might have shut down and so on.
14 So I think it's an important point that, you know, 12
15 percent in southeastern Michigan is where we're sitting at
16 our hospitals.
17 The second slide here is specific to Henry Ford
18 and we were looking at, well, what has our own experience
19 been? Not only for the period of time that the current data
20 that the state has published addresses, but since, you know,
21 and what have we seen as we compare 2019 volumes to 2020
22 volumes? The first graph here shows you that in April one
23 of our hospitals had a 76 percent reduction in volume in
24 2020 specific to April and that reduction, while it improved
25 and you see in June we bounced back to having 14 percent

1 less scans for June of 2020 over 2019, we continued
2 (inaudible) --
3 MR. FALAHEE: Tracey?
4 MS. TRACEY DIETZ: Yeah.
5 MR. FALAHEE: Tracey, this is Chip Falahee. I
6 should have reminded everyone that witnesses have a three
7 minute time limit.
8 MS. TRACEY DIETZ: Oh, okay.
9 MR. FALAHEE: So I forgot to notify you. If you
10 could summarize what you're about to say in about 30
11 seconds, that'd be great.
12 MS. TRACEY DIETZ: I apologize. Sure. So what
13 you see here is our ongoing reduction in volumes. And so
14 it's continued since the executive orders have lifted and
15 that we have absolutely struggled to get patients back in on
16 an ongoing basis.
17 Really I think two points here I want to make in
18 30 seconds. One is we do suggest a more simplistic
19 approach, one either reverting to 2019 volumes for
20 expansions, relocations, acquisitions, and initiations of
21 either new services that are fixed or mobile. The second
22 option would be rather than a 10 percent reduction, looking
23 at a 30 percent reduction for any type of applications for
24 expansion, initiation of fixed and host sites as well as
25 applications for relocation or acquisitions.

1 MR. FALAHEE: Great. Thank you very much. Sorry
2 for the -- sorry for the failure to notify you about three
3 minutes. I apologize.
4 MS. TRACEY DIETZ: No. And I apologize. I went
5 over.
6 MR. FALAHEE: Well, some of the "over" is a thank
7 you to the Department and it's well deserved. I know there
8 was one Sunday afternoon when I spoke to Tulika and I
9 believe Beth and Larry Horvath on a Sunday afternoon during
10 all this. So that shows everybody was on board. Questions
11 of Tracey with the comments she made? Let me just -- I'll
12 throw out a question. I think I know the answer already.
13 Would Henry Ford be willing to work with the Department to
14 come up with -- and with others as well -- potentially
15 alternative language between now and the January meeting?
16 MS. TRACEY DIETZ: Cheryl, do you -- are you okay
17 if I say "yes"?
18 MS. CHERYL MARTIN: Absolutely.
19 MR. FALAHEE: Thank you. Thanks to both of you.
20 Thanks to Henry Ford.
21 MS. TRACEY DIETZ: Yeah, we appreciate it. Thank
22 you.
23 MR. FALAHEE: Any other questions? Okay. Thanks
24 again.
25 MS. TRACEY DIETZ: Thank you.

1 MR. FALAHEE: Tania, turn it back to you. Thank
2 you.
3 MS. RODRIGUEZ: Okay. It looks like we have a
4 couple more. Let me see. The next one would be Mike
5 VanderPol.
6 MIKE VANDERPOL
7 MR. MIKE VANDERPOL: Hi. I'm Mike VanderPol. I'm
8 with MidMichigan Health. I want to thank you for this
9 opportunity to provide feedback regarding the changes to the
10 MRI standards proposed by the Department. We very much
11 appreciate the Department taking the time and initiative to
12 put forth thoughtful suggestions for ways to modify the MRI
13 standards to account for the impact to COVID-19 on MRI
14 volumes across the state.
15 Although we feel confident the state put forward
16 these recommendations with the absolute best of intentions,
17 we felt the need to share our concerns with one
18 recommendation in particular. Section 3, parts (4) and (5)
19 in the changes that would exclude applicants proposing to
20 initiate a new mobile MRI host site on an existing MRI route
21 from having to demonstrate need for the new host site.
22 Although we understand that other mobile imaging services do
23 not require commitments and referrals over historical
24 volumes to initiate host sites on existing routes, we feel
25 there are other factors that distinguish those standards

1 from MRI that are very meaningful.
2 First, although CT standards allow for adding new
3 host sites to existing routes without physician commitments,
4 the CT standards do not allow host site to convert to fixed
5 unit by just growing volume at the site. The MRI standards
6 do and many applicants truly desiring a fixed service will
7 start by initiating a host site because it is much easier,
8 even under the current standards than initiating a fixed.
9 They will then push as much volume through as quickly as
10 possible to reach the volume required to convert to fixed.
11 Make no mistake, that volume comes from another MRI service.
12 This practice has driven overall volumes per MRI unit down
13 over the years.
14 Second, although PET does include language to
15 allow for the conversion from a mobile host site to a fixed
16 unit, the volume required is so high it is a provision that
17 is rarely used. In addition, we think it is important to
18 also note that CT and PET are both ionizing radiation
19 imaging modalities which tend to inherently limit it to use
20 due to the risk it brings to long-term patient health. MRI
21 does not.
22 The other changes proposed by the Department seem
23 to be directly in response to the impacts of COVID-19 and
24 the language drafted specifically references a public health
25 epidemic whereas this specific language or change appears to

1 be more broad and permanent change without a direct
2 correlation to the pandemic. We believe the percentage
3 decrease proposed by the Department for all initiation
4 volume requirements would address any concerns with access
5 to new MRI host sites whereas this broader change would have
6 unintended consequences in the MRI market and should be
7 looked at further. The CON Commission already has an
8 approved work group to look at these standards and we would
9 recommend this concept be added to the MRI work group charge
10 before being considered by the Commission.
11 MR. FALAHEE: Thank you very much. Some of the
12 same issues we've talked about already during this
13 discussion. Any questions of Mr. VanderPol? Hearing none,
14 Tania, turn it back over to you, please.
15 MS. RODRIGUEZ: Okay. The next one would be
16 Patrick O'Donovan from Beaumont.
17 PATRICK O'DONOVAN
18 MR. PATRICK O'DONOVAN: Hi. This is Patrick
19 O'Donovan from Beaumont. I, too, appreciate and Beaumont
20 Health appreciates all the work that the Department has
21 done, not only on this MRI issue, but on all throughout the
22 pandemic. They've worked with us on the emergency CONs
23 along with all others in the state and have done absolutely
24 outstanding job.
25 With regard to the MRI, I think that a lot of the

1 work that has been done here would serve as a good framework
2 for making some changes to the MRI standards, but we do
3 think it's a little bit premature to approve new standards
4 right now. We certainly agree with what others have said
5 about the host sites and adding host sites to mobile routes
6 without having to a document need. But the main issue to us
7 is that if statewide volumes are down and have not
8 recovered, which I believe is the case, then we're really
9 making it easier to add capacity at a time when the volume
10 has been down. As others have noted, our volume at Beaumont
11 is down. We track it week by week. Last week we were only
12 75 percent of what we were the previous year. So we're down
13 a quarter even though, you know, the volumes have started to
14 recover. Looking at Henry Ford's chart, we have the exact
15 same thing. It went way down back in the spring and it's
16 improved, but it's not up to where it was. So I'm just
17 concerned that we're increasing access at a time when, you
18 know, no additional need has been identified. We still have
19 the capacity in the state that we had pre-pandemic and given
20 that the volume, the demand is down, I don't know that this
21 is the proper time to make these kinds of changes. We would
22 suggest that that be added, you know, to the work group to
23 take a look at that as well. Thank you.
24 MR. FALAHEE: Patrick, thank you very much.
25 Questions from the Commissioners of Mr. O'Donovan? Okay.

1 Thank you. Beth, just a heads up, listening to what the
2 current witnesses have said and maybe some more others,
3 think about is there a way between now and the January
4 meeting to address these comments and maybe come back with
5 some revised language and then also at that January meeting
6 maybe to address Commissioner MacAllister's point, come back
7 with sort of a -- what a general statement would be about
8 the other standards over and above MRI given what the impact
9 has been throughout because of the pandemic? Just a thought
10 so you can start thinking about that one to put you on the
11 spot in the future.
12 MS. NAGEL: Yeah. No, I think we certainly can do
13 that. I think what's going to be most helpful for us,
14 though, is for the Commission to give us some direction
15 because you've heard a wide range of potential solutions. I
16 think that if we could have some very specific focus, we
17 could bring something back in January.
18 MR. FALAHEE: Okay. Thank you. Tania, turn it
19 back to you, please.
20 MS. RODRIGUEZ: That was the last public comment.
21 MR. FALAHEE: Okay. Great. I won't try to
22 summarize the public comments, but Beth, to your point about
23 specifics I think -- and, again, I'll -- this is just a
24 chairman starting off so the other 10 members can say "he's
25 nuts" and I welcome that. So not in any order of priority

1 the issue that came up about commitments, initiation of the
2 MRI for a mobile when you're already on a route and doing it
3 without having to provide commitments, I think that I would
4 ask the Department to consider whether that should be turfed
5 to the work group or as I believe it was Mr. Walker said,
6 come up with something that says, "Hey, in a sense this
7 isn't a freebie. You do have to submit commitment letters
8 to prove that, yes, you do have the volume you say you do"
9 or something else to show that they're not just gaming the
10 system as I said earlier. All right. To look at that. And
11 anyone that has comments about that, you're welcome to
12 submit them to Beth, Brenda, Tulika, whomever about that.
13 Is that a fair summary of that one issue from my fellow
14 Commissioners? Do you want to add or subtract anything from
15 that? Okay. Beth, is that good enough for now or do you
16 need some more on that specific issue? I'm not talking
17 about the others yet.
18 MS. NAGEL: I'm thinking for us that that's good
19 enough. I would ask Tulika and Brenda for their input. I
20 think we heard even prior to this meeting that that's not a
21 desirable fix. So we would be fine with if you wanted to
22 tell us specifically to move it to a work group, we would be
23 fine with that as well if you wanted to be more specific.
24 MR. FALAHEE: I would be so bold as to say that.
25 I think that this is not -- based on the calls I was getting

1 before, the e-mails, and what I've heard from repeated
2 witnesses today, this isn't pandemic related so much and I
3 would rather refer this to the work group that we've
4 authorized, we just haven't set it in place yet because
5 we're so busy doing other things. So I would like that to
6 happen. Does any of the other -- do any of the
7 Commissioners object to that?
8 MR. DOOD: No. I support that.
9 DR. KONDUR: I support that.
10 MS. GUIDO-ALLEN: Support.
11 DR. ENGELHARDT-KALBFLEISCH: I support that as
12 well.
13 MR. FALAHEE: Okay.
14 DR. MACALLISTER: Support as well.
15 MR. FALAHEE: Thank you, everybody. That's a
16 great discussion. And then on the others, again, no other
17 priority, this 10 percent and then the annualization and to
18 me they sort of go hand in hand. Because on the one hand
19 what I've heard -- again, subject to others saying no,
20 chairman, you're wrong -- 10 percent is not enough, that
21 it's actually been more and I hear that. Is there a way to
22 tweak the language to reflect that it's been more or is the
23 annualization formula in need of tweaking because it's got
24 that extra language and prevented by law? Because we know
25 now it's not prevented by law anymore, but as we saw in the

1 charts from Henry Ford people aren't coming in still and
2 we've heard anecdotal evidence about that. So to me it's an
3 issue of do we need to tweak the 10 percent to be a better
4 realistic number, or do we need to tweak the language about
5 annualization, or is it a combination of the two? And,
6 Beth, I honestly don't know what the solution would be. I
7 guarantee you if we open it up, you'd get phone calls and
8 e-mails today about a potential solution. But I think
9 that's where -- that's where I see that. I welcome any
10 comments from the other Commissioners. And then Beth, I'll
11 ask for your comments as well and Tulika's and the
12 Department's. Other Commissioners, any comments about that,
13 my summary?
14 MR. DOOD: Commissioner Dood here. Mr.
15 O'Donovan's comments about having volumes be down and making
16 it easier to initiate new services really struck a chord
17 with me. I can understand wanting to be flexible with the
18 pandemic with a relocation situation or an acquisition, but
19 volumes are down to allow it, to make it easier for people
20 to initiate new services seems like it's going to increase
21 the cost kind of dramatically at a time where we don't need
22 more access. So I'd like that included in the thought
23 process between now and January.
24 DR. MCKENZIE: Yeah, this is Commissioner
25 McKenzie. I would echo that. I have the same feelings and

1 I think that the flexibility needs to be looked at from the
2 existing sites and less so for establishing new services.
3 MR. FALAHEE: Other Commissioner comments? Thank
4 you for both of those. Beth? Comments?
5 MS. NAGEL: Yeah. I just wanted to add that our
6 thinking was very much in line with what Commissioner Dood
7 and Commissioner McKenzie just outlined; that there was a
8 difference for initiating a brand new site and a difference
9 between expansion and relocation of services. And so we do,
10 you know, from our perspective the kind of input that I
11 would like to see from -- you know, that would be most
12 helpful from the Commission would be to say focus on
13 flexibility for the existing sites to relocate, expand, be
14 acquired rather than on initiation. I understand that, you
15 know, that if we're going to talk about the actual number of
16 decrease then, you know, probably 10 percent is too low, but
17 we also from our perspective wanted to balance that with,
18 you know, the actual need in the system. So the more
19 specific you can give us for direction I think the better
20 chance we'll have to bring you a finished product in
21 January.
22 MR. FALAHEE: So let me ask a question about that
23 if I may. If we as the Commission said focus on existing
24 and not new, that might help move that specific language to
25 get something in January. Would that throw out potentially

1 doing anything for new projects or would there still be some
2 opportunity to have language about that as well? I don't
3 know the answer. I'm just asking you.
4 MS. NAGEL: I think that's really the Commission's
5 prerogative. You could say to us leave the 10 percent
6 alone. Leave it in the standard the way that it's mocked up
7 today and come back to us with something that, you know,
8 encapsulates more flexibility for those that want to expand,
9 relocate, and be acquired. Or you could say take it out,
10 take out the initiation totally, the initiation changes that
11 we put in today with the 10 percent. Take that out totally
12 and come back in January with just the change that we talked
13 about for the expansion and relocation and acquisition. So
14 that's really -- it's up to you.
15 MR. FALAHEE: Okay. Thank you. Hard to do
16 virtually. But let me ask is -- which is along the lines of
17 what Commissioners McKenzie and Dood said. Basically for
18 those that are initiation, don't make any changes is what
19 I'm hearing. Is that right?
20 MR. DOOD: Yes.
21 MR. FALAHEE: I'm seeing heads nodding. Right.
22 Do other Commissioners -- I'll just throw it out, Beth, to
23 the group, if you will. To the other Commissioners, do you
24 agree, disagree, have any other concerns about what
25 Commissioners Dood and McKenzie raised?

1 DR. ENGELHARDT-KALBFLEISCH: It's Commissioner
2 Engelhardt. I have concerns. The problem is that the
3 impacts of the COVID data are going to last beyond the
4 pandemic because of the lag in data as well as the, you
5 know, patients' response to the pandemic and so I think we
6 need to include both existing as well as new into the
7 January proposal.
8 MR. FALAHEE: Thank you, Commissioner Engelhardt.
9 That's one of the reasons I've raised it almost as an
10 alternative to say, you know, can we have language for
11 initiation and then separate language for expansion,
12 whatever, that kind of thing. Sort of two separate tracks
13 on that. Other Commissioner comments?
14 MS. GUIDO-ALLEN: Commissioner Guido-Allen. I'm
15 just having a hard time with the expansion verbiage with
16 volumes being down. We just heard from multiple health
17 systems that their volume is down. How do we at least right
18 now even entertain expansion with volumes being down and not
19 even rebounding to where they were in 2019 when our COVID
20 cases decreased for a short time? I know it was a short
21 time, but decreased. We don't know what's going to happen
22 over the next year. I mean, we all know vaccines are
23 coming, but I just think we're getting ahead of ourselves.
24 That's just my own personal opinion.
25 MR. FALAHEE: Thank you, Commissioner Guido-Allen.

1 Other Commissioner comments? Questions? So what I'm
2 hearing is -- and I don't think this is one that merits a
3 formal motion because I think there's different sides to the
4 argument as we've heard from the Commissioners and from the
5 witnesses that have testified today. Beth, I don't want to
6 put you on the spot, but I think we've talked about turfing
7 some matters to the MRI work group, we've talked about doing
8 something with the 10 percent, we've talked about doing
9 something with the pandemic language and the "required by
10 law" and the, whether we do anything for initiation or
11 expansion. You may not be able to resolve all of that by
12 January, but at least you know what the issues are as the
13 Department, you and your team. Would it be possible just to
14 come up with some language between now and January to
15 address some of those issues knowing that we don't have a
16 consensus on what to do within the Commissioners? And I get
17 it because we've never been through this before nor has the
18 Department. So we're trying to do our best to walk a fine
19 line here as we go through this on a daily basis.
20 MS. NAGEL: Certainly we can come back with some
21 additional options. We would probably have a meeting to get
22 the input from the community interested in this. And like
23 you said, I don't know that we'll be able to come back with
24 consensus. There are such wide ranging opinions. But we
25 can certainly come back with a encapsulation of the

1 discussion and if perhaps some consensus forms, we could
2 bring that back as well.
3 MR. FALAHEE: I think that'd be great, a great
4 goal, and I'll leave it up to the Department to figure out
5 how to elicit input and whether you want to be flooded with
6 it or turf it all to Marcus so he has to deal with all of
7 it, but I'll leave it up to the Department to let everyone
8 know how to get comments in to you and the appropriate
9 intake person that that's okay with you. All right.
10 Brenda, turning to you, given the discussion we
11 just had, I don't think -- at least I don't see any need for
12 a formal motion about this language. It's more you've heard
13 the comments, we're going to move forward to try to do what
14 as best we can come the January meeting. Is that fair?
15 MS. ROGERS: Yeah. This is Brenda. Yeah. So the
16 Commission's not going to take proposed action today on this
17 language, then, no, a motion for that is not needed. I
18 think -- and this is -- I'm just kind of re-summarizing in
19 my own mind, too, so it sounds like we can -- just working
20 off based on this draft -- okay, so we're not completely
21 starting over from square one -- we would actually be taking
22 out the physician commitment for host site initiation based
23 on today's discussion. So we won't have that language in
24 the next draft of what we bring to the Commission.
25 MR. FALAHEE: Correct. And that would instead be

1 referred to the work group.

2 MS. ROGERS: Yup. And then any additional tweaks

3 regarding the rest of the language for both existing and new

4 will be made depending on what we come up with, with others

5 that we work with. Okay.

6 MR. FALAHEE: Very succinct summary to what we

7 just discussed. Thank you for summarizing.

8 MS. ROGERS: Thanks.

9 MR. FALAHEE: Okay. So then are we ready to move

10 to the next agenda item everyone? Seeing -- hearing no

11 objection, we'll move on. Review of the biennial report.

12 It's been in our packet and I hope you've reviewed it. It's

13 always a great report. I want to thank Tulika and her team,

14 Beth, and Brenda for pulling this together. It's very well

15 done. I've gone through it. I know Commissioner Mittelbrun

16 has gone through it. We're ready to accept it and move

17 forward with it. Brenda, do we need a formal motion for

18 that to accept it and move forward?

19 MS. ROGERS: Yes. This is Brenda. It would be

20 very helpful to have a motion to approve the report and then

21 we would move it forward to the Joint Legislative Committee

22 which is -- it's due January 1st. So we would send that all

23 within the next weeks to the current JLC.

24 MR. FALAHEE: Great. Thank you, Brenda. Would

25 anyone care to make the motion along what Brenda just said?

1 DR. KONDUR: Commissioner Falahee, I approve it.
2 MR. FALAHEE: Thank you. Support?
3 MS. GUIDO-ALLEN: Guido-Allen. Support.
4 MR. FALAHEE: Motion on the floor to approve the
5 report and send it -- sorry. Did somebody have a comment?
6 Okay. Sorry. Any Commission discussion? Anyone opposed to
7 that motion? All right. The motion carries and it'll be
8 submitted in time for the JLC by January 1.
9 (Whereupon motion passed at 11:18 a.m.)
10 MR. FALAHEE: Thank you very much. And thanks for
11 that report. It's a great report. I'd encourage everyone
12 to take a look at it. It's a very good summary of what
13 we're about.
14 Next, Hospital Beds, Re-Calculation of Bed Need
15 Numbers. Brenda, comments on that one?
16 MS. ROGERS: Yeah, this is Brenda. So it's time
17 to -- for the biannual update of the bed need numbers and
18 the LAAs. So Paul Delamater on behalf of the Department has
19 done the recalculation. He's provided a report summarizing
20 the changes. And while there's an overall slight increase
21 statewide, all areas still remain over bedded. Pursuant to
22 the statute, that's why this is being -- no. I'm sorry.
23 I'm -- I've got biannual report in my head. Okay. Sorry.
24 MR. FALAHEE: You need an effective date for us to
25 send; right?

1 MS. ROGERS: Yeah. So basically pursuant to the
2 Hospital Bed standards, the Commission is required to set
3 the effective date of the new bed need numbers. And after
4 taking a look, the next scheduled date of the bed inventory
5 is January 4th, so the Department would suggest making those
6 new bed need numbers effective at that time.
7 MR. FALAHEE: Thank you, Brenda. Any Commissioner
8 would like to make a motion about that January 4th effective
9 date?
10 MR. MITTELBRUN: Mittelbrun. Motion to approve
11 the recommendation of the Department that the date be set at
12 January 4th, 2021.
13 MR. FALAHEE: Thank you. Support for that motion?
14 DR. KONDUR: I support. Commissioner Kondur.
15 MR. FALAHEE: Thank you very much. Commission
16 discussion? Hearing none, is anyone opposed to that motion?
17 Hearing no opposition, the motion passes. Thank you very
18 much.
19 (Whereupon motion passed at 11:20 a.m.)
20 MR. FALAHEE: Next -- I've got so many sheets of
21 paper in front of me here. We're going to move on to the
22 next agenda item. We have a Cardiac Cath services Standards
23 Advisory Committee, an interim report. It's in our packet.
24 I don't think there's any action to be taken. I know
25 they've been very, very busy because I've talked to them and

1 so you see the report there just for your edification and
2 enjoyment as they move forward with some difficult issues.
3 Any questions about that? All right.
4 Next Hospital Bed SAC. I see Jenny is I think on
5 here. She's been patiently waiting. So, Jenny, if you want
6 to say anything? The report's in the packet.
7 MS. JENNIFER GROSECLOSE: Hi, it's Jenny. I don't
8 have any comments.
9 MR. FALAHEE: Great. Jenny and her team and that
10 have just gotten started as you can see from the report, but
11 they, too, are dealing with some issues and look forward to
12 getting more reports and a final update back from them.
13 Thank you, Jenny, for you and the whole team for the work
14 you're doing on that.
15 Moving ahead, Legislative Update. It's lame duck
16 season, but I think it's going to be a lame-lame duck and I
17 don't foresee a lot of action going on in the legislature.
18 They've adjourned for the week due to some COVID issues.
19 Who knows what the next week will bring? But I don't
20 foresee any Certificate of Need activity other than what
21 we've already talked about at prior Commission meetings. So
22 I think that's that and we'll probably very likely just stay
23 tuned next year and see what happens. But I expect a quiet
24 lame duck.
25 Next we'll turn it over to the usual

1 administrative update. And it looks like, Beth, the floor
2 is yours for this issue to start with.
3 MS. NAGEL: Well, thank you. I have no additional
4 comments at this time.
5 MR. FALAHEE: Okay. Thank you. Tulika? CON
6 section update, please?
7 MS. BHATTACHARYA: Good morning. This is Tulika.
8 Thank you, Chip. So the first report that you see on the
9 screen is our compliance report. So we, as you can see from
10 the numbers on that, we continue to do our follow-ups of the
11 CON approved projects. We are getting lots of request for
12 extension starting from extension to construction start date
13 to (inaudible) installation because we are noticing that, as
14 you all know, everything is kind of being impacted by COVID.
15 So we are working through those requests and approving the
16 extensions when appropriate and in general just working with
17 the providers to keep those projects ongoing or if they come
18 back and say, no, we cannot implement the project at this
19 point, so those are being expired. Next page, please.
20 MR. FALAHEE: That's the update from Dr.
21 Delamater, yeah.
22 MS. BHATTACHARYA: Next page. So there were some
23 individual compliance actions that you will see on your
24 report. I don't know. This is a different page. But
25 anyway, I'll just summarize that. We are still -- yes,

1 that's the page. Thank you, Tania. We are still in the
2 process of doing our statewide compliance review for
3 Surgical Services utilizing the 2018 and 2019 CON annual
4 survey data, and we are also doing the follow-up compliance
5 review for Cardiac Cath and MRT services. We do not have a
6 final report for the Commission yet, but we expect to bring
7 those reports back to the Commission at a later date. And
8 then you can see the individual compliance actions on your
9 screen as well. Okay. If we can move to the next report,
10 Tania?
11 So the program activity, yes, we continue to
12 process letters of intent, applications, amendments and FOIA
13 requests and I would take this opportunity once again to
14 give a shout out to our wonderful team. They have adjusted
15 so well. I do not have words to express my appreciation and
16 the Department's appreciation in, you know, keeping
17 everything up and still managing to do an issue of the
18 activities or decisions within time and things like that.
19 So the numbers are in front of you. But I did want to
20 provide a summary report on the emergency CONs that we have
21 received this year because this is the last Commission
22 meeting for this year. So, Tania, if you could please go to
23 the next page? And the next page? Yup.
24 So, I mean, when I was looking at our annual
25 report when we look at the last five years, we probably

1 received five total. But this year between March and
2 November 24th, we did receive 115 emergency CON
3 applications. As you can see from the summary, majority of
4 them are for hospital beds, but there were applications for
5 nursing home beds, adult psych beds, swing beds and
6 lithotripsy and MRI services. So when we break those down
7 in terms of what is the effect or completion rate, as you
8 can see, it's not just that we approve those beds. Those
9 were truly needed and utilized and they were made
10 operational. So, I mean, look at the numbers for swing beds
11 and look at the number of hospital beds that we approved and
12 only, like, a few of those were expired because they could
13 not get a license or they utilized the beds for a time frame
14 but then they expired it because there was no need for it.
15 But majority of them are still ongoing.
16 So if we look at the number of additional beds --
17 Tania, if we could scroll down a little bit? So as you can
18 tell, like 93 percent of the approved beds are still in
19 operation for hospital beds; 52 percent of the nursing home
20 beds are still operational; 77 percent of the psych beds and
21 I think 100 percent of the swing beds are still in operation
22 that we approved through the emergency CON process. And
23 with that, I am happy to answer any questions.
24 MR. FALAHEE: Thank you, Tulika. Again, there is
25 very good reason why many people were thanking you and the

1 whole team for all that you've done and this is written
2 proof of how busy you've been. So thank you for everything,
3 and to the whole team there. Many of whom we all know and
4 respect and they've really done a great job so thank you.
5 Questions of Tulika?
6 MS. GUIDO-ALLEN: This is Commissioner
7 Guido-Allen. I just want to reiterate our appreciation and
8 gratitude during the height of the first wave of the
9 pandemic and the response from the Department was phenomenal
10 and our patients and our communities benefitted from
11 everything that you did for us. So thank you.
12 MR. FALAHEE: Other questions? Okay. Hearing
13 none, next item is the Legal Activity Report and I'll turn
14 it over to Becky.
15 MS. BERELS: Thanks, Chip. This is Becky Berels
16 from the Attorney General's office. As always, my written
17 report is in your binder. Really the only thing of note
18 from the last Commission meeting in September is that all of
19 those nursing home appeals, 14 of them, have now been
20 dismissed for review under a standard that took effect that
21 same month. Other than that, we are awaiting decisions on
22 three Beaumont cases and we continue to be available for
23 advice to the Commission and the Department.
24 MR. FALAHEE: Great. Thank you. I really liked
25 the way you laid out that report. It was well done,

1 informative, and succinct.
2 MS. BERELS: Thank you.
3 MR. FALAHEE: Any questions from the
4 Commissioners? Okay. Hearing none, thank you and thanks
5 for making sure we did what we needed to do today, Becky. I
6 appreciate it. Next item, future meeting dates. For those
7 of us on the Commission, you can see it. Tania put it up
8 right there. So we're looking at January 28 for our January
9 meeting, which in addition to the usual planning function
10 will also be sort of a revisit of some of the discussions we
11 had today. So appreciate the Department for being open to
12 that on January 28. And then the next meetings for the rest
13 of 2021: March 18, June 17, September 16 and December 9.
14 And as we sit here virtually today, we'll keep doing this
15 virtually I'm sure until we're told we can't under the Open
16 Meetings Act or whatever rules or epidemic orders are out
17 there. So those are the dates, whether we meet in person or
18 virtually.
19 Is there anyone that would like to make public
20 comment? Tania, I don't know if you have any green cards or
21 if any would like to make public comment?
22 MS. RODRIGUEZ: I have not received anything.
23 MR. FALAHEE: Okay. Thank you.
24 MS. RODRIGUEZ: You're welcome.
25 MR. FALAHEE: Is there anyone that would like to

1 make any public comment? Okay. Hearing none, Brenda, we'll
2 turn it over to you for the review of the Commission work
3 plan, please.
4 MS. ROGERS: Find my unmute button. Again, this
5 is Brenda. You have the draft work plan in front of you and
6 I'm not going to read through everything, but basically we
7 need to have a motion to accept the work plan as presented
8 and we will modify it accordingly to the changes at today's
9 meeting.
10 MR. FALAHEE: Any questions of Brenda?
11 MR. MITTELBRUN: Sorry.
12 MR. FALAHEE: That's okay. Go ahead, Tom. I know
13 where you were headed.
14 MR. MITTELBRUN: This is Mittelbrun. I will make
15 the motion to approve the work plan as presented
16 incorporating the changes from today's meeting.
17 MS. LALONDE: LaLonde, second.
18 MR. FALAHEE: Thank you. Any Commission
19 questions? If not, is anyone opposed to that motion?
20 Hearing none, that motion is approved.
21 (Whereupon motion passed at 11:33 a.m.)
22 MR. FALAHEE: Before we get into adjournment, I
23 just want to thank everyone for your participation in this
24 last calendar year through many critical issues. Again,
25 welcome to the four other new Commission members. And I

1 know Hanukkah begins soon and there are many other holidays,
2 Christmas and others coming, so I wish everybody a happy and
3 safe holiday season and we will see you in January. And
4 with that, I will entertain a motion to adjourn.
5 UNIDENTIFIED SPEAKER: (inaudible)
6 MS. GUIDO-ALLEN: Second. Guido-Allen.
7 MR. FALAHEE: All in favor?
8 ALL: Aye.
9 MR. FALAHEE: I did it the wrong. I was just
10 keeping you on your toes. Thank you, everybody. I
11 appreciate your input.
12 MS. ROGERS: This is Brenda. Who made the motion?
13 MR. FALAHEE: Thank you very, very much. Bye-bye.
14 MS. ROGERS: Who made the motion? Sorry.
15 MR. MITTELBRUN: I'll make the motion.
16 MS. ROGERS: Okay.
17 MR. MITTELBRUN: Mittelbrun.
18 MS. ROGERS: Okay. Thank you.
19 MR. MITTELBRUN: All right.
20 MR. FALAHEE: All set, Brenda?
21 MS. ROGERS: I think we are. Thanks.
22 MR. FALAHEE: We are adjourned. Thank you,
23 everybody.
24 (Proceedings concluded at 11:34 a.m.)
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