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JUN 21 2019

Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems

Public Hearing
Thursday, June 6, 2019
2:00 P.M.

Present From Department of
Licensing and Regulator Affair

Ms. Karen Krzanowski
Ms. Tammy Bagby
Mr. Larry Horvath
Ms. Heather Hosey

1 MS. BAGBY: Good afternoon. My name
2 is Tammy Bagby, and I am an analyst for the Bureau of
3 Community and Health Systems in the Department of
4 Licensing and Regulatory Affairs.

5 This hearing is being called to order
6 at 2 p.m. on June 6, 2019 at the G. Mennen Williams
7 Building Auditorium located at 525 West Ottawa Street
8 in Lansing, Michigan. The hearing is being conducted
9 under the authority of the Administrative Procedures
10 Act, Public Act 306 of 1969.

11 The notice of public hearing was
12 published in three newspapers. On May 14, 2019 it
13 was published in the Jackson Citizen Patriot and the
14 Grand Rapids Press; and on May 16th, it was published
15 in the Marquette Mining Journal. The same notice was
16 published in the Michigan Register on May 15, 2019.

17 As stated in the notice, the proposed
18 new administrative rule set for licensing health
19 facilities or agencies is replacing six individual
20 rule sets for licensing health facilities and
21 agencies. Those rule sets are: Complaints, public
22 inspection of license records, hospice and hospice
23 residents, minimum standards for hospitals, nursing
24 homes and nursing care facilities, freestanding
25 surgical outpatient facilities.

1 The proposed new single rule set has
2 been updated to comport with the current practice
3 standards; reflects the current organization of state
4 licensing functions; harmonizes rules with current
5 federal laws and regulations; eliminates duplicative
6 rules and obsolete rules, meaning rules that pertain
7 to subjects that are no longer practiced; is an
8 improved comprehensive system of licensure and
9 certification of health facilities or agencies that
10 leads to improved patient care, safety and more
11 effective and efficient uses of resources.

12 Regulatory impact statements are
13 available for further explanation of these rule sets.
14 Copies are available in the hall outside of the
15 auditorium or they can be found on the Web site for
16 the Michigan Office of Administrative Hearings and
17 Rules, formerly known as the ORR, or Office of
18 Performance and Transformation.

19 Pursuant to Section 45 of the
20 Administrative Procedures Act, MCL 24.245, this
21 public hearing is an opportunity for the public to
22 present data, views, questions and arguments in
23 regards to the proposed rules.

24 The Department will use the testimony
25 and documents presented at this hearing to determine

1 if any changes should be made to the proposed rules
2 before they are adopted. If you have comments,
3 please make sure that they are related directly to
4 the proposed rules. If you have questions regarding
5 the rules, please submit your questions as part of
6 your testimony for the Department's review. If you
7 have suggested changes to the proposed rules, please
8 include the specific reasons why the changes would be
9 in the public interest.

10 If you wish to comment, please
11 complete a white card that was available when you
12 came in. This will help the Department prepare the
13 hearing record. When you testify, please identify
14 yourself by name and organization, if any, that you
15 may be speaking for.

16 Written statements can be submitted
17 directly to me. The Department will also accept
18 written statements e-mailed or post -- e-mailed or
19 delivered postmarked until 5 p.m. on Friday, June 7,
20 2019. Address information can be found in the notice
21 of the public hearing that we have made available in
22 the hall.

23 If you would like to testify and not
24 have yet filled out a white card, you can do that
25 now.

1 The Department staff from the Bureau
2 of Community and Health Systems includes myself,
3 Karen Krzanowski, Heather Hosey and Larry Horvath.

4 Before we start the public comments,
5 Larry Horvath is going to make a statement.

6 MR. HORVATH: So my name is Larry
7 Horvath; I'm with the Bureau of Community Health
8 Systems. I'm the Bureau Director.

9 I guess briefly, I want to make a
10 quick statement that I wanted to recognize the hard
11 work of the Department staff on promulgating these
12 rules.

13 I also want to thank all of those that
14 participated in providing us feedback working in our
15 informal work groups. We think we have a very good
16 product, and so we appreciate all of the hard work
17 and dedication of both our internal staff but also
18 the external providers and those of interest that
19 provided us feedback.

20 So, again, thank you very much for
21 your time and participation.

22 MS. HOSEY: Hi everybody. I'm just
23 going to go through some of the goals and the
24 projects that we worked with on the project and some
25 of the objectives that we had.

1 So today's hearing is on the proposed
2 new rule set for licensing health facilities and
3 agencies as a result of a project that was initiated
4 by our Department two years ago. The purpose of the
5 project is to identify the core principles and
6 standards of health facility licensing and then
7 conduct a comprehensive review and update of all
8 health facility licensing rules.

9 The goal is to replace six different
10 rule sets with a single new rule set for licensing
11 health facilities and agencies that will accomplish
12 the following objectives.

13 The first objective is to fulfill
14 statutory requirements for rulemaking. That will
15 enable the Department and health facilities to focus
16 on a core set of principles and standards for health
17 facility licensing and regulation; to comport with
18 current practice standards; harmonize the rules with
19 the federal laws and regulations; be uniform as
20 reasonable, that is, the rules should be consistent
21 across different types of health facilities and
22 agencies, unless differences are necessary to fulfill
23 statutory, medical or structural requirements; be
24 free of unnecessary repetition of federal and state
25 statutory and regulatory language; and be free of

1 obsolete and unnecessary rules; and, lastly, result
2 in at least 25 percent fewer rules.

3 We think the proposed rule set
4 accomplishes these objectives. The rule set is
5 organized into ten parts. Nine parts apply to all
6 types of health facilities and agencies. Part 10 is
7 divided into four subparts that apply to specific
8 facility types, including freestanding surgical
9 outpatient facilities, hospice and hospice
10 residences, hospitals and nursing care facilities.

11 Currently there are 315 administrative
12 rules for licensing health facilities and agencies.
13 The new rule set has 126 rules; in other words, 189
14 rules will be rescinded. This represents a 59%
15 reduction in the number of rules.

16 The project was designed to gather
17 input from internal and external stakeholders from
18 the very beginning of the process.

19 A steering committee was formed. It
20 include at least 10 bureau personnel with expertise
21 on different provider types and licensing functions.
22 In addition, a team of 12 subject matter experts
23 serve as consultants to the steering committee.

24 The rules apply to four different
25 provider types, including approximately 1,000

1 facilities and agencies. In order to have input from
2 these providers, the Department identified 30
3 stakeholders, such as professional associations that
4 represent these types of providers and invited them
5 to participate in the project.

6 The Department held five meetings with
7 the stakeholders.

8 In addition, during the summer of
9 2017, more than 60 individuals who represented
10 providers and consumers participated in five
11 different work groups to review the existing rules
12 and determine which rules were obsolete, which ones
13 should be retained, and which rules should be
14 revised, and which rules should be added.

15 Five versions of the draft rules were
16 circulated for stakeholders to review and comment on.
17 The proposed rules reflect their input.

18 We look forward to hearing from -- or
19 your comments today; and thank you for your
20 participation.

21 MS. BAGBY: Okay. We will now begin
22 the public comment time frame. If you're handing in
23 written comments, feel free to summarize and add to
24 your comments. You do not need to read them as they
25 will become part of the official record.

1 Our first person is Margaret
2 Chamberlain. If you want to come up to the
3 microphone.

4 MS. CHAMBERLAIN: Hello. Margaret
5 Chamberlain, and I have two comments with respect to
6 surgery. The first is for the general provisions
7 relating to surgery. Would the Department consider
8 acknowledging past physical plant waivers and
9 allowing those waivers to remain in effect? That's
10 my first comment.

11 And then the second one is, would the
12 Department also consider adding language with respect
13 to surgical, that the location of the surgical
14 procedure is decided by the physician based on the
15 procedure and the medical condition of the patient?

16 MS. BAGBY: Thank you. We will take
17 those back to the Department and consider them.

18 I don't have any more cards. Does
19 anybody else want to speak in support or against?

20 (No response.)

21 MS. BAGBY: Okay. We will recess for
22 10 minutes just to allow other people to come, and
23 then if nobody else comes, we will end.

24 (Recess taken.)

25 MS. BAGBY: Okay. It's 2:15, and we

1 have two more people that would like to speak.

2 Dann Holmes, if you would like to come
3 up and speak in the microphone.

4 MR. HOLMES: Yes, hi. Dann Holmes,
5 I'm with NSF International. First of all, we want to
6 applaud the State for moving forward with the
7 proposals.

8 There was some additional changes that
9 we would recommend in some of the language; we can
10 follow up with copies with you on this.

11 Basically we're in section, bear with
12 me, under the healthcare section, Chapter 9, Section
13 (8), we would like to see language, "A healthcare
14 facility must develop a water management program
15 consistent with Centers for Medicaid care and
16 Medicaid Services (CMS) requirements in QSO-17-30.
17 Facilities must have a water management plan and
18 documentation that, at a minimum, ensure each
19 facility: Conducts a facility risk assessment to
20 identify what --

21 (Interruption.)

22 MR. HOLMES: -- so identify where
23 Legionella and other opportunistic waterborne
24 pathogens, for example, Pseudomonas, Acinetobacter,
25 Burkholderia, Trophomonas, and other pathogens that

1 grow and spread in the facility water system.

2 This is consistent with the message
3 that CMS has come out with that develops and
4 implements a water management program that considers
5 the ASHRAE industry standard and the CBC toolkit.

6 Specified testing protocols and
7 acceptable ranges for control measures and document
8 the results of testing and corrective actions taken
9 when control limits are not maintained.

10 Maintains a compliance with other
11 Federal and State and local requirements.

12 A health facility must update their
13 water management program for new additions and
14 renovations to the facility.

15 A healthcare facility shall conduct a
16 water risk assessment at least once per year.

17 In addition, in Section (10) (sic),
18 we're looking at: A water management program shall
19 include all water systems, including medical devices
20 that use water.

21 And the health facility must have a
22 copy of their water management program on site.

23 MS. BAGBY: Thank you. Do you have
24 those written with your specific language?

25 MR. HOLMES: Yes, we do. And as

1 following up today, we're going to file an actual
2 follow-up by 5 o'clock tomorrow.

3 MS. BAGBY: Okay, perfect.

4 MR. HOLMES: I can leave this with you
5 if you'd like.

6 MS. BAGBY: That would be great.

7 Thank you.

8 And then, Andrew, are you also
9 speaking?

10 MR. WARD: Sure.

11 MS. BAGBY: Welcome.

12 MR. WARD: Thank you. My name is
13 Andrew Ward with the NSF International. Everyone can
14 hear clearly?

15 Just to follow up on Dann's statement
16 and recommendations for the proposed changes to the
17 rules, we just encourage the State of Michigan
18 address the CMS requirements that came out on June
19 2nd of 2017 and then updated the next year.

20 They are looking for additional
21 components of a water management program, not looking
22 at just Legionella, because healthcare facilities are
23 concerned with more pathogens, more hazards in their
24 water systems other than Legionella. It's getting a
25 lot of attention, but there's a lot of other

1 pathogens, a lot of other hazards that need to be
2 considered.

3 So we strongly encourage that the
4 State of Michigan address, you know, these things,
5 make sure that the requirements are consistent at
6 least with CMS since they are targeting and expecting
7 these programs to look at other hazards.

8 So our recommendations for changes in
9 the code have been submitted, and so we just
10 encourage there to be a little bit more specificity
11 for what should be included in these plans.

12 In general, there should be an
13 expectation by the State Health Department by various
14 regulatory affairs to address these things, to look
15 through these plans and make sure that they are
16 sufficient in nature.

17 MS. BAGBY: Thank you. I have no
18 other comment cards. Thank you everybody for coming.
19 Each comment will be reviewed and evaluated by the
20 bureau, as well as the comments that we received
21 electronically.

22 We will now adjourn. It is 2:25.

23 (Hearing concluded at
24 2:25 p.m.)

25 (END OF RECORD)