TASK FORCE ON HEALTH PLANNING REFORM

PROPOSED BLUEPRINT (12/19/2008)

Reform Goal and Objectives

A. Reform Goal

The State of Illinois will promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide comprehensive health plan and ensuring a predictable, transparent and efficient CON process.

B. Statewide Comprehensive Health Plan

Objectives

1) To assess existing community resources and determine health care needs
2) To support safety net services for uninsured and underinsured residents
3) To promote ~~ensure~~ adequate financing for health care services
4) To recognize and respond to changes in community health care needs, including public health emergencies and natural disasters.

Implementation Strategies

1) Conduct a bi-annual comprehensive assessment of health resources and service needs, including but not limited to facilities, clinical services and workforce
2) Conduct needs assessments using key indicators of population health status and determinations of potential benefit that could occur with certain changes in the health care delivery system.
3) Collect and analyze relevant, objective and accurate data, including health care utilization data
4) Identify issues related to health care financing (such as revenue streams, federal opportunities, better utilization of existing resources, development of resources and incentives for new resource development)
5) Evaluate findings of inventory/needs assessment
6) Annually report to the General Assembly and the public

Comprehensive Health Planning Principles

1) Health and mental health services will be assessed comprehensively
2) Assessment of need will include a special focus on identifying health disparities
3) State-level and regional needs will be identified
4) Findings ~~may~~ shall identify the impact of market forces in assuring open access to high quality services for uninsured and underinsured residents.
5) ~~Relevant, objective and accurate data will be collected, analyzed and applied in the assessment of existing community resources and determination of health care needs.~~

Comment [LM1]: Deleted, given that ideas from this point #5 are listed in Implementation Strategies #1, 2, and 3

C. Certificate of Need Process

Objectives

1) To improve the financial ability of the public to obtain necessary health services
2) To establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public
3) To maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent
4) To assure that the reduction and closure of health care services and/or facilities is performed in an orderly and timely manner, and that these actions are deemed to be in the best interests of the public
5) To assess the financial burden to patients caused by unnecessary health care construction and modification

Comment [LM2]: Previously listed as Purpose in 12/8 version. Former #1 language moved to Goal statement.

Implementation Strategies

1) Apply the findings from the Comprehensive Health Plan to update review standards and criteria, as well as better identify needs and evaluate applications
2) Establish mechanisms to support adequate financing of the health care delivery system in Illinois, with consideration of charity care needs

Comment [LM3]: Previously listed as Objectives in 12/8 version. Reduced language in this section to reduce redundancy.

CON Process Principles

1) Written and consistent decisions will be required that are based on comprehensive health plans and established policies/procedures, which include criteria and standards for plan variations/deviations
2) Evidence-based assessments, projections, and decisions will be applied regarding capacity, quality, value and equity in the delivery of health care services in Illinois.
3) Integrity of the 'Certificate of Need' process will be insured through implementation of a special panel for nominations of the CON Board, as well as revised ethics and communications procedures.
4) Cost containment and support for safety net services will continue to be central tenets of the CON process.

Comment [LM4]: Previously listed as Goals in 12/8 version. Former #1 language moved to Goal statement.

Comprehensive Health Planning - Functions

1) The State of Illinois shall undertake a more active role in comprehensive health planning to guide the development of clinical services, facilities and workforce that will meet the health and mental health care needs of Illinois.

2) A newly formed **Center for Comprehensive Health Planning** at the Illinois Department of Public Health shall be charged with developing a long range **Comprehensive Health Plan** (5-to-10 years) to be updated bi-annually, with the ability to update annually if needed.

3) The plan will incorporate an inventory to map the state for growth, population shifts, and utilization of available healthcare resources, using both state-level and regionally defined areas. The plan will also evaluate health service needs, addressing gaps, over-supply and continuity of care. This evaluation will include an

assessment of existing safety net services. The Center for Comprehensive Health Planning will identify unmet health needs, and assist in any inter-agency state planning for health resource development.

4) The inventory of state's health facilities infrastructure includes regulated facilities and services, as well as facilities and services that are not currently regulated, as determined by the Agency.

5) In developing the plan, the Center for Comprehensive Health Planning shall consider health plans and other related publications that have been developed both in Illinois and nationally.

6) In developing the plan, the need to ensure development and maintenance of access to care, especially for "safety net" services, including rural and medically underserved communities, shall be included.

7) The Center for Comprehensive Health Planning may establish priorities and recommend methods for meeting identified health service, facilities and workforce needs. This includes proposing legislation, policy and/or administrative rule adjustments, ways to incentivize providers or educational facilities to assist in resource development. Further, recommendations should be short term, mid-term, and long range in nature.

8) Health planning for clinical services, facilities and workforce under the Illinois Health Facilities Planning Act shall be integrated with other health planning laws and activities of the State, where appropriate. These include, but are not limited to the State Health Improvement Plan, the *Illinois Rural/Downstate Health A*ct and related activities of the Office of Rural Health of the Illinois Department of Public Health, and the recommendations of the (2006) *Joint (House/Senate) Task Force on Rural Health & Medically Underserved Areas*.

9) The Center for Comprehensive Health Planning may consider health resource development projects or information on methods by which a community may receive benefit, that are consistent with health resource needs identified through the comprehensive health planning process, which contribute to the development of appropriate and necessary services and facilities. The Center for Comprehensive Health Planning established by this reform may recognize such "community benefit" or "charity care" project as meeting an identified need.

10) The Center must also work cooperatively with a reorganized Illinois Health Facilities Planning Board, to become known as the "**Health Facilities and Services Review Board**" ("CON" Board). The plan may include recommendations that will be integrated into and applied to any relevant "CON" criteria, standards and procedures. Not all service needs that are identified in the comprehensive health planning process would be subject to "CON" regulation.

11) The (existing) **State Board of Health** (SBOH) must, within 60 days of receipt from the Center for Comprehensive Health Planning, review and comment on ~~approve~~ the final Comprehensive Health Plan and must submit ~~and will be charged with submitting~~ the plan to the Illinois General Assembly on a bi-annual basis, ~~for annual review~~ by March 1 of ~~each~~ the year. The initiation of the Center for

Comprehensive Health Planning will commence with the signing of legislation, and the first comprehensive health plan will be submitted to the SBOH within one year of hiring the Comprehensive Health Planner. The SBOH will also review any policy change recommendations. The SBOH shall adopt and follow the *Illinois Governmental Ethics Act* (5 ILCS 420/). ~~ethics standards to ensure the integrity of the Comprehensive Health Plan including provision governing *ex parte* communications and disclosure of conflicts of interest.~~

12) This new Center will also be charged with making comprehensive health planning data available to interested parties. This data should be kept current and made available to the public, including publication on an accessible agency website. Information about the funding of the Center should also be made available.

13) The Center for Comprehensive Health Planning and the State Board of Health shall hold public hearings on the plan and its updates. There shall be a mechanism for the public to request that the plan be updated more frequently to address emerging population and demographic trends.

14) The components of the plan shall be outlined in state statute, with reasonable detail to limit administrative rule-making.

Comprehensive Health Planning - Organizational Structure

15) A Center for Comprehensive Health Planning shall be created as a new and separate subdivision of the Illinois Department of Public Health, which will develop a Comprehensive Health Plan.

16) The new Center for Comprehensive Health Planning shall ~~may~~ manage its own professional staff dedicated to the development of the Comprehensive State Health Plan. Staff of the Illinois Department of Public Health currently dedicated to health planning duties may ~~would~~ be realigned or consolidated under the new Center. Staff shall also provide technical assistance to the CON Board in terms of the application of the components of the comprehensive health plan for the CON Board's usage.

17) The (new) Center for Comprehensive Health Planning will be supervised by a **Comprehensive Health Planner** appointed by the Governor by a ***Special Nomination Panel*** (See Attachment for the Special Nomination Panel), with the advice and consent of the Illinois Senate ~~and the Illinois House of Representatives~~. The Planner will serve as the chief of staff responsible for the operations of the Center for Comprehensive Health Planning and its staff. This appointment is subject to review and approval every 3 years. The Director shall be paid a salary in accordance with the top salary range for a Senior Public Service Administrator.

18) The Comprehensive Health Planner shall prepare and submit a separate and distinct budget for the Center for Comprehensive Health Planning for review and approval by the Illinois General Assembly. To promote transparency of the process, this information shall be made available as part of an annual report that is available on the IDPH website.

Reform of the Illinois Health Facilities Planning Board – Functions

CON Process and Scope of Reforms

19) Reform of the CON Board shall focus "Certificate of Need" project review efforts on applications involving new or replacement facilities, new services (including those for freestanding facilities, such as proton therapy and cardiac catheterization, that are regulated under CON for only some providers, or regulated under different standards), discontinuation of services, major expansions, the addition of 20 or more beds or 10% of a facility's bed capacity (whichever is greater), and major changes in volume-sensitive services, and to expedite review of other projects to the maximum extent possible. The financial review would focus the overall project cost rather than on individual line items. Replacement facilities on the same site that are below the capital expenditure threshold would not be subject to a substantive full scope review. Because applications for discontinuation are not complicated, they should continue to be reviewed under a 60-day timetable. The public would continue to have an opportunity to request a public hearing.

Comment [LM5]: Refer to CON Review Chart for current status

20) There will continue to be three classifications of projects – emergency, non-substantive, and substantive. The Staff review period for non-substantive projects is currently 60 days. The Staff review period for substantive projects is 120 days. The timeframes should be reduced by eliminating criteria that do not focus on the need for and the total size of the project.

21) In addition, there are projects that could be moved from the substantive to the non-substantive classification. The review criteria could also be streamlined for these projects. The CON Board should adopt rules to address re-classification of projects so that Board review can be expedited. Examples of project types that might be expedited include:

    - Applications to move acute care beds between existing categories of service within the facility;
    - Applications to establish a new acute care service, using existing beds, when there is a calculated need for the beds providing that service in the planning area;
    - Applications for selected other projects that require a permit yet fall below the capital expenditure thresholds.

22) The CON Board shall create a mechanism for the public to request changes to the rules, including standards and criteria. The public will be allowed an opportunity to comment on any proposed rule and standard changes.

23) Assess the cost of the capital expenditures for all projects in relation to the cost of care.

24) For projects that are reviewed solely because of cost and not because they propose to establish a new facility or service, the capital expenditure shall be statutorily updated to $8.8 million for hospitals. The rate for all other projects will be set at $3 million. These rates should be adjusted for inflation every year in the same fashion and on the same schedule as currently required by rule. This will allow applicants to upgrade existing facilities without adding unnecessary costs and delaying access to modernized facilities for the community. In calculating cost components to be included ~~under~~ in relation to the capital expenditure threshold, consideration would be given to whether the components are programmatically related and whether a component could be completed independently of the other components. Regional differences in cost may also be considered. Common financing of components would not automatically result in components being considered interrelated.

25) To expedite project approval, particularly for less complex projects, the CON Board, in conjunction with its staff, and industry experts and consumers, should ~~consider~~ promulgat~~eing~~ regulations to be applied by the Staff in determining whether a project is in ~~substantial~~ compliance with the review standards.

26) "Letters of Intent" will no longer be required. Limitations on *ex parte* communication will apply at the point that the application is formally filed and noted by staff as complete.

27) At least one public hearing is required for any project for which a hearing has been requested subject to full CON Board review, at which at least one ~~a quorum~~ of the members of the CON Board must participate. The CON Board shall implement public information campaigns, in addition to the current practices of website notice and legal notice, to regularly inform the general public about the public hearing requirement and the standards and procedures ensuring public access to and participation in the hearings.

28) All rights to due process in appeals of CON Board final decisions remain in effect. ~~Any denied application will be subject to automatic appeal, unless waived by the applicant. CON Board final decisions on projects will constitute an administrative decision subject to the Administrative Review Law~~.

29) Permit holders would be required to submit annual progress reports and final cost reports as the mechanism to enable the CON Board and Staff to know that projects are proceeding with due diligence. These reports are public information.

CON Board Responsibilities

30) The CON Board will continue to have responsibility for decision-making on applications. Standards shall be clear and detailed to the extent that the staff and CON Board determine compliance on an objective and consistent basis. Decisions must be consistent with appropriate standards. Written decisions shall be issued upon request. There must be clear and documented criteria and procedures for any variation from standards.

31) Standards and criteria must be updated to better identify needs and evaluate applications on a regular basis (at least every 2 years), using the inventory and

Comment [LM6]: IHA is suggesting $12 million. To be discussed at the 12/19 meeting.

Comment [mb7]: The current amount is $8,850,717 – The TF may want to suggest $8.9 million to assure the threshold is not being reduced in the recommendation.

Comment [MSOffice8]: Maryland, Tennessee and Vermont make this same distinction between hospitals and all other projects. A request has been made to IHFPB staff for guidance on this tiering.

Comment [mb9]: The current rule 77IAC Sec. 1130.310(a)(1) is as follows: The basis for such adjustment for major medical equipment shall be the latest annual inflation rate as reflected in the Producer's Price Index as calculated in the DRI/McGraw-Hill Health Care Cost Review section on Special Machinery and Equipment (DRI/McGraw-Hill, 1200 G Street, N.W., Suite 1000, Washington, D.C. 20005). The basis for the adjustment to capital expenditures other than major medical equipment shall be the latest annual inflation rate as reflected in the medical construction component of the Means Cost Data (R.S. Means Company Inc., 100 Construction Plaza, P.O. Box 800, Kingston MA 02364-0800). The revised minimums shall be published on HFPB's internet site;

recommendations of the Comprehensive Health Plan for guidance. These updates shall be adopted by the CON Board to keep pace with the evolving health care delivery system. Certain standards shall be stipulated in statute, with provisions that allow for modification by rules adopted under the Illinois Administrative Procedures Act.

32) The CON Board should also periodically re-evaluate categories of service that are subject to review, including provisions related to structural, functional, and operational differences between long- term care facilities and acute care facilities and that allow routine changes of ownership, facility sales, and closure requests to be processed on a timely basis. There should be flexibility in the standards to allow for facilities to modernize, expand, or convert to alternative uses that are in accord with health planning standards. As necessary, the CON Board may appoint temporary advisory committees to assist in the development of revisions to standards and criteria, including experts with professional competence in the subject matter of the proposed standards or criteria that are to be developed.

33) The Board ~~Staff~~ shall issue reports ~~to the CON Board~~ on a monthly basis. Reports should include the status of applications and recommendations regarding updates to the standards, criteria, or the health plan as appropriate.

34) The CON Board shall publish an annual report of all fines, fees and other revenue collected, as well as expenses incurred with respect to the CON process.

35) The CON Board shall meet at least every 45 days. A quorum of the appointed members is only required for matters upon which a formal vote is required.

CON Board Chairman Responsibilities

36) The chairman of the CON Board is authorized to approve emergency applications, consistent with the current regulations. Emergency projects can be approved orally but must be followed by a written application that summarizes the nature of the problem and the anticipated cost of the project. Emergency projects are defined as those projects that are necessary because of imminent threat to the structural integrity of the building or because of an imminent threat to the safe operation and functioning of the mechanical, electrical, or comparable systems of the building.

37) The chairman is also authorized, as provided under the current rules, to approve applications for exemption. These exemptions are not discretionary. If applicants do not meet specific criteria that are set forth in the CON Board's rules, they must go through the full "Certificate of Need" process. The chairman also may refer any application for exemption to the full CON Board for its consideration.

38) In addition, the CON Board, after analyzing data on previous applications, should consider adopting rules that would authorize the chairman to approve other applications that meet all of the review criteria and are unopposed. For the limited applications that the chairman is authorized to approve, the chairman also has the authority to refer them to the full CON Board. The chairman will still be authorized to approve certain administrative changes such as extensions and some alterations, as is currently allowed under the rules.

39) After the public hearing and review of applications that will be considered at a meeting of the CON Board, the chairman may request that some applications be considered as part of a consent agenda that will be voted on at the beginning of the Board meeting. There will be an opportunity for CON Board members to raise questions about applications on the consent agenda and they may request that the applications be considered on the regular agenda if there are significant issues that warrant full discussion.

Staff Responsibilities

~~40)~~ All staff will be required to meet minimum professional qualifications. All staff and their immediate family members (parents, spouses, children and siblings) will be subject to the **Illinois Governmental Ethics Act (5 ILCS 420/).** ~~Spouses or other members of the immediate family cannot be an employee, agent or under contract with services or facilities subject to the Act. Staff would also be required to comply with other ethical and conflict-of-interest standards. Violators will be subject to personnel sanctions, for which specific penalties should be enumerated.~~

41) The CON Board staff may provide technical assistance to applicants in the development of their applications. This could include consultation at any time prior to the actual filing of an application. In addition, the staff may communicate with the applicant to clarify or verify information provided in the application as it prepares the Staff Report on the application. A ~~public~~ written record of such consultation must be made by the staff, and made part of the public record for any active application. These consultations are not considered *ex parte* since staff are not the decision-makers on applications. Communications occurring during administrative reconsideration shall be made a part of the formal public record using a prescribed, standardized format that is included in the application file.

42) Staff will establish short timeframes for responding to requests about the applicability of rules and would communicate to applicants in a timely manner regarding whether or not their project is to be considered at an upcoming meeting.

43) Staff must prepare reports showing the degree to which an application conforms to the CON Board's review standards. Any additional information that Staff wants to communicate would be included in the Staff Report. The public will have an opportunity to comment up until 14 days prior to the CON Board meeting regarding facts set forth in staff reports. These reports would be posted on the Boards' web site and should include summations of relevant public testimony. All information related to any application shall be public information (except those required by law to be confidential). The CON Board shall make such information immediately available for public inspection, which may include access on the agency website.

~~44) The Staff shall report to the CON Board on a monthly basis. Reports should include the status of applications and recommendations regarding updates to the standards, criteria, or the health plan as appropriate.~~

Comment [MSOffice10]: Moved to Board responsibilities.

Predictability and Accountability

45) Policies and procedures of the (reformed) Illinois health facilities planning process shall ensure that it is predictable, transparent, and as efficient as possible. The

staff and the CON shall provide timely and appropriate explanations of its decisions and establish more effective procedures to enable public review and comment on facts set forth in Staff analyses of project applications prior to the issuance of final decisions on each project.

46) The enforcement processes and compliance standards must be fair and consistent with the severity of the violation.

47) Policies and procedures shall ensure that patient access to new and modernized services will not be delayed during a transition period under any proposed system reform, including the appointment of members. The transition to a reformed system should minimize disruption of the process for current applicants.

48) The Auditor General should conduct a performance audit of the Center for Comprehensive Health Planning, the CON Board and the "Certificate of Need" process to ~~be~~ commenced ~~completed~~ 18 months after the initial appointment of the 9 members. Section 19.5 of the Act providing for a special audit should be revised accordingly.

Charity Care and "Safety Net" Services

49) In addition to other requirements or conditions that may be applied to the approval of applications, the CON Board may include reasonable conditions or stipulations agreed to by the applicant that are directly related to the application being considered and that address health resource needs identified through the comprehensive health planning process to be established under the reform. These may include the establishment of time frames for compliance with such conditions and the establishment of reporting requirements.

50) Policies and procedures of the CON Board shall take into consideration the priorities and needs of medically underserved areas and other health care services identified through the comprehensive health planning process, giving special consideration to the impact of the projects it reviews on access to "safety net" services.

51) "Safety net services" should be defined as services provided by organizations that deliver health care services to persons with barriers to mainstream health care due to factors such as lack of insurance, inability to pay, special needs, ethnic or cultural characteristics, or geographic isolation.

52) Composition of the safety net varies by community, but has regional and statewide factors. Safety net services can be provided by hospitals and private practice physicians that provide charity care, school-based health centers, migrant health clinics, rural health clinics, federally qualified health centers, community health centers, public health departments, community mental health centers and others.

53) CON review standards must include a requirement for applicants to provide a "Safety Net Impact Statement," which shall be filed with an application for a certificate of need and shall be considered with "general review criteria" within the meaning of Section 1110.230 of the current rules promulgated by IHFPB. This Statement shall describe the project's potential impact on safety net services in the

community, to the extent feasible. Safety Net Impact Statements should be filed by all applicants which are "health care facilities" as defined under Section 3 of the Act (20 ILCS 3960/3), when they are proposing a substantive project or when they are proposing to discontinue a category of service. This requirement does not apply to skilled and intermediate long term care facilities licensed under the Nursing Home Care Act.

54) Upon the filing of an application for a certificate of need and accompanying Safety Net Impact Statement with the IHFPB, the Agency shall provide notice of such filing by publishing a notice in a newspaper having general circulation within the area affected by the application. If no such newspaper has a general circulation within the area, then the notice shall appear in a newspaper having general circulation within the county and by posting such notice in 5 conspicuous places within the proposed area.

55) Any person, community organization, provider or health system or other entity wishing to comment upon or oppose the application for certificate of need may file a "Safety Net Impact Statement Response" with the IHFPB which provides additional information concerning the project's impact on safety net services in the community.

56) The applicant shall have an opportunity to reply to any Safety Net Impact Statement Responses that are submitted.

57) Safety Net Impact Statements, as developed by the applicant, should describe what material impact, if any, a proposed facility or service may have on essential safety net services, including the impact of a project on the ability of another provider or health system to cross-subsidize safety net services and the impact of the discontinuation of a facility or service on the remaining safety net providers in a given community.

58) Since "charity care" is currently defined as "care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer" under Section 3 of the Act (20 ILCS 3960/3), Safety Net Impact Statements should include a certification for the three fiscal years prior to the application to the Illinois Health Facilities Planning Board of the amount of charity care provided by the applicant. Such amounts should be calculated by hospital applicants in accordance with the reporting requirements for charity care set forth in Section 20 (a)(3) of the Community Benefits Act, 210 ILCS 76/20 (a)(3), i.e., the actual cost of services provided, based on the total cost to charge ratio derived from the hospital's Medicare cost report (CMS 2552-96 Worksheet C, Part 1, PPS Inpatient Ratios), not the charges for the services. Non-hospital applicants should also report charity care at cost rather than charges in accordance with an appropriate methodology specified by IHFPB.

59) Safety Net Impact Statements should include a certification for the three fiscal years prior to the application to the Illinois Health Facilities Planning Board of the amount of care provided to Medicaid patients. Such amounts should be reported by hospital and non-hospital applicants by providing the information reported each year to the Illinois Department of Public Health regarding "Inpatients and

Outpatients Served by Payor Source" and "Inpatient and Outpatient Net Revenue by Payor Source" and published by IDPH in the Annual Hospital Profile.

60) In addition to data provided on charity care and care provided to Medicaid patients, the applicant may provide in its Safety Net Impact Statement information regarding teaching, research and any other service provided by the applicant that it believes is directly relevant to the safety net.

61) The State Agency Report shall include a statement as to whether a Safety Net Impact Statement was filed by the applicant and whether it included the information described in paragraphs 49(b), 49(c) and 49(d) above, the names of the parties submitting Responses and the number of Responses and Replies, if any, that were filed.

Comment [MSOffice11]: The next 3 major sections have not yet been reviewed by the Task Force.

Long Term Care

Comment [MSOffice12]: Reflects the testimony and comments of the joint statements of the long term care industry and continuing care facilities.

62) Require the Center for Comprehensive Health Planning to conduct a special analysis regarding the availability of long term care resources throughout the state, taking into consideration data and plans developed under the Older Adult Services Act, to adjust existing bed-need criteria and standards for changes in utilization of both institutional and non-institutional care, with special consideration of the availability of least-restrictive care options, when appropriate and in accordance with the needs and preferences of the persons requiring long term care.

63) Establish a separate set of rules and guidelines for long term care that recognize that nursing homes are a different business line and service model. In the revision of planning criteria and standards consider the fact that nursing homes have a significant number of open beds, as well as the transitional nature of Medicare skilled clientele. A thoughtful process should be developed that looks at the following: how skilled nursing fits into the continuum of care; other care providers who are licensed under the skilled nursing criteria; and current trends (such as resident focused care) in the provision of long-term care services.

64) Long term care facility standards should reflect consumer choice and need. Additional beds in a planning area would be needed once occupancy levels reach 90%. To encourage modernization and downsizing of existing facilities, standards should allow for the sale of excess CON and licensed capacity to other providers in the planning area, which may result in the availability of more private rooms, modernization, development of alternative services, and newer facilities that address consumer needs and trends in senior living services without expanding or increasing the overall existing pool of beds in an area.

65) Criteria and standards governing project costs for long term care facilities should recognize updated Federal Life Safety Code requirements and state licensing standards, and should take into consideration constraints on costs that are related to Medicaid reimbursement caps for capital costs. Additional requirements resulting in added cost should not be imposed except for extraordinary circumstances.

66) Adopt language under the CON process that allows for Continuing Care Retirement Communities (CCRC) to have CON application fees apply only to the licensed sections of the campus, not the unlicensed portions. Additionally, a CCRC variance shall remain to allow for open admission from the general community.

Reform of the Illinois Health Facilities Planning Board – Organizational Structure

67) In order to transition to a new focus on health planning and setting new criteria and standards by which CON projects are evaluated, the (reformed) CON Board – the Illinois Health Facilities and Services Review Board -- membership shall be increased from 5 to 9 members appointed by the Governor from a list of 3 nominees per office developed by the Special Nomination Panel. Appointments to the Board shall be subject to the advice and consent of the Illinois Senate and Illinois House of Representatives. (See Attachment for the Special Nomination Panel.)

68) All members to be appointed shall have a reasonable knowledge of the practice, procedures and principles of the health care delivery system in Illinois. At least five (5) of the members of the CON Board should have knowledge about health care delivery system planning, finance, or the management of health care facilities that are currently regulated under the Illinois Health Facilities Planning Act. At least two (2) of the members shall be representatives of non-profit health care consumer advocacy organizations. Each member shall be a resident of Illinois. At least 4 members shall reside outside of the Chicago Metropolitan Statistical Area. Appointments should reflect the ethnic, cultural and geographic diversity of the State of Illinois.

69) No more than 5 members of the CON Board may be from the same political party at the time of appointment.

70) The Special Nomination Panel shall nominate 3 nominees to Chair the CON Board on a full-time basis who will receive an annual salary to be determined of ~~$80,000~~. The Chair must have expertise in health care delivery system planning, finance or management of health care facilities that are regulated under the Illinois Health Facilities Planning Act. This appointment shall also be subject to the advice and consent of the Illinois Senate and the Illinois House of Representatives.

Comment [LM13]: These amounts may need to be reviewed to assess sufficiency to get the level of skill needed by both Chair and Board.

71) CON Board members (other than the Chair) shall be paid a part-time salary at a rate to be determined ~~of $65,000 per year~~ and the Chairman shall be paid an additional amount to be determined ~~$15,000~~ per year to compensate for the additional duties required of that position. Each unexcused absence from a scheduled meeting of the full Board will result in a $500 deduction from the annual salaries, which may be pro-rated over the period of 4 regularly-scheduled pay periods.

72) Five members of the CON Board will constitute a quorum. The affirmative vote of 5 appointed members is required for approval of a project application. Terms of new CON Board members will be staggered. Four (4) of the initial appointments will be for two year terms, and 5 will be appointed for 3-year terms. After the initial terms,

all members may serve for three year terms. Members cannot serve for more than 3 terms. Members whose terms have expired may only serve up to 6 additional months or until a successor has been appointed and qualified, whichever comes first.

73) The CON Board shall also be subject to strict ethics requirements – See Attachment.

74) No person who has been convicted or pled to a felony shall be nominated, appointed to the CON Board or hired as staff.

75) Spouses or other members of the immediate family of the Board cannot be an employee, agent or under contract with services or facilities subject to the Act. Prior to appointment and in the course of service on the Board, members of the Board shall disclose the employment or other financial interest of any other relative of the member, if known, in services or facilities subject to the Act, and members of the Board shall declare any conflict-of-interest that may exist with respect to the status of those relatives and recuse themselves from voting on any issue for which a conflict-of-interest is declared.

76) Any member may be removed for neglect of duty, misfeasance, malfeasance, or nonfeasance in office of for engaging in any political activity – i.e., activity in support of or in connection with any political organization, in accordance with state law and regulation. Board members must formally disclose any potential conflicts of interest, which must be filed with the Special Nomination Panel.

77) Within a separate and distinct budget approved by the General Assembly for such purposes, the CON Board, through the Chairman, shall have expressed independent authority to hire and supervise its own staff responsible for processing and reviewing CON project applications.

78) The CON Board may also contract for expertise related to specific health services or facilities, and create technical advisory panels to assist in the development of criteria, standards and procedures and the evaluation of projects that may require special attention.

79) (Note to reader: To be determined after deciding if CON Board sits inside or outside IDPH)The Illinois Department of Public Health shall, through inter-agency agreements and from the specific appropriations for such purposes, provide operational support to the CON Board, including the provision of office space, supplies and services, clerical services, financial and accounting services, etc.

Transition/Re-Organization

80) Establish a "saving" provision to allow for the Board reorganization and adjust for pending applications during the re-organization and transition to the new CON process. Prospective applicants shall be given adequate notice regarding the effective date of the new Board and any related changes in standards and procedures.

81) Extend the "sunset" of the existing law for at least (__) years.

Comment [MSOffice14]: 10 years is suggested, which will allow for a significant period of time to measure the effect of this reform.

Attachment

Sec. ____ . **Special Nomination Panel**.

Comment [LM15]: Took out House in the approval process below. This section was partially reviewed at the 12/8 meeting.

(a) The Nomination Panel is established to provide a list of candidates to the Governor for appointment to the Illinois Health Facilities and Services Review Board (the"Board"), the position of Chairman of the Board, and the Comprehensive Health Planner. Members of the Nomination Panel shall be appointed by a majority vote of the following appointing authorities: (1) the Executive Ethics Commissioner appointed by the Secretary of State; (2) the Executive Ethics Commissioner appointed by the Treasurer; (3) the Executive Ethics Commissioner appointed by the Comptroller; (4) the Executive Ethics Commissioner appointed by the Attorney General; and (5) the Executive Ethics Commissioner appointed to serve as the first Chairman of the Executive Ethics Commission, or, upon his disqualification, refusal to serve, or resignation, the longest-serving Executive Ethics Commissioner appointed by the Governor. However, the appointing authorities as of the effective date of this amendatory Act of the 95th General Assembly shall remain empowered to fill vacancies on the Nomination Panel until all members of the new Board, the Chairman of the Board, and the Comprehensive Health Planner have been appointed and qualified, regardless of whether such appointing authorities remain members of the Executive Ethics Commission. In the event of such appointing authority's disqualification, resignation, or refusal to serve as an appointing authority, the Constitutional officer that appointed the Executive Ethics Commissioner may name a designee to serve as an appointing authority for the Nomination Panel. The appointing authorities may hold so many public or non-public meetings as is required to fulfill their duties, and may utilize the staff and budget of the Executive Ethics Commission in carrying out their duties; provided, however, that a final vote on appointees to the Nomination Panel shall take place in a meeting governed by the Open Meetings Act. Any ex parte communications regarding the Nomination Panel must be made a part of the record at the next public meeting and part of a written record. The appointing authorities shall file a list of members of the Nomination Panel with the Secretary of State within 60 days after the effective date of this amendatory Act of the 95th General Assembly. A vacancy on the Nomination Panel due to disqualification or resignation must be filled within 60 days of a vacancy and the appointing authorities must file the name of the new appointee with the Secretary of State.

(b) The Nomination Panel shall consist of the following members: (i) 2 members shall be former federal or State judges from Illinois, (ii) 2 members shall be former federal prosecutors from Illinois, (iii) one member shall be a former sworn federal officer with investigatory experience with a federal agency, including but not limited to the Federal Bureau of Investigation, the Internal Revenue Service, the Securities and Exchange Commission, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, or any other federal agency, (iv) 2 members shall be former members of federal agencies with experience in regulatory oversight, and (v) 2 members shall have at least 5 years of experience with nonprofit agencies in Illinois committed to public-interest advocacy for which the appointing authorities shall solicit recommendations from the Campaign for Political Reform, the Better Government Association, the Chicago Crime Commission, the League of Women Voters, the Urban League, the Mexican American Legal Defense and Educational Fund, and any other source deemed appropriate. Members shall submit statements of economic interest to

the Secretary of State. Each member of the Nomination Panel shall receive $300 for each day the Nomination Panel meets. The Executive Ethics Commission shall provide staff and support to the Nomination Panel pursuant to appropriations available for those purposes.

(c) Candidates for nomination to the Illinois Health Facilities and Services Review Board, Chairman of the Board, or the position of Comprehensive Health Planner may apply or be nominated. All candidates must fill out a written application and submit to a background investigation to be eligible for consideration. The written application must include, at a minimum, a sworn statement disclosing any communications that the applicant has engaged in with a constitutional officer, a member of the General Assembly, a special government agent (as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act), a member of the Board or the Nomination Panel, a director, secretary, or other employee of the executive branch of the State, or an employee of the legislative branch of the State related to the regulation of health facilities and services within the last year. A person who knowingly provides false or misleading information on the application or knowingly fails to disclose a communication required to be disclosed in the sworn statement under this Section is guilty of a Class 4 felony.

(d) Once an application is submitted to the Nomination Panel and until (1) the nominee is rejected by the Nomination Panel, (2) the nominee is rejected by the Governor, (3) the candidate is rejected by the Senate, or (4) the candidate is confirmed by the Senate, whichever is applicable, a candidate may not engage in ex parte communications, as that term is defined in Section 5.7 of this Act.

(e) The Nomination Panel shall conduct a background investigation on candidates eligible for nomination to the Board, Chairman of the Board, or the position of Comprehensive Health Planner. For the purpose of making the initial nominations after the effective date of this amendatory Act of the 95th General Assembly, the Nomination Panel shall request the assistance of the Federal Bureau of Investigation to conduct background investigations. If the Federal Bureau of Investigation does not agree to conduct background investigations, or the Federal Bureau of Investigations cannot conduct the background investigations within 120 days after the request is made, the Nomination Panel may contract with an independent agency that specializes in conducting personal investigations. The Nomination Panel may not engage the services or enter into any contract with State or local law enforcement agencies for the conduct of background investigations.

(f) The Nomination Panel must review written applications, determine eligibility for oral interviews, confirm satisfactory background investigations, and hold public hearings on qualifications of candidates. Initial interviews of candidates need not be held in meetings subject to the Open Meetings Act; members or staff may arrange for informal interviews. Prior to recommendation, however, the Nomination Panel must question candidates in a meeting subject to the Open Meetings Act under oath.

(g) The Nomination Panel must recommend candidates for nomination to the Board, the Chairman of the Board, and the position of Comprehensive Health Planner. The Nomination Panel shall recommend 3 candidates for every open position and prepare a memorandum detailing the candidates' qualifications. The names and the memorandum must be delivered to the Governor and filed with the Secretary of State. The Governor may choose only from the recommendations of the Nomination Panel and

must nominate a candidate for every open position within 30 days of receiving the recommendations. The Governor shall file the names of his nominees with the Secretary of the Senate and the Secretary of State. If the Governor does not name a nominee for every open position, then the Nomination Panel may select the remaining nominees for the Board, Chairman of the Board, or the position of Comprehensive Health Planner. For the purpose of making the initial recommendations after the effective date of this amendatory Act of the 95th General Assembly, the Nomination Panel shall make recommendations to the Governor no later than 150 days after appointment of all members of the Nomination Panel. For the purpose of filling subsequent vacancies, the Nomination Panel shall make recommendations to the Governor within 90 days of a vacancy in office.

(h) Selections by the Governor must receive the advice and consent of the Illinois Senate ~~and the Illinois House of Representatives~~ by record vote of at least two-thirds of the members elected.

Sec. ____ **Ethics**.

Comment [LM16]: This section was not reviewed at the 12/8 meeting.

(a) Conflict of interest. Members of the Health Facilities and Services Review Board (the "Board"), members of the Nomination Panel, the Comprehensive Health Planner, and employees may not engage in communications or any activity that may cause or have the appearance of causing a conflict of interest. A conflict of interest exists if a situation influences or creates the appearance that it may influence judgment or performance of regulatory duties and responsibilities. This prohibition shall extend to any act identified by the Director of the Department of Public Health if in the judgment of the Director or Board, it could represent the potential for or the appearance of a conflict of interest.

(b) Financial interest. Constitutional officers, members of the General Assembly, members of the Executive Ethics Commission, Board members, members of the Nomination Panel, the Comprehensive Health Planner, and employees may not have a financial interest, directly or indirectly, in his or her own name or in the name of any other person, partnership, association, trust, corporation, or other entity, in any contract or subcontract for the performance of any work for the Board or for any licensee under this Act. This prohibition shall extend to the holding or acquisition of an interest in any entity identified by Board action that, in the judgment of the Board, could represent the potential for or the appearance of a financial interest. The holding or acquisition of an interest in such entities through an indirect means, such as through a mutual fund, shall not be prohibited, except that Board may identify specific investments or funds that, in its judgment, are so influenced by the holdings of regulated health facilities or services as to represent the potential for or the appearance of a conflict of interest.

(c) Outside employment. A Board member, the Comprehensive Health Planner, or an employee may not, within a period of 1 year ~~5 years~~ immediately after termination of employment, knowingly accept employment or receive compensation or fees for services from a person or entity, or its parent or affiliate, that has engaged in business with the Board that resulted in contracts with an aggregate value of at least $25,000 or if that Board member, employee, or the Director has made a decision that directly applied to the person or entity, or its parent or affiliate. A Board member, employee, or the Director shall not hold or pursue employment, office, position, business, or occupation that conflict with his or her official duties. The Chairman of the Board and the Director shall not engage in other employment. Board members and employees may engage in other gainful employment so long as that employment does not interfere or conflict with their duties and such employment is approved by the Board.

(d) Gift ban. Board members, the Comprehensive Health Planner, members of the Nomination Panel, and employees may not accept any gift, gratuity, service, compensation, travel, lodging, or thing of value, with the exception of unsolicited items of an incidental nature, from any person, corporation or entity doing business with the Board.

(e) Abuse of Position. A Board member, member of the Nomination Panel, Comprehensive Health Planner, or employee shall not use or attempt to use his or her

official position to secure, or attempt to secure, any privilege, advantage, favor, or influence for himself or herself or others.

(f) Political activity. No member of the Board, employee, or the Comprehensive Health Planner shall engage in any political activity. For the purposes of this subsection, "political activity" means any activity in support of or in connection with any campaign for State or local elective office or any political organization, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action (as those terms are defined in Section 2 of the Lobbyist Registration Act), (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official State duties or governmental and public service functions.

(g) A spouse, child, or parent of a Board member, member of the Nomination Panel, the Director of Comprehensive Health Planning, or an employee may not:

(1) Have a financial interest, directly or indirectly, in his or her own name or in the name of any other person, partnership, association, trust, corporation, or other entity, in any contract or subcontract for the performance of any work for the Board or any facilities or services subject to this Act. This prohibition shall extend to the holding or acquisition of an interest in any entity identified by Board action that, in the judgment of the Board, could represent the potential for or the appearance of a conflict of interest. The holding or acquisition of an interest in such entities through an indirect means, such as through a mutual fund, shall not be prohibited, expect that the Board may identify specific investments or funds that, in its judgment, are so influenced by gaming holdings as to represent the potential for or the appearance of a conflict of interest.

(2) Accept any gift, gratuity, service, compensation, travel, lodging, or thing of value, with the exception of unsolicited items of an incidental nature, from any person, corporation or entity doing business with the Board.

(3) Within a period of 1 year ~~2 years~~ immediately after termination of employment, knowingly accept employment or receive compensation or fees for services from a person or entity, or its parent or affiliate, that has engaged in business with the Board or the Center for Comprehensive Health Planning that resulted in contracts with an aggregate value of at least $25,000 or if the Board or Center has made a decision that directly applies to the person or entity, or its parent or affiliate.

(h) Any Board member, member of the Nomination Panel, Comprehensive Health Planner, or employee or spouse, child, or parent of a Board member, member of the Nomination Panel, Director of Comprehensive Health Planning, or employee who knowingly violates any provision of this Section is guilty of a Class 4 felony.

Sec. ___. Ex parte communications.

Comment [LM17]: This section was not reviewed at the 12/8 meeting.

(a) For the purpose of this Section:

"Ex parte communication" means any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi regulatory, investment, or licensing matters pending before or under consideration by the Illinois Gaming Board.

"Ex parte communication" does not include the following: (i) statements by a person publicly made in a public forum; (ii) statements regarding matters of procedure and practice, such as format, the number of copies required, the manner of filing, and the status of a matter; (iii) statements regarding recommendation for pending or approved legislation; (iv) statements made by a State employee of the agency to the agency head or other employees of that agency.

"Interested party" means a person or entity whose rights, privileges, or interests are the subject of or are directly affected by a regulatory, quasi-adjudicatory, investment, or licensing matter of the Board.

(b) A constitutional officer, a member of the General Assembly, a special government agent as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act, a director, secretary, or other employee of the executive branch of the State, an employee of the legislative branch of the State, or an interested party may not engage in any ex parte communication with a member of the Board or an employee. A member of the Board or an employee must immediately report any ex parte communication to the Inspector General. A knowing violation of this subsection (b) is a Class 4 felony.

(c) A constitutional officer, a member of the General Assembly, a special government agent as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act, a director, secretary, or other employee of the executive branch of the State, an employee of the legislative branch of the State, or an interested party may not engage in any ex parte communication with a candidate or nominee for the Board, or a candidate or nominee for the Comprehensive Health Planner. A person is deemed a candidate once they have submitted information to the Nomination Panel and a nominee once the Governor nominates the person to fill a position on the Board or as Director. A candidate or nominee must immediately report any ex parte communication to the Inspector General. A knowing violation of this subsection (c) is a Class 4 felony.

(d) Any ex parte communication from a constitutional officer, a member of the General Assembly, a special government agent as that term is defined in Section 4A-101 of the Illinois Governmental Ethics Act, a director, secretary, or other employee of the executive branch of the State, an employee of the legislative branch of the State, or an interested party received by a member of the Nomination Panel or employee assisting the Nomination Panel must be immediately memorialized and made a part of the record at the next meeting. Report of the communication shall include all written communications along with a statement describing the nature and substance of all oral communications, any action the person requested or recommended, the identity and job

title of the person to whom each communication was made, and all responses made by the member. A knowing violation of this subsection (d)
is a Class A misdemeanor.

COMPENSATION

Comment [LM18]: This section was not reviewed at the 12/8 meeting.

Sec. ___ . ~~It is declared to be the public policy of this State that the Illinois Health Facilities and Services Review Board established herein is a quasi-judicial body and that~~ Each Member of the Board shall receive an annual salary to be determined ~~$65,000~~. The chairman of the Board shall receive in addition to his salary an additional sum of $~~15,000~~ _____ per year.

Sec. ___. The Comprehensive Health Planner shall be paid a salary of $~~90,000~~ _____ per year, or such amount as set by the Compensation Review Board, whichever is greater.