

Illinois Task Force on Health Planning Reform

Monday, December 8, 2008

9am-4pm

Illinois Dept. of Human Services
100 W. Randolph, 9th Floor 9-040
Chicago, Illinois

SIUE School of Nursing
Springfield Campus
409 Calhoun
Springfield, Illinois

Task Force Members Present:

Chicago: Senator Pam Althoff, Senator Bill Brady, Rep. Lisa Dugan, Senator Susan Garrett, Paul Gaynor, Gary Barnett, Rep. Lou Lang, Hal Ruddick, Claudia Lenhoff Heather O'Donnell, Ken Robbins, Margie Schaps, Sister Sheila Lyne, William McNary

By phone: Rep. Renee Kosel

Ex Officio Members Present: David Carvalho/IDPH, Jeff Mark/IHFPB, Myrtis Sullivan (for Carol Adams)/IDHS, Mike Jones/HFS

Staff Present:

Illinois Public Health Institute Staff - Chicago: Kathy Tipton, Elissa Bassler

Illinois Public Health Institute Staff- Springfield: Laurie Call

Legislative Staff- Chicago: Greg Cox, Kurt DeWeese

Legislative Staff- Springfield: Melissa Black, Clayton Clenke, Mike Constantino/Department of Public Health, Bruce Simon

Facilitator: Laura McAlpine, McAlpine Consulting for Growth

Notetaker: Stephanie Hedquist, McAlpine Consulting for Growth

Call to Order: 9:16am

Action: Approval 10-30-08 Minutes

Rep. Dugan motioned to approve the 10/30 minutes. Motion seconded. Kurt DeWeese requested the minutes be corrected as his name was listed twice.

Facilitate Discussion

McAlpine- Reviewed facilitated discussion objectives

1. Review entity structure for comprehensive health planning and the CON process
2. Review proposed recommendations for comprehensive health planning
3. Review proposed recommendations for the CON process
4. Prioritize remaining items future discussion
5. Establish next steps for the completion of the Task Force

Laura McAlpine started the discussion by asking the group to review each section of the draft Blueprint language. She noted the results of the email survey to each section.

Statewide Comprehensive Health Planning

McAlpine: According to survey results, there was 100% agreement, in accordance with comments the only change is in point D.

- DeWeese: The change was made due to responses concerning unanticipated events in the process and subsequent plan for replacement.

Robbins: Is it realistic to state, “to ensure adequate financing”?

- Carvalho: These are ultimately recommendations to the general assembly and all require subsequent actions. We need a word to ensure financing recommendations are made to the general assembly.
- Rep. Dugan: We do not need to go into the details of financing and where financing comes from. All we need to state is that there will be adequate financing.
- McAlpine: What about “promote” instead of “ensure.”
- (General): Consensus

Certificate of Need (CON) Process - Principles

McAlpine: According to survey results there was 100% agreement prior to the changes made in response to comments.

Bullet 4

Devlin: What is the difference between “findings will” versus “findings may?” [Bullet 4]

- Carvalho: I suggested changing to identify, because it wasn’t part of the plan to affect market forces. The problem point is that it’s in the affirmative
- O’Donnell: Use “shall” instead of “may,” it shouldn’t be a permissive statement.
- (General): Consensus

Certificate of Need (CON) Process - Objectives

McAlpine: According to survey results, there was 100% agreement; again we added some things based on comments in the survey.

Point 1

Mark: from a pragmatic standpoint, I suggest that in #1, “including but not limited to facilities,” we should define facilities for planning versus rehabilitation.

- McAlpine: We can define this and bring it back on the 19th.

List Facilities

Sen. Garrett: We also need to list the facilities.

- Mark: Facilities include licensed hospitals, LTCs (with exceptions), ASTCs, ESRDs, FSBCs, FSECs. There are many facilities in the state such as radiation therapy centers, FQHCs, CHCs, SHCs, radiation centers, assisted living centers, shelter care, etc. that I would suggest, if we are doing a comprehensive assessment, should come under this process.
- DeWeese: There are a range of services to take into planning, I am worried about including a list and then leaving someone out, I think we should leave it as all inclusive as possible and leave it to the planning process.
- Sen. Althoff: This could be misinterpreted by entities that are using this. We could come back to this as we are reviewing the plan. We don’t necessarily want to get very specific, we should leave it as “including but not limited to.”
- Ruddick: However, to some degree for planning, we need to make it clear that it’s not just those facilities in CON.

To include physicians

Robbins: Are physicians included in this inventory? Or other entities not currently or proposed to be included in CON?

- DeWeese: Yes, in the context of workforce analysis. This is because the lack of a sufficiently large workforce might impinge on our ability to provide universal health care. Whether we have enough nurses, etc. is something they have to take into consideration.

McAlpine: To clarify, we are not adding all that language to objective 1-we can either put a footnote, or an appendix with definitions

- Sister Lyne: What do you mean by inventory?
- McAlpine: it is up to those planners to determine the comprehensive assessment. We will state that have to address those facilities and we will provide an appendix for details.
- DeWeese: It is important to emphasize that a lot of this analysis has already been done, with respect to rural health, etc.
- Carvalho: There are many spots suggesting that this entity will work from scratch, however that is simply not the case, the intent is not to do everything from scratch.
- McAlpine: We will note that the intent is to find existing data

Comprehensive Health Planning - Functions

McAlpine- Page 3, comprehensive health planning functions, there was 90 % agreement. The only change based on comments is on page 4, points 10 and 13.

Sen. Garrett: Number 10 concerns ex parte.

- DeWeese: This will carry over to our discussions concerning ethics, etc. The suggestion is that the State Board of Health is subject to the same ex parte communication.
- Carvalho: This is another example of the “devil in the details.” You need to decide if in the case of a conflict of interest the individual may recuse themselves, or if they are simply ineligible to be on the Board in the first place.
- Sen. Garrett: Technical assistance is one of the most troubling areas concerning communication. If technical assistance still prevails, those meetings should be made public.

Sen. Garrett: The State Board of Health shall determine the governing of the ex parte communications, what does this mean?

- Carvalho: We should not import the requirements from the current CON board, which says ex parte is prohibited.
- McAlpine: Do you want a mechanism where the state addresses ex-parte?
- DeWeese: It depends on what the intent of the plan is. There is always the possibility that a particular industry could have great impact on that plan. That industry could use their influence, and the person voting could push it through without recommendations. This could have significant influence without having openness.
- Carvalho: Ex parte means that if you are the State Board of Health, it is ok to talk about that plan in the meeting, but discussions outside the meeting, such as in the hallway, are supposed to be documented.

- Sen. Brady: I hope we won't tie it up in statutory implication. That document should be shared with the General Assembly. The plan will be used for many things, but our intent is to statutorily and by rule govern the CON board. I have difficulties with having people report a talk in the coffee shop, when we cannot have the direct contact.
- Ruddick: Not concerning with technicalities, what is important is that the planning process is as transparent as possible; do we need more of this or less of that, should the market determine this or not; our recommendations may not be legally binding, but they do carry a lot of weight; we need public input and public meetings; they should they document who is involved in the process.
- McAlpine: Point 12 speaks directly to the process. We could put even more detail than is there, specifically to conflict of interest.
- Sen. Althoff: We've allowed this plan to come forward with General Assembly review in a definite time period. When the comprehensive health planning holds a hearing, we have to do our job. I am concerned about being too detailed; this is a living breathing document. It is our responsibility to do our job when it comes to ex-parte. We have to have written documentation, this is something we are required to do, there is oversight, you just have to do it.

Rep. Lang: Can someone clarify how we got the plan to go from the State Board of Health and then to the General Assembly? That gives the State Board of Health the ability to hold up the process. I would be more comfortable for it to go straight to the Assembly, have them hold hearings. The way it is now creates more rule making; the House is not big on agency rule making.

- DeWeese: The State Board of Health will provide a formal endorsement for the review process. The State Board of Health would be the official entity to present to the General Assembly.
- Carvalho: The original proposal created an entirely new entity. At the time, I suggested the State Board of Health perform that function. As long as you already have the State Board of Health, you can have them perform this function. That is how we got here.
- McAlpine: There are 2 issues to address: (1) to stick to the structure we had agreement on- where the report would go from the center to State Board of Health to the General Assembly or change- to go to the center and the State Board of Health at same time
 - (General)- Consensus to stay with what we had

Point 12, Public Hearings

McAlpine: The second issue concerns public hearings. Should we state that the center for comprehensive health planning and the State Board of Health both hold public hearings?

- (General) – Consensus that both will hold public hearings [Number 12]

Timeline

Rep. Lang: If the State Board of Health is required to review the plan, we must specify a timeframe. We have to ensure the plan eventually gets to the General Assembly.

- McAlpine: The timeline for the SHIP process is relatively quick; I believe there are 3 months for public hearings.
- Sen. Garrett: We could use the same model.
- Rep. Lang: That is fine as long as there is finality to it.

Point 2 and 10

Schaps: We need to revisit “annual review” in point 10, it should be every other year; every year would be very difficult.

- Rep. Lang: We should have option for an interim report, while requiring a review every other year.
- Devlin: We should allow the public to request that it is revisited.
- McAlpine: Point 2 and Point 10 will reflect every 2 years.

Ex Parte

Sen. Garrett: I suggest we remove ex-parte from this part of the planning process

- Carvalho: There are always 2 issues (1) is it a conflict that strips you from being eligible and (2) is it a conflict that comes up time to time. We have to define what the conflict of interest provisions are.
- Rep. Dugan: We need to find out if people even want this included.
- Carvalho: It may seem odd for me to be advocating for this, because adding these provisions does nothing but add work for the Department of Public Health , but from a policy point of view, they are protections I think ought to be there.
- Rep. Lang: We should have the General Assembly adopt whatever standards the General Assembly thinks are appropriate.

Special Nomination Panel

Sen. Garrett: I would like to adopt that approach for all boards and commissions in the state to provide accountability.

- DeWeese: There was considerable comment from Dave Carvalho whose has seen how this process can be impacted. In some cases the whole CON process was stymied. He raised how this nomination process would work if you have 9 positions, 3 nominees to each position and then 2 other officers, you would have to come up with 40 some nominees, this could be very cumbersome.
- Sen. Garret: If we don't, we will be in the same place.
- DeWeese: This could determine whether this process will work, I don't know if at this point that we should recommend this always occur.
- Sen. Garrett: However, we are not even saying this would occur here.
- McAlpine: Right now, it is the comprehensive planner, the CON board and the board chairman.
- Robbins: To build on what's been said, I'll put aside my opinion about wise versus unwise policy, but I am very concerned about the logistics and the ability of agencies, whether it be the State Board of Health or the CON board, to get the business done that has to get done. We don't want to impose a standstill, there are applications in the pipeline, there will be more coming in, if the process becomes a barrier then you will stop a reasonable process. Also, my fear is that if this becomes some sort of constitutional value of wills, then you end up in a game of amendatory vetoes, etc. We need some practical consideration to determine who has the power if there is some sort of fight between the Legislature and the Executive.
- Sen. Garrett: This is the heart and soul of why we are here. Candidates were not vetted properly. In order to prevent that from happening we have to implement measures to prevent that from reoccurring. Albeit, some may be too heavy handed, but this is the test.

- Rep. Lang: Although we are off track, it is in an important place. The State Board of Health is in a good place. This proposal will ensure that people are appointed because, under the language of the proposal, if the governor doesn't act, then there are other mechanisms to allow appointment to continue. This Governor (or any other) can halt the process by not appointing positions; this will ensure that at some point in time there will be a complete roster of board members. This should also at least apply to Chairman of the State Board of Health.
- **Sen. Garrett: Motion** to add the State Board of Health to the special nomination panel process. Right now we have the nominating panel overseeing the comprehensive health planner, the CON board and the CON board chairman. To make it complete and weed out conflict of interest, etc. we will add the State Board of Health, because they will be voting on the plan-this is to ensure the process is pure
 - Rep. Lang seconded the motion
- Sen. Brady: The names are submitted, the panel chooses 3 people for every open position, the Governor selects one, if the Governor doesn't choose a nominee, then it goes to special panel.
- Sen. Garrett-That is the proposal that may or may not work, because we don't know any other state that allows it.
- Sen. Brady: I wouldn't agree with House confirmation.
- Dugan: We are still working through this.
- Sen. Brady: Is that Constitutional?
- Cox: It is extra-Constitutional, it is not forbidden in the constitution.
- Barnett: There is no precedent, it seems like it may be a major controversy between the Legislature and the Executive, especially if we are having this much difficulty agreeing.
- Sen. Garrett: Is any of this in place in the Gaming Commission?
- Rep. Lang: It's out there, but not yet enacted.
- Sen. Garrett: If no one is arguing, we should keep the motion in place, but not include the House.
- McAlpine: Should we change language that is in 12-14?
- Sen. Garrett: Take out "house approval" from the special panel.
- Carvalho: With respect to the State Board of Health, which is a special panel, this proposal would require 51 people to be identified. They would all have to go through FBI background checks and then be submitted for confirmation by the House and Senate. For the CON Board, these are all people whose employers would have to allow them to be off of work 2-3 times every 6 weeks, plus the 20 or more public hearings you've required them to attend - I would question this. This will slow down the process, because who would want to be part of something when you have to go through that process just to get appointed.
- Rep. Lang: Before we started talking about having the State Board of Health nominating panel, we should talk about the process for adoption of a plan. As written, it would go straight to the board of health before it went to the General Assembly. The General Assembly would have nothing before that point. At a time when our Governor makes interest (??) appointments and sometimes no appointments at all, when the Governor simply seems to create road blocks, I suggest the plan be required to go to the State Board of Health and the General Assembly at the same time, because then the General Assembly has the plan.

- McAlpine- In answering questions, we are not focusing. For the sake of time, given we have majority approval, rather than continue to debate points you already agreed to, is the language for the special panel something you can agree to? Respectfully, we already dealt with the Governor time frame issue. Are pages 12-14 ok if we take out House approval?
- Sister Lyne: What does the Illinois Department of Public Health have to do with the special panel?
- McAlpine: The comprehensive health planner will be of the Department of Public Health Center for Comprehensive Planning. This person will be vetted by the special panel.
- Carvalho: We are borrowing from Gaming Board situation, but one of the things that it misses is that there are policy difference between health and gaming. Depending on the party of the Governor, priorities tilt. Health policy has partisan differences. This proposal strips it out as if there were no policy considerations inherent to health planning. I'm not sure why you'd want to strip policy considerations from the process.
- Rep. Lang: We expect them to be totally objective, there will be a lot of people on both sides of the issue.
- McAlpine: Pages 12-14, is the language of special panels ok if we take out house approval- is anyone objecting?
- Gaynor- I am sensitive to conflicts of interest, but what Dave Carvalho has said convinced me. There is a difference between gaming policy and health care planning. I do believe there has to be a mechanism concerning the problems of the past, but Dave Carvalho's points about policy and having people with the right policy orientation are important. I would take out the special panel
- Ruddick: Dave Carvalho made a lot of sense. There are differences between policy orientations. The Governor could be a Republican Governor; s/he should have the right to appoint who they want, someone of similar policy orientation.
- Sen. Garrett: We have been through a horrendous situation, given what we have gone through this is necessary.
- Rep. Lang- I agree with Sen. Garrett. The Governor can still can propose anybody they want, however if the Governor is allowed to appoint anyone they want, and they are not vetted in conflict of interest, talent, understanding of health financing/planning issues, etc. we will end up with the same situation. With this process we are making a statement that we expect honest, competent and well informed people.
- Sen. Garrett: I **motion** to keep the special panel for those 3 entities for the oversight process
 - Yes - 6 – Rep. Lang, Rep. Dugan, Sen. Garrett, Sen. Althoff, Rep. Brady
 - No – 7 – Robbins, Ruddick, Schaps, Devlin, Lenhoff, Gaynor, Barnett
 - **Motion Failed**
- Gaynor: Carvalho makes a compelling point, I agree in terms of the problem and conflict of interest, but I am not sure it is the best model.
- DeWeese: In the writing of the report, we can state that this was proposed, that there was considerable debate, that there was a vote, and that it was not accepted. We can also state that it is something that could be reconsidered, and that there may be other options. We should note that this was a significantly debated issue
- Sen. Garrett: One of the reasons why we are here is because there was corruption. We need a process. Where do we go from here? Vetting is key in the report.

- Ruddick: My reason for voting, was because those on the left shouldn't go through nomination [the comprehensive health planner], however I wouldn't object to the CON board themselves go through the process.
- Sen. Garrett: new **motion**- Accept special nomination panel for CON board and CON board chairman, but not for the comprehensive health planner.
- Rep. Lang: The planner will be appointed by the governor with no planning process whatsoever? The Governor can pick any person in America? I have an issue with that.
- Sen. Garrett: I agree with Rep. Lang. It is one person, not the whole panel, we must ensure we do not have another Stuart Levine. If we don't implement stop-gap measures, then we risk that reoccurring.
- Ruddick: We create the plan, submit the plan to the Board of Health, and submit it to the General Assembly. In regards to the Stuart Levine analogy, if someone would slip something into the plan, there are several steps/independent bodies that could catch it.
- Sen. Garrett: This planner is the chairman of the board in the planning process. If we do not send a message that we care about who that person is, then the process becomes somewhat pointless.
- O'Donnell: The planner will be policy driven, but that doesn't mean we won't have backstops.
- Rep. Lang: My view is not that everyone is corrupt. However this panel, one of the main reasons all of us are here, is because of certain situations that happened in the State of Illinois. We are not here only because we have an interest in health care policy and planning, but ultimately, because of corruption in an agency. The first point is to create a plan where there is less opportunity for corruption. We cannot simply say that if there is corruption someone will eventually find it. We should stop it at the top.
- Ruddick: What if the person was confirmed by senate?
- Sen. Garrett: The Legislators, for the most part, are for the oversight. We are the ones that need to make sure we are answering the will of the people. If we are going to do one thing, then we must combat corruption. If this becomes a problem we can amend it, however we must make it as seamless as possible.
- Sen. Garrett: The **motion** is to keep the special panel for the CON board and CON board chairman
 - No- 6 - Sen. Garret, Rep. Dugan, Gaynor, Sen. Althoff, Sen. Brady, Sister Lyne
 - Yes – 3 - Ruddick, O'Donnell, Sullivan
 - Abstain- 2 - Robbins and Barnett
- Robbins: I am concerned about the ability of the CON process to proceed, it could result in no planning or a stalemate
- Rep. Lang: A process that takes longer is better than no process at all.
- Sen. Garrett: It is important to consider that as a legislative group, we are all in agreement.
- Se. Althoff: This is a difficult process; we are at an even higher standard, because we have 3 caucuses represented here.
- Sen. Garrett: I will make a commitment that if there is a problem, we will amend this.
- Sister Lyne: I could go either way, I'm not sure having the planner in or out will have much effect, in some ways it is for show.
- Sen. Garrett: It is not just for show, it is for confidence. It gives credibility to what we are doing.
- Sister Lyne: We have to make the right choice about the person.

- Sen. Garrett: This will make it less likely that we will be in that position we were in last year.
- DeWeese: We have to have 12 votes for each of these measures and the final report.
- McAlpine: 11 participated in this question on special panels in the survey, 7/8 task force members agreed to it.
- McAlpine: That is a very important procedural point. We have to clarify- every single recommendation has to be voted on and must have 12 voting in favor for the measure to be approved?
- DeWeese: We can identify areas of general consensus. Ultimately, we have to adopt a consensus of 12 votes on the final report.
- McAlpine: Earlier in this meeting, we stopped after each section and asked for consensus, until we got to special panels, we need a consensus.
- DeWeese: The report itself has to reflect a consensus on those items. We can put a note of "legislative preference in the report, but we will also note there was no consensus.
- Carvalho: I anticipated recommendations such as, "the panel recommended...but the panel couldn't conclude..." In other words, this panel is likely to reach consensus on broader statements, and to then hand it back to the legislature. If you wait for 12 on everything, rather than general consensus, then you will have a hard time finishing.
- Sen. Garrett: We have to be careful that we are not too general.
- Carvalho: This process is not just about vetting, it is about choice, it is about who is in the policy position. Vetting is an FBI background check, but this restricts the choice to those candidates that other elected officials – the Treasurer, the Comptroller, the Secretary of State, the Attorney General and the Governor - come up with. That is a strange way to staff a policy-oriented, agency position.
- McAlpine: We need to go back and consider the functions of the comprehensive health act. We don't have 12, we have 2 Abstains and 4 Yeses.
 - Yes- special panel for con board and chairman- Ruddick, Sullivan, O'Donnell, Lenhoff
 - No- Sen. Garret, Rep. Dugan, Gaynor, Sen. Althoff, Sen. Brady, Sister Lyne
 - Abstain- Robbins, Barnett
- Ruddick: This is not the most important issue in the planning process; there are good arguments for why the planning position is different from the CON board.
- Lenhoff: I agree, we should move on and come back. I have a pretty good handle on what the people will think of this. People could view this as politicizing the process. It seems a little problematic. I agree with comments that Dave Carvalho has made. I assume there are requirements to get a position in any state agency. There are professional requirements that would be set, and that in itself is a vetting process. From a community member's perspective, this process of putting the planner through the vetting process could be seeing as politicizing the position.
- McAlpine: Is there anything else concerning functions we need to discuss, pages 3-4.

Number 13

- Rep. Lang: Number 13 leaves a lot to administrative rule making. I would be opposed to more administrative rule making. We get into real trouble, especially with JCAR when we have open-ended, let's leave it to rule protocol. I cannot be for a proposal that leaves everything to rule, any legislation passed cannot leave everything to rule.

- DeWeese: There was comment about how much detail you can actually put into a statute. There is also the question that a lot of rule making has to do with substantive changes, has to do with process. We wanted as much detail as possible, but you cannot cover every rule. We tried to say that there would need to be more detail, but I don't know how much more explicitly you can write it.
- Rep. Lang: I would agree to "as much detail as possible." This infers that we have an open-ended program and we just went through a situation because the administration tried to get an entire health care proposal through by rule. It should state, "With reasonable detail, to limit administrative rule making"
- Sen. Garrett: I agree.
- (General): Consensus.
- McAlpine: Is everyone ok with everything in comprehensive health planning function, points 1-14, except point 10
- (General): Consensus

Special Panel

Sen. Garrett: I resubmit the original **motion**- to redo the final vote, to include the CON Chairman, Planner and CON Board in the special panel.

- Claudia: Point of clarification, if the planner is included, then are they still accountable to their respective state agency?
- Sen. Garrett: Yes.
- Robbins: They would be fired in the same way?
- Sen. Garrett: Yes.
 - Yes - 12 - Robbins, Rep. Lang, Ruddick, Sister Lyne, Rep. Dugan, Sen. Garret, Gaynor, Sen. Althoff, Sullivan, O'Donnell, Lenhoff, Barnett
 - No - 0

Comprehensive Health Planning Functions, Point 10, Conflict of Interest & Ex Parte

McAlpine: We will begin with conflict of interest.

- Rep. Lang: Allow ex parte and memorialized; in addition, we should adopt state agency rules.
- McAlpine: Page 4, point 10, should we keep in the underlined words? We changed the "to" to "shall," is there a process for state agencies?
- Sen. Garrett: They will be required to fill out an economic interest statement on an annual basis.
- McAlpine: Is everyone in agreement as long as "to" is changed to "shall," and that we will address that later in the ethics section. Is there anything on pgs 1-14 or can we move on?
- (General): Consensus.

Comprehensive Health Planning, Organizational Structure

McAlpine: According to the survey, there was 100% agreement among voting members, and 50% agreement among ex-officio members. We did change the "would" in Point 15 to "may."

- Devlin: It should be changed from "may" to "shall."
- DeWeese: In accordance with Dave Carvalho we changed it to "may."

- Carvalho: I advocated the change because some of the elements that go into a plan require information from other departments and elsewhere in the department. The question is whether the intent is that the center would develop its own information or gather existing information from other agencies. The point I made to Kurt DeWeese is whether you want full-time people solely working in the center or rely on the Center's employees gathering information from other centers, whose employees may provide a slice of their time to the planning effort.
- DeWeese: There may be some people that work solely for the center and others that are not only just working for the center, but nonetheless impact the process.
- Carvalho: Should this be fully contained, a separate center or a combination.
- Schaps: It can be both.
- McAlpine: Point 8 discusses whether health planning will be integrated with other kinds of health planning, so what should the word be?
- Carvalho: I would change the second sentence.
- McAlpine: Changes in 15, the Center for Health Planning "shall" manage its own staff, "may be realigned," and the last sentence will state "Senior Public Service administrator."

Comprehensive Health Planning – Organizational Structure, Point 16

Rep. Lang: Point 16, "appointed by the Governor by a special nomination panel" should be changed to "appointed by the Governor," delete "by a special nomination panel."

- (General): Agreement.
- Rep. Lang: I would also like the record to show that although I will sign off on having this be a part of Department of Public Health, it is not the right thing to do.

Certificate of Need (CON) Process, Purpose [page 2]

McAlpine: Kurt DeWeese, will explain why we added the purpose section.

- DeWeese: It reflects comments that we need a basic purpose statement. It is somewhat verbatim about what the CON purpose is supposed to be about.
- Mark: The overriding purpose of the CON process is, "to contain cost by limiting unnecessary health care construction," this does not necessarily reflect what is going on today.

Number 6

Sen. Garrett: I have a problem with number 6. Please change "limit" to "assess" or "address" or "review."

Amendments / Legislative Language

McAlpine: Referred the group to review proposed language to amend the Health Facilities Planning Act by Jeff Mark, David Carvalho and Frank Orzo.

- Rep. Dugan: If the statute is one way and we decided to take something out, we should take the time examine it.
- Carvalho: This draft is an exercise we started a few months ago. We decided to look at it because we knew we would eventually get to that point.
- McAlpine: Is it reasonable that we look at it with the blueprint language?
- Carvalho: We could use this where it is applicable to the blueprint.

- Rep. Dugan: This is a lot of information for us to look at today. We don't necessarily have time to go through this whole document. This document takes pages and lines out of the existing statute so it is important to look at it thoroughly.
- Robbins: We decided we would be drafting a report and not legislation.
- DeWeese: Without regard to the specific legislative proposal, this was utilized in response to comments from the survey.
- McAlpine: Yes, but the comments were from the ex-officio members.
- Ruddick: The only question is, putting the legislation aside, is it useful to having this in the blueprint?
- Howard Peters: I think it is unfair to provide the task force a day's notice to in one meeting put in the report at all. You should not allow something at the last minute to distract from the essential elements of the report. After the report is done, as you are drafting legislation, this will be applicable. But I don't think you should be asked to endorse and put this into a meeting like this.

The group decided to not consider the amended language.

Purpose of CON

Rep. Lang: I agree, we shouldn't be going through this entire amendment. The purpose of the CON board has changed. For instance, they should be working with the planning agency we've created, if we have a new scheme with a separate planning agency and a board we need to address that.

- McAlpine: To that end, that is a goal, we never wrote a purpose statement.
- Robbins: We ought to go through the suggested purposes. I urge everyone to do so, but maybe at a different time.
- Barnett: I am not certain of the definition difference between goal and purpose, but I suggest that (e) and (f) in goals move to the purpose statement. Certainly item (f) in the goals, out of all the testimony we received, I think that's the one that the speakers agreed with, so that should be in the purpose.
- McAlpine: It is necessary to somehow coalesce these; this could be a fair amount of work.
- Sen. Garrett: Could you do that?
- Rep. Lang: This needs this to be consistent with page 1, goals, objectives...
- McAlpine: I will give goals, principles and objectives back to the small group and come back with something more unified.

Reform of the Illinois Health Facilities Planning Board - Functions

CON Process and Scope of Reforms [Page 5]

McAlpine: According to the survey, there was 87% agreement on process and scope, pages 5 and 6.

- Sen. Garrett: In point 22, I believe it was 3 million.
- Mark: The existing language is updated annually, therefore the existing language is 3 million, but because it is updated, today it is about 8.8 million.
- DeWeese: It was originally left blank because there were specific recommendations.
- Robbins: I think the recommendation was to increase it to 15 million. We recommended that it increase to 15 million to focus the board's attention on larger projects.

- Rep. Dugan: Do we have a sense of how many projects are that large or the implications of that specific number?
- Carvalho: There are a couple of considerations to address. One of the recommendations is to eliminate the common financing test, because you don't want them to be able to pull a bunch of projects and really have a \$28 million dollar project versus four \$7million dollar projects. If you increase the threshold there is more opportunity for this to occur. The ultimate question is whether the mechanism you enforce/encourage in the CON process is going to make it more difficult to implement the plan?
- Barnett: The number is not as important- regardless of the number, there will be a time when you wish you had a bigger number. I would advocate for a larger number, we can specify services instead of numbers.
- Sister Lyne: Ours was supposed to be \$20 million, even though it was 3 separate projects, they had common financing.
- Sen. Garrett: To specify a dollar amount and hold everyone to it is restrictive.
- Rep. Dugan: We could look at services, not just costs.
- Ruddick: Do we have numbers from other states?
- Mark: We are the third highest.
- Robbins: However, roughly half don't even have a CON process, if you include that information; we'd be right in the middle of those who have none and those who have some.
- Rep. Dugan: How do we even determine accurate cost? The cost of a hospital in Chicago versus Kankakee is 2 very different dollar amounts.
- Mark: We have, by rule, benchmarking that are by geographic area, an adjustment for inflation, and are currently proposing to adjust per a complexity factor.
- Rep. Dugan: It is important to consider where you are building and what you are building. There is a small part of the blueprint of a hospital in my district that is trying to determine square cost footing; my concern is the delay this may impose. The hospital in my district has been delayed a month.
- Sen. Garrett: Is there another way that would not require numbers? Maybe we should let go of some of the boundaries and barriers for these hospitals, not include a dollar amount. Instead, we could make sure the services they are developing are done in a reasonable way
- Devlin: I recommend keeping the threshold, because it allows public input on high ticket items. It does so through the public hearing requirement.
- McAlpine: Projects should be reviewed solely because of cost?
- Rep. Dugan: Yes.
- Sen. Garrett: I'm saying that the hospital would say what they are doing, how much it would cost, etc, but I would take out the dollar amount. The board would have the benchmarks.
- Sister Lyne: When it involves compliance you should not have to go at all.
- Carvalho: If it is over the dollar amount, you have to go before the Board.
- Sister Lyne: I am saying that you should not have to go before the Board if it involves compliance.
- O'Donnell: What is the point?
- McAlpine: Cost containment.

- Rep. Lang: We could say that there is no limit on cost, but they have to include a patient impact statement, specifically, how this would impact the cost of other hospital services.
- DeWeese: The underlying assumption is that whatever the hospital spends on capital will be passed on to patient cost. We have created a number of exceptions/exclusions so that these only apply to specific areas, and we keep adding to that list of excluded services. In my own view, it will all eventually carry over to cost. What I didn't hear in testimony was that the current threshold was a problem. I didn't hear that it was encumbering projects. We intended to narrow the scope of what the process is. Additionally, in terms of the inherent process of having a threshold, it's sort of an apples and oranges comparison if you are look at other states.
- Robbin: I'll start with what was just said: one of the purposes of our group was to streamline the CON process. One way to streamline is to have fewer projects go before the board. Lobbyists, etc. are all part of the cost. When it doesn't relate to a service or a brand new facility, when you want to upgrade an existing wing, then the hospital board has to make a decision of whether it has the money to do it. Over half the hospital patients are being paid for by Medicaid or Medicare. You don't just pass on those patients. The others are commercial insurance. The other is uncompensated care. Practically, if streamlining means anything at all, it means something in this process.
- Sen. Garret: There should be regional benchmark costs (to deal with the Chicago versus Kankakee issue), if you go above that amount then you go to the board, but there will be a set dollar amount for each service.
- Mark: Several things trigger Board review. One is the dollar amount, the other is if it establishes a new service. The Board's definition of services is very limited--it primarily involved bed services. However, my guess is that 50-60% of a hospital's revenue is outpatient revenue- so building an outpatient, radiology, etc, requires going to the Board solely on the basis of cost.
- Dugan: The question is should we increase the threshold from 8 to 15 million?
- McAlpine: Point 18 specifies the services without a dollar amount. In 21, there is no dollar amount. Should there be a dollar amount? What is the threshold in 22?
- Robbins: I **motion** that point 22 reads \$15 million.
 - Seconded by Sister Lyne.
- Ruddick: We heard testimony on impact of ASTCs, specifically they discussed what the impact would be if services changed.
- Mark: To establish an ASTC, you would have to come before the board whether it is \$1 million or \$10 million. Next year, if she [Sister Lyne] wants to expand, but is below threshold, even if it is 4x the space, she doesn't have to come before the board.
- Ruddick: There was testimony about ASTCs hurting the hospitals.
- Robbins: This is a fair question. Should there be a differential, given the nature of the organization? Given the size of a hospital, this may not be a large amount of money, conversely, it would be for an ASTC. Maybe there should be different classes of institutions.
- Lenhoff: For example, in Champaign radiology is excluded. They didn't have to report to CON. The non-profit hospital that had a radiation oncology center suffered huge losses as doctors steered them to their own radiation oncology center, while Medicare/Medicaid patients went to the non-profit hospital. This had a major impact on low-income patient and the hospital. We would have loved that something would have been triggered to have some sort of public scrutiny. I would like to see us continue with

the set amount, it is ok to make refinements, but I suggest we continue with the \$8.8 million, or slightly increase it. It is important to remember that there can be damage done as a result of projects with lower dollar amounts.

- Rep. Dugan: Was this problem due to the fact that the service was excluded or because of the dollar amount?
- Mark: Under current statute, the only way the board would have jurisdiction would be because of a dollar amount. That is because it was not a facility as defined in the act.
- Mark: For radiation therapy, is there a review regardless of price?
- Mark: No, the panel may consider a tiered threshold, one for hospitals and one for centers.
- Sen. Garrett: We have to look at this holistically, the fees have to be separated by their effect; it is not done here and not in the statute.
- McAlpine: There is some language about what is a covered facility.
- Rep. Dugan: There is not language about what is in a covered facility.
- Sen. Garrett: We do not want to pick an arbitrary number.
- Robbins: We could go with \$15 million for hospitals and \$8 million for other facilities.
- Sister Lyne: It would have to have been even lower to help the hospital in Champaign.
- Sen. Garrett: It should be done regionally. When we meet again, this is something that we should take up.
- Ruddick: Right now it is \$8 million. If we are talking about revising this, are we eliminating the common financing law?
- Robbins: The real key was that we had common financing, but not a common purpose.
- McAlpine: We don't address common financing.
- Rep. Dugan: How do we not penalize our existing health care facilities?
- DeWeese: Refer to number 22.
- Howard Peters: We must be careful about a regional number, because costs are driven by construction, equipment and technology. Equipment and technology do not differ in cost. There may be some marginal advantage in construction cost, but it is essential not to overstate that difference.
- Sister Lyne: I would like to suggest that for unrelated projects, even if they have common financing, are not lumped together.
- Sen. Althoff: That is in the language.
- Ruddick: If Sister Lyne's project had been allowed to be separated that would have solved that question.
- Rep. Dugan: This is one issue involving the reason Sister Lyne had went to CON, and why we need to streamline the process. The other issue involved a limit.
- McAlpine: You want to understand Board review [Point 18] concerning (1) dollar threshold, (2) expand or close service, (3) new services, and (4) major changes in volume-sensitive projects.
- Cox: It is important to note that the threshold was set up as a cost containment measure. We are now adding it as a safety net protection mechanism. Now, we are taking something that historically was cost containment and not a safety net mechanism.
- DeWeese: The financial threshold has been operating in a way to capture certain facilities or services that it wouldn't have captured before the board. I think it would be a good step to add to some of those services. Maybe we should have specific criteria to have those services where it is expected to impact those services. Maybe that is where

we should focus our attention. Also, I remind you that we have excluded a number of projects that will have a substantial impact. We have only included clinical focused projects, this does not include parking lots, technology, administrative costs, etc. We may need further investigation into the implications on this.

- Schaps: We need to look at the list.
- Robbins: One of the reasons those services were not popping up regularly was because they were at a disadvantage. It is important to look at why they were excluded. If they couldn't be regulated out there, they shouldn't be regulated in here.

CON Process and Scope of Reforms, Point 23 and Point 35

Rep. Lang: I have two items to discuss. (1) Point 23 in that section, in the third line, strike "consider." (2) The point of the streamline process was that if a certain project didn't meet a certain level, they would be basically, automatically approved without going in front of the board, however we are not really saying that is occurring.

- Carvalho: This seems inconsistent, because we keep saying that everything is transparent, but this allows the staff to determine whether something is "almost in compliance," this is substantial discretion. We should take out "substantial" so that it states "in compliance."
- Barnett: This is similar to working in point 35, page 7. If we take out substantial in point 23 this needs to be consistent.
- McAlpine: How about "shall promulgate" and strike substantial.
- (General): Consensus

CON Process and Scope of Reforms, Point 25, "Letters of Intent"

Ruddick: I would like to discuss Section 25, "'letters of intent' will no longer being required." It seems to me that if we are talking about transparency, a letter of intent informs the public and allows the opportunity for comment.

- DeWeese: The moment you file a letter of intent you cannot have any interaction. This was inhibiting the pre-formal review process. There was some question/comment by David Carvalho about how that got to be a burden. Now, it is viewed as a significant thing, as signifying the start of a project, even though you haven't submitted a final application. It seemed that have outlived its usefulness, and served more as a barrier.
- Carvalho: It used to say you can't talk with anybody when there's a "pending" proposal. This would begin when you filed your application. The Legislature changed it to include "impending" as well as "pending." The letter of intent was adopted in order for the staff and the board to know at what point they could not talk to them. We created the letter of intent process and implemented "impending" at the same time. It also gave the public a heads up that something was coming. To get rid of the letter of intent you have to get rid of "impending" in the statute, and just go back to "pending".
- Ruddick: You could you keep the letter of intent, but if the problem is that you are limited on conversations you could broaden the conversations you could have. It seems the letter of intent could serve a useful purpose. I'm sure it is annoying to hospital staff, but this would allow feedback from the community.
- Robbins: If you get rid of impending it should resolve this.
- Sen. Garrett: Go ahead and take out impending.
- Ruddick: So we will continue to require letters of intent and eliminate impending to allow more conversations?

- Mark: Historically we used the pending application. This was when the application was received by the staff. When it was changed for impending and pending, we extended the time of the communication limit.
- Mark: "Impending" and letters of intent came in at the same time.
- Sen. Althoff: The reason for the "impending" and letters of intent were to address problems with conversations that were happening on the board.
- Sen. Garrett: This could be solved through technical assistance, which is done as a public process 10 days in advance. That could solve the problem.
- Ruddick: if we go with Point 25 as written, then people could have a lot of conversations.
- Sen. Althoff: But there is the technical assistance.
- McAlpine: Point 38 it refers to technical assistance [page 7].
- Sister Lyne: The problem is that when this first started this was normal, now we have had this awful occurrence so we put in these inhibiting processes.
- Barnett: Concerning the comment about 38, it is helpful for an applicant to talk to staff on technical issues. It can be as simple as, "I understand what they are telling me in writing, but I'm struggling with how to incorporate it into the application...." This is overkill.
- Sen. Garrett: I've looked into these technical assistance issues. You absolutely could not find a record of these conversations. It does not have to be a public meeting for everyone to attend, but this could be problematic. They referred to the work on this as "visionary."
- Carvalho: Why is it a problem to come and ask for technical assistance? It is not a misnomer. If Rush, Northwestern, etc. were all planning redos, and they want to come in and talk about it, do we have to make that public?
- Sen. Garrett: The technical assistance area needs to be tightened up.
- Barnett: We need clarity in the rules, transparency. I don't know how you can have ex parte with people that will not make a judgment.
- Sen. Garrett: The staff does play an important role, they go to meetings, they advise. I don't know why these meetings can't be public / taped. School Boards do this, why do we have a separate way to do this than other boards?
- Gaynor: One of the problems is of the detailed reports of what is being discussed at the meetings. Stipulating that you have to detail who attended, what was said- I don't know if it's practical to make it open to everyone.
- Sen. Garrett: They should be posted on the web, and tape recorded if it involved something that could be needed in the future.
- Schaps: What if NW doesn't want Rush to know, for example.
- Gaynor: I am sensitive to the proprietary concerns. If it is a conversation concerning something that is not being pursued, but something that is being discussed, there is a difference between that and a project that is being actively pursued. It is very important to consider proprietary concerns.
- Rep. Lang: I was going to say exactly what Paul Gaynor just said. If a project is not moving forward, there is no reason for the public to know about it. If it is moving forward, then they should know.
- McAlpine: We could say 25 is ok, with eliminating letters of intent and the ability to talk to staff prior to filing a full application.

- Sen. Garrett: How does it work when a business wants to buy another business? Isn't there a quiet agreement/period?
- Carvalho: If they are publicly owned companies then there are SEC requirements regarding disclosure, and there is a quiet period before certain stock offerings.
- Sen. Garrett: How can we adapt that?
- Carvalho: If there was technical assistance meetings prior to an application, as part of your application you would then include all those minutes.
- Barnett: We could get rid of impending, go with "letter of intent will be eliminated," then in the official certificate of need process there will be adequate time.
- Ruddick: We could keep the letter of intent, but allow for greater flexibility for letter of intent and filing.
- Carvalho: The applicants don't want the additional 16 day delay because of notice requirements.
- Robbins: From the time the actual application is filed, how long does the staff have to respond?
- Mark: 10 days for the staff to deem it complete. The public have from then until 20 days before board meeting to submit comments. Then, in that period, there is a public hearing. In addition, it is supposed to be posted on the website 14 days before the meeting and the public can comment up to 2 days before the meeting. The non-substantive review period is a maximum of 60 days, the substantive review period is maximum of 120 days.
- Carvalho: What is the minimum amount of time?
- Mark: 3 months.
- Carvalho: The reason it is ambiguous is because you don't know at which board meeting it will be heard.
- Robbins: This seems like a lot of time for public comment.
- Sen. Althoff: I think we should stay with Hal Ruddick's suggestion.
- Lenhoff: Is there not a value for the public in the letter of intent. Would health care providers not have an investment of not having input first. From the provider perspective, is there not a value?
- Barnett: There has to be a very organized group for there to be value. In my community, I can't ever remember public comment driven by a letter of intent.
- McAlpine: Do we have consensus on keeping existing language that eliminates the letter of intent with the ability to talk with staff prior to filing a full application, with no ex parte until a full application is submitted.
 - (General): Consensus, 12 approve, 1 reject (Ruddick)

CON Process and Scope of Reforms, Point 26, Public Hearings

Mark: Point 26 is extremely problematic. The way this is written, we will have roughly 6 scheduled board meetings and would require 120 additional meetings of the board

- Sen. Althoff: I concur. I don't think you will ever have a quorum
- Mark: Staff published 124 opportunities, 18 were accepted. We had 18 in one year.
- Sen. Garret: But they will be salaried which will encourage them to be there.
- Mark: Yes, I am concerned about the logistics. We have a finite time period. From the time an application is deemed complete, staff has 60 days to complete the review. During that time we have to offer public hearings, this takes 2 weeks, then we have to

find a place, advertise the place, publicize it and do it. There is about a 2 week time period to conduct that public hearing with respect to the timeframe.

- Sen. Garrett: If they can't go to the board meetings, they should not be on the board.
- Sen. Althoff : This is an onerous qualification. We should say we need x amount of members, instead of quorum. They will still read their packets, if we specify an amount, instead of a quorum we also have a better chance of getting better qualified people.
- Lenhoff: This is incredibly burdensome. I am worried about feasibility. To us, there has never been a problem with the board process. The public hearing is not the only way to get input, this gives the impression that the public hearing is the only way to submit input and perspective. The point is to get the community involved. What I have been seeing at public hearings is health care providers putting on a huge show. The bottom line is that I don't want something to get in the way of the public communicating.
- Sen. Brady- (phone) We could consider a model like the pollution control board. They have a board member who is a chairman. There are several other models that would be a compromise.
- Rep. Lang: During the earliest parts of our hearings there was significant conversation about the public hearing process. All of which stated that it needed to be reformed. There was testimony of board members getting massive amounts of information, questions of whether they were reading the information versus taking the staff's advice. That is when it developed into a quorum. There are other models to gain feedback on what was said and how it was said. It is an absolutely critical part of the process. They must show up so they don't become perfunctory. As Claudia Lenhoff would argue, there was value in the past, but there would be more value if there were more board members present. They should be there to see what happens in the meetings. I favor the quorum.
- DeWeese: This assumed that not every application would have a full scope review. That you would take only those to hearing that were controversial, when there was community opposition. The other assumption was that there would be 5/10/15 different projects in one centralized meeting. I understand talking with Jeff Mark that there are not always places in the project for this, but that sort of raises a different logistical problem. This assumes that you will have a fairly small number of projects for a public hearing.
- Carvalho: The problem with what Kurt DeWeese suggested is that both the applicant and the public can decide whether or not to request a hearing. Sometimes the applicant files for a hearing, sometimes an opponent files for the hearing. If you move to a process where board members are required to attend, then if you are an applicant, you will always go for a hearing, because why not take another shot at selling your proposal to board members, especially if there's a quorum. Centralizing the hearings detracts from local communities – right now the hearings are right in the community affected. Also, please think about the cumulative effect of the provisions you are adding and the burden you are placing on potential board members. They've agreed to 8 2-day board meetings a year plus 1 to 2 days of preparation, but they all have other jobs. It's not just a question that you are paying them a part-time salary. The question is, can they be out of their office for 20-50 days a year? Will their employer allow it?
- Barnett: If community members show up to the public hearing it becomes a show of passion. While sometimes there are facts involved, sometimes there are not. I am not

sure this will improve the decision making process. Public hearing sounds like a great idea, but in reality it may not be accomplished.

- Lenhoff: Part of the arguments against these hearings focus on cost containment. They could ramp up cost of the applicant. However there may be some value in community members communicating in person to the board. Some community members are not able to put their opinion into writing. However, the board members are doing a lot of work. We don't want to expand the burden on the board. While it seems there is not a lot to be gained, there is a lot to lose.
- Sen. Garrett: **Motion** - At least one board member must be present at the public hearing, and it is only required for those requiring full CON Board Review.
 - Seconded by Rep. Lang
 - (General): Consensus
- Sen. Garrett: We should encourage board members to be there. One of the concerns is that what happens if at the last minute the one board member that is supposed to be there can't go.
- DeWeese: A comparison to Legislative hearings is helpful, there are times when only staff show up, but usually at minimum the chairman shows. There is a need for one of them to be there, it signifies the importance.
- Rep. Lang: Part of this regards the requesting of hearings. If we are going to do this, then we have to have some definition fully of how a hearing is requested and how to get the info out to the community so that they can request it, there should somehow be public notice.
- McAlpine: Anything else in 18-28?
- Devlin: The process of how the community is notified. If an applicant has applied to the CON board then shouldn't the state representatives and senators be automatically notified when a full application is received.
- DeWeese: The limitation is that the applicant is not necessarily from the place where the hospital is located.
- Robbins: Wouldn't they themselves go to their legislator?
- Rep. Lang: The problem is that people don't know about the process. Claudia Lenhoff talked about her groups and how they come and testify, but that is because they know how to do it. I'm not suggesting we train them, I'm requesting that there is public notice.
- Mark: First, when an application is received we post a status. Second, in terms of opportunity for public notice, a "public notice for opportunity for public hearing" is posted in local newspaper.
- Devlin: The department doesn't currently have technology available to sign on to a list serve, but this may further the cause of transparency.
- Mark: If we publish this on a weekly basis then why do we have to send this to a group of people. We did have something like that, but we stopped, because it was going to a select group of people, which seemed unfair.

Sunset Provision

McAlpine: Anything else 18-28?

Ruddick: The sunset provision harmful in terms of retention of staff. Did we address that?

- DeWeese: We talked about that. In the event that there would be some type of transition process defined, there is timing and logistics involved.

- McAlpine: We can hold this until we get to that section.

CON Process and Scope of Reforms ,Point 27

Carvalho: What is point 27 intended to do? Currently, any denied applicant can request an appeal, why is it flipped in the draft?

- DeWeese: This goes back to how these projects would be determined or provided. It concerns the rights of the applicant once a decision is made.
- McAlpine: Should we take 27 out?
- Lenhoff: Yes.
- Rep. Lang: We need something in there about the right to appeal.
- Carvalho: Any applicant has the right to appeal under the Administrative Review Act. Now, if the CON board turns you down you can ask for administrative review. The Administrative Law Judge (ALJ) hears your case and make recommendations. It is basically an opportunity for the CON board to hear from the ALJ, and decide accordingly.
- (General): Consensus

CON Process and Scope of Reforms, Point 24

Carvalho: I am not sure what point 24 is intended to do.

- DeWeese: This will be clarified later with charity care. In the process of an application there may be commitments/evidence and this is a way to address that. If there were other ways the applicant could show what they were doing...we will go back after charity care.

CON Process and Scope of Reforms, Point 19

Ruddick: Number 19, we already shortened this with eliminating the letter of intent, but does this further shorten it?

- Mark: the short answer to your question is yes

CON Process and Scope of Reforms, Point 20

Ruddick: Number 20, in terms of moving beds around, does that allow you to discontinue a whole medical service in a hospital as long as you kept those beds for something else, which would become non-substantive? And that would mean that under 19 the period would be shorter? I'm a little confused about what 19 actually means, is it that we would keep the 60 and 120 days, but more would tend to fall in the 60 days?

- DeWeese: We didn't specify a new timeframe, but certainly the new testimony occurring now is too long. It was more a general statement of intent, not making a specific timeframe.
- McAlpine: We are relooking at 19 and 20 in our small group, let us also look at 18 and 22.
- Ruddick: We don't want to go too far in one direction.

CON Process and Scope of Reforms, Point 28

Consensus

CON Board Responsibilities, Point 29

McAlpine: According to survey results, there was 100 percent agreement.

Cox: Any denial of the CON should have a written denial. A written opinion will provide more compliance.

- Carvalho: The considerations for you and the applicants is how you get to a written statement from a board meeting. If the board meeting is on July 1st, how does that turn into a written decision? Following the vote, someone has to write it, it has to be submitted to the board for approval, they all have to agree. That means, the written decision won't actually be issued until the meeting after the decision is made. If that is what you want to do, the agency will find a way to do it. However, from the applicant's position, they only get verbal communication the first time, then they wait, sometimes there are changes, etc. There are pros and cons for a written statement.
- Rep. Lang: We could propose a hybrid. The applicant could have to request a written decision. This way the burden is not on the board, the application makes that choice.
- DeWeese: Part of the discussion concerned the arbitrariness. People would like a record to refer back to in order to see what was decided and how they decided it. It seemed that creating a record would enact some kind of consistency. People can then refer back to something beyond simply the vote.
- Rep. Dugan: I try to look at this board as any board that makes a decision that affects whether or not something can happen. The concern is that there is no cohesiveness. Either they approve or they don't approve because of a list of variables. It shouldn't be that complicated to create.
- Sen. Garrett: You could simply refer to the testimony.
- Robbins: You get the board making a decision, you then appeal to an administrative judge, then they present it to the board, they give reasonable findings, and then it goes back to the board. If you were going to have a written record of decision, they'd want something on record that could go to the board on appeal.
- Carvalho: In the case of a denial the applicant could request administrative review. The ALJ writes an opinion, that opinion goes to the board, and the board moves to adopt or disagree with the ALJ. I don't have any problem from a policy perspective. The tricky part is, do you want a written decision if they approve something? If they only write it if they don't approve it, that would be more workable; otherwise, there could be a lag between meetings, etc.
- Robbins: I would like to have the record
- Cox: Wouldn't it be better to have that instead of trying to recreate a record?
- DeWeese: This recommendation has more of a bearing on those denials. Denials may prompt a more cumbersome approach from the board.
- Cox: The Chairman could write it
- Sen. Garrett: It could be like a Supreme Court decision, one from those who supported the decision, one from those who didn't support the decision.
- Rep. Dugan: Do we have consensus? If requested, a written decision should be given to the applicant – added to 29.

CON Board Responsibilities, Points 30, 31 and 32

McAlpine: Anything concerning points 30, 31, or 32?

(General): No.

Board Chairman Responsibilities, Point 36

McAlpine: According to survey results, there was 100% agreement on points 33-36.

Ruddick: In point 36, what does the consent agenda actually mean?

- McAlpine: The consent agenda is drafted prior to a board meeting. Members are told that all items won't be discussed unless someone requests it; this could include executive director reports, minutes, etc. They can pull it out to the agenda for conversation, but expectation is that they look those items and know they will not address them unless they request to do so in the meeting.
- Carvalho: Run of the mill, non-controversial applications could be put on this.
- (General): Consensus

Staff Responsibilities, Point 37

DeWeese: Family members, etc. clause is too broad.

- McAlpine: It refers to immediate family.
- Carvalho: Currently, you can't even serve on the board if a family member works as a nurse, janitor, etc. It's not a matter of declaring a conflict of interest – you can't serve on the board. That rule currently applies to the board. This proposal would apply that to staff, too. Staff are already covered by conflict of interest rules - they recuse themselves, for example, if their spouse works for a hospital and that hospital is involved as an applicant or opponent or supporter.
- Carvalho: During the testimony, this was discussed with respect to board members. Mr. Poshard highlighted the problem downstate due to health care facilities being the largest employer and this provision puts a lot of people "out of the box" for serving on the board. This proposal would extend that problem to employees, too.
- Rep. Lang: This ought to mirror other statutes we have, such as those applying to the pollution control board or the gaming board.
- Sen. Garrett: It might be in the ethics section.
- Sen. Garrett: What about disclosure? We could have the same things as the economic interest statement, but I am not sure if that needs to go down into the staff.
- Schaps: They should recuse themselves.
- Carvalho: They do recuse themselves.
- McAlpine: Page 16 (g), "may not have a financial interest..."
- Carvalho: This is a learned borrowing from the gaming commission and I can understand why it might make sense there. In the facilities planning process you're wiping out anyone that has a family member who works in a nursing home, etc., from even being employed in the program.
- Sen. Garrett: It should be full disclosure and then they must recuse themselves.
- Carvalho: I would go one step further I have always thought they should declare a conflict, explain the nature of the conflict and then recuse themselves (not just "walk away").
- McAlpine: This will include spouses and other members of the immediate family.
- Rep. Lang: How do you define immediate family?
- McAlpine: Parent, child, sibling, spouse.

Staff Responsibilities, Point 38

- McAlpine: This will be changed based on feedback. Minute/tape recordings of the meeting by applicant/staff, later if the project is submitted as an application, then they must submit minutes/tape recording.
- (General): Consensus

Staff Responsibilities, Point 40

McAlpine: There were no changes to 39, 40 or 41.

Carvalho: Point 40 is where we are trying to fix the problem of dropping this on staff 2 days before the board meeting.

- DeWeese: I am unsure about logistics, specifically about whether this is a long enough time period.
- Carvalho: This is something that was brought up as being broken in the hearing.
- Rep. Lang: There are several weeks between public hearing and the board meeting. Is 2 weeks enough time from that cut off?
- Mark: As of now, the staff prepares a report of findings. This is their statement of whether the application complies. We review it, determine whether the applicant is compliant or non-compliant.
- Rep. Lang: The question is, can they do it in 14 days?
- Rep. Lang: They could be required to do it in 14 days unless they can prove that it isn't possible.
- Mark: It would certainly be better than it is now.
- (General): Consensus to leave it as it is.

Staff Responsibilities, Point 41:

Rep. Lang: The staff will report on a monthly basis, are they subjected to public scrutiny?

- Mark: Board meetings occur once every 6 weeks, we need a quorum.
- Rep. Lang: You don't need a quorum to have a meeting. They could meet whether there is a quorum or not and do whatever work can be done. All of this will work toward an open and transparent program.
- Lenhoff: Should this be changed to reflect the current practice?
- McAlpine: We will add that the board meet every six weeks with quorum.
- Rep. Lang: Right now, they post weekly on the website, but it should be statutory.
- McAlpine: We will put in the statute that they must post weekly and meet at scheduled meetings every 6 weeks.
- Sen. Garrett: This is important to emphasize because one of the things we heard was that the board members weren't showing up to the meetings.

Predictability and Accountability, Point 45

Carvalho: Right now it is written "to be completed" 18 months after the Board members convene. But this is something that takes 6 months to do; we should change it to "to be commenced 18 months..."

- (General): Consensus

Charity Care, Points 46-49

- McAlpine: This will replace points 46-49.
- McNary: I move to adopt these points.
- Robbins: 47 (a) and (b) are only slightly altered from hospital association...[summary of agreement reached with hospital association].

Charity Care, Point 49 (c)

Barnett: 49 c, this is a requirement that hospitals report Medicaid.

- Robbins: We will add language in the last sentence of 49 (b) to the second sentence in 49 (c).
- Sen. Garrett: Thank you very much for those who labored over this.

Charity Care, Definition of Charity Care

Rep. Lang: What counts as charity care? Is it only if the facility offers charity care upfront that it counts as charity care? What about the person that loses their job and can't pay? The facility then has to write it off to bad debt. I'd argue for a more expansive definition to include bad debt.

- Robbins: I thought there was a definition in the statute. Section 3 of the Act details this. Rather than get into a discussion of what counts and what doesn't count, we will make a note of this particular act. Rep. Lang's point is addressed in the body of the information.
- Rep. Lang: As long as it's covered then it's ok.
- DeWeese: What if their circumstances change?
- Robbins: We will have more applications as the economy worsens. Where there are conflicts of applications, it is usually between the applicant hospital and a competitive hospital. There will be a safety net impact statement, and there will be a safety net response.
- Cox: Is this going to apply to everybody?
- Robbins: The only exclusion is long term care.
- Carvalho: If you have a community where there are 2 hospitals that take up demand for the community, anyone new would be denied. However, what if those facilities don't provide care to Medicare, Medicaid or charity care impacts – would this impact the decision at all?
- Robbins: This would impact the hospital.
- Carvalho: If there is a benefit to the safety net, then there would not be a bar to the application.
- Rep. Dugan: But if there is no need, then they will not be approved.
- Barnett: Even if there is not a need, they can still offer a review.

Substantive versus Non-Substantive

Ruddick: How big of an impact this has or doesn't have is fine, but this mentions only if it applies as a substantive project...

- Robbins: The safety net would have to be filed even if there is not a substantive claim of services.
- McAlpine: We will need to discuss this is if we move around what is substantive and non-substantive.

Next Steps

- Sen. Garrett: We should change the meeting on 12/19 to 10 to 3.
- McAlpine: We will go over long term care, a few elements of the CON Board, ex parte, compensation, whether the CON board is inside or outside IDPH, and take a look at the amendments.

Meeting Adjourned, 4pm

Minutes respectfully submitted by Stephanie Hedquist