

August 29, 2011

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AUG 30 2011

Courtney R. Avery
Administrator
Illinois Health Facilities and Services Review
Board
525 West Jefferson Street
2nd Floor
Springfield, IL 62761

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

**Re: Project No. 10-090, Centegra Hospital-Huntley
Scheduling of Project for Review Board Consideration**

Dear Ms. Avery:

Thank you for your courtesy call on August 19, 2011 advising of the intent to reschedule Project No. 10-090, Centegra Hospital-Huntley from the October 12-13, 2011 Review Board meeting to the November 22, 2011 Review Board meeting.

While my clients Centegra Health System and Centegra Hospital-Huntley (collectively "Centegra") would prefer to remain on the October agenda, we understand that the Review Board has substantial discretion over its docket and the scheduling of projects for consideration. We also appreciate the efforts of the Review Board and its staff to ensure that projects are reviewed in conformance with the requirements of the Health Facilities Planning Act and the Review Board's rules. In connection with the scheduling of Centegra Hospital-Huntley there are some technical matters relating to the processing of our application that I would like to take this opportunity to address.

First, we have noticed that there has been a procedural linkage between our project, Centegra Hospital-Huntley, and another project, namely, Mercy Crystal Lake Hospital & Medical Center, Project No. 10-089. On occasions when the Mercy application has lagged behind ours, either the Mercy application has been advanced in the review process or the Centegra Hospital-Huntley project has been delayed in order that the two projects remain together for purposes of Review Board consideration. This first occurred shortly after the two applications were filed on December 29, 2010. The Centegra Hospital-Huntley application was complete when filed on December 29, 2010 and appropriately deemed complete on January 10, 2011. The Mercy Crystal Lake application did not meet the requirements for completeness when filed, and Mercy was still in the process of completing its CON application as late as May 13, 2011, when it finally submitted its Attachment 37

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addressing the review criteria relating to Clinical Services Areas Other Than Categories of Service under Criterion 1110.3030. This Attachment should have been filed with the original application in order to meet completeness requirements. Nevertheless, the Mercy application was deemed complete on January 11, 2011, the same day as Centegra's application. This allowed the Mercy application to enter the review process at the same time as Centegra's application even though the Mercy application was not complete until four months later.

A second occurrence followed the Intents-to-Deny issued for the projects on June 28, 2011. Both projects were tentatively scheduled for the October 12-13, 2011 Review Board meeting. The Mercy applicants then made major modifications to their CON application, including a Type A modification that required an opportunity for another public hearing, extended the review process, and resulted in a rescheduling of the project to the November Review Board meeting. Centegra, on the other hand, made no modifications to its project, is not having another public hearing, and did nothing that would have caused its project to be moved off of the October agenda. Again, we recognize the Review Board's discretion in scheduling the projects before it. The linkage though in the processing and scheduling of Centegra Hospital-Huntley and Mercy has resulted in the Mercy application beginning the review process sooner than otherwise while causing the Centegra project to be heard later than otherwise.

Another consequence of rescheduling Centegra's project due to Mercy's modification is that Centegra will lose its opportunity for an applicant deferral. Under the Review Board's rules, an applicant is entitled to defer consideration of its project but may not defer beyond a Review Board meeting that is more than six months from the date of the issuance of the Intent-to-Deny. (77 Ill. Adm. Code 1130.670(d).) The November 22nd Review Board meeting is the last scheduled meeting that is within six months from the date of the issuance of the Intent-to-Deny that was issued on June 28, 2011. Centegra would have the right to an applicant deferral at the October meeting, but not the November meeting.

If the Review Board in its discretion schedules Centegra Hospital-Huntley for the November 2011 meeting, then of course Centegra will present the project at that time. We only request that to the extent the Review Board keeps Centegra Hospital-Huntley and the Mercy project together in the review process, measures be taken to assure that the process does not advantage one project while disadvantaging another.

I greatly appreciate your comment during our conversation on August 19th affirming that Centegra Hospital-Huntley and Mercy's project will not be subjected to comparative review or "batched." The Review Board's rules require that each project be reviewed and considered on an individual basis, and comparative review or batching is not permissible. (77 Ill. Adm. Code 1130.620(e)(2).) A project that substantially conforms to the Review Board's criteria should be approved, and a project that does not substantially conform to the

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criteria should be denied. I note that on numerous occasions Mercy representatives have invited comparative review of the two projects. Centegra has been careful to avoid such comparisons and fully endorses the prohibition against comparative review. Again, we appreciate the Review Board's assurance that the projects will be reviewed on their respective individual merits and not be subjected to comparative review.

With these considerations, the Centegra applicants are confident that the Review Board will continue to process the Centegra Hospital-Huntley project in conformance with the provisions of the Planning Act and Review Board's rules. Please advise me of the date, time and place for consideration of Centegra Hospital-Huntley, Project No. 10-090 when they are confirmed. Again, thank you for your courtesy call of August 19th and your consideration of the concerns expressed in this letter.

Very truly yours,

K&L GATES LLP



Daniel J. Lawler

DJL:dp

cc: Mr. Frank Urso
Mr. Michael Constantino
Ms. Andrea Rozran, Diversified Health Resources
Ms. Hadley Streng, Centegra Health System