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HEALTH FACILITIES & SERVICES REVIEW BOARD

Before The
HEALTH FACILITIES AND SERVICES REVIEW BOARD
State of Illinois

HEALTH FACILITIES AND SERVICES REVIEW BOARD, Complainant, v. MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, INC. and MERCY ALLIANCE, INC., Project No. 10-089, Respondents.	)	**Docket No. HFSRB #12-01**

CENTEGRA'S EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS TO ALJ'S PROPOSAL FOR DECISION

Intervenors Centegra Health System, Centegra Hospital-McHenry and Centegra Hospital-Woodstock (collectively "Centegra"), by their attorneys K&L Gates LLP, respectfully submit the following Exceptions to the Proposal for Decision of Administrative Law Judge ("ALJ") Richard E. Hart on Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center issued on May 23, 2012:

Background

The applicants Mercy Crystal Lake Hospital and Medical Center Corporation and Mercy Alliance, Inc. (collectively "Mercy") seek to build an undersized hospital in Crystal Lake that could only survive by cannibalizing the patient volumes of two existing hospitals that are even *closer* to some areas of Crystal Lake than Mercy's proposed project, namely, Centegra Hospital-Woodstock and Centegra Hospital-McHenry, Illinois.

Mercy originally proposed a 128-bed hospital that, while non-compliant with a number of Review Criteria, at least met the minimum bed unit size for the Medical/Surgical and Obstetrics

("OB") categories of service. However, after the State Board issued an Intent-to-Deny following a vote of 1 to 8 against the project, Mercy drastically downsized the project so that both the Medical/Surgical and the OB units were far below the State's mandatory minimum size requirements. The newly proposed 56-bed Medical/Surgical unit does not meet the State Board's 100-bed minimum, and the 10-bed OB unit is only half the size of the State Board's 20-bed minimum requirement.

Mercy plans to fill its hospital by having its employed physicians with admitting privileges at Centegra's hospitals redirect virtually all of their patient referrals away from Centegra to the Mercy hospital even though this would require the vast majority of these patients to travel past Centegra's existing hospitals in order to get to Mercy Crystal Lake. In fact, a large number of these patients actually live in Woodstock and McHenry and they would have to forego the hospitals in their own hometowns and travel to Crystal Lake under Mercy's strong-arm referral plan.

Even though Mercy downsized its project, the severe negative impact it would have on Centegra's two nearby hospitals was not diminished at all. To justify its initial 128-bed proposal, Mercy relied on 42 physician referral letters that promised to redirect 3,368 patients away from Centegra's hospitals to the Mercy facility. The downsized 70-bed hospital proposal relies on the same 42 letters and 3,368 Centegra patients as justification. Redirection of patients from Centegra's two hospitals represents nearly 90% of the total patient referrals to Mercy's proposed facility.

On December 7, 2011 the State Board considered the modified Mercy project and a motion for approval failed to pass by a vote of 2 to 6. The State Board issued its written decision in a letter dated December 9, 2011 and notified Mercy of its right under Section 10 of the Illinois

Health Facilities Planning act ("Planning Act") to a hearing before an Administrative Law Judge ("ALJ").

Mercy waited nearly a month to file its request for a hearing before an ALJ, and then agreed to an initial pre-hearing conference that was not scheduled until March 14, 2012. At the initial prehearing conference on March 14th, Mercy did not request that the ALJ schedule dates for the administrative hearing but rather agreed to the matter being set over to May 2, 2012 for a status hearing. Mercy never requested ALJ Hart to set a hearing date on Mercy's administrative appeal from the State Board's denial of its permit application and instead requested ALJ Hart remand this matter back to the State Board without a hearing.

On May 23, 2012, ALJ Hart issued his Proposal for Decision in which he recommended that the State Board correct Mercy's record and reconsider Mercy's application for permit with the corrected record. ALJ Hart determined that Mercy's project file contained a market study prepared by Krentz Consulting for Centegra Hospital-Huntley, Project No. 10-090 (the "Krentz Centegra Study") and did not contain a market study prepared by Krentz Consulting for the Mercy project (the "Krentz Mercy Study").

Centegra respectfully submits the following exceptions to the Proposal for Decision. If the State Board votes to adopt the Proposal for Decision to reconsider Mercy's project, Centegra respectfully requests that the State Board deny the application for permit in Mercy Crystal Lake Hospital and Medical Center, Project No. 10-089 on the grounds that the project is not in substantial compliance with the State Board's Review Criteria, as more fully addressed below.

Argument

I. The Proposal For Decision May Establish Adverse Precedent

In remanding this matter to the State Board based on the alleged misfiling of documents, ALJ Hart specifically found that, "The issue of fault or responsibility for the misfiling is

irrelevant unless it was intentional, which it does not appear to be." By excusing parties responsible for misfilings from the consequences of their actions, the ALJ effectively imposes adverse and potentially severe consequences on other parties to the proceedings.

In the present proceeding, the Intervenor Advocate Hospitals and Health Corporation ("Advocate") and its attorneys were responsible for the submission of the documents allegedly misfiled. Yet, the Proposal for Decision will subject *all* parties to the proceeding to the cost of delay caused by the remand. Moreover, the only way a party could avoid such costly delays in the future would be to monitor all filings by all persons in all projects before the State Board to assure none were misfiled. This would be a literally impossible burden. Centegra takes exception to the Proposal for Decision for this reason.[1]

Here, the State Board's Staff filed the Krentz studies as directed by the attorneys for Advocate. Even if the Krentz studies were misfiled, Advocate's attorneys had ample notice of the filing from the Board's Staff and could have easily resubmitted the Krentz Mercy Study if they had thought the study was important enough to be considered by the State Board when it voted on Mercy's project. The fact that Advocate took no action to correct the alleged error in filing even after having notice shows that Advocate's own attorneys did not consider the Krentz Mercy Study to be worth the effort of resubmitting it into the Mercy project file.

A. The State Board's Staff Properly Filed The Krentz Documents As Directed By Advocate's Attorneys

The document that ALJ Hart proposes to *remove* from the Mercy project file was entitled "Market Assessment and Impact Study, Proposed Centegra-Huntley Hospital (Project 10-090)," and was prepared by Krentz Consulting and dated May 24, 2011 (the "Krentz Centegra Study").

[1] Centegra's submissions to ALJ Hart in this matter on March 26, 27 and 28, 2012, asserted additional objections to a remand of this matter to the State Board that are included in the administrative record submitted with ALJ Hart's proposal for decision.

The document that ALJ Hart proposes to *include* in the Mercy project file is entitled "Market Assessment and Impact Study, Proposed Mercy Crystal Lake Hospital" and was also prepared by Krentz and dated May 24, 2011 (the "Krentz Mercy Study").

The Krentz Centegra Study is one of three different Krentz studies submitted into Mercy's project file by Advocate and its allies. The other two, one of which is yet another Krentz Study on the *Centegra* project, are:

1. "Financial Impact Study, Proposed Mercy Crystal Lake Hospital dated May 25, 2011 and (Project 10-089)," submitted via email by Joe Ourth on June 2, 2011;

2. "Assessment of Utilization, Population Growth, and Applicant Arguments of Impact on Existing Providers, Proposed Centegra Hospital-Huntley (Project No. 10-090)," dated November 11, 2011 submitted by Joe Ourth via email on November 6, 2011.

Advocate's attorney, Mr. Joe Ourth, submitted the Krentz Centegra Study dated May 24, 2011 *and* the Krentz Centegra Study dated November 11, 2011 to the State Board's Staff with a cover letter and email, respectively, directing that they be filed in the *Mercy* project file. Conversely, Mr. Ourth sent the State Board's Staff the Krentz Mercy Study dated May 24, 2011 with a cover letter also dated June 2, 2011, directing the Staff to file that document in the *Centegra* project file.

Under Illinois law, public agencies are presumed to have properly performed their statutory duties and the burden to overcome that presumption is on the one asserting agency malfeasance. *Village of Hillside v. John Sexton Sand & Gravel Corp.*, 113 Ill. App. 3d 807, 447 N.E.2d 1047 (1st Dist. 1983); *Advanced Systems, Inc. v. Johnson,* 126 Ill.2d 484, 535 N.E.2d 797 (1989). The State Board's Staff has a statutory duty to post on the Board's website "notices of project-related filings, including notice of public comments related to the [permit] application." 20 ILCS 3960/12.2(1.5). The Staff is presumed to have properly performed this duty with respect to Mr. Ourth's submissions of June 2, 2012 and no competent

evidence has been submitted to overcome this presumption. On the other hand, there is ample evidence proving that Mr. Ourth repeatedly erred in submitting documents to the State Board in both the Mercy project and the Centegra project.

Even if there was a mistake in connection with Mr. Ourth's submissions on behalf of Advocate, the burden of correcting that mistake rested entirely with Mr. Ourth and his client, both of whom had actual notice as early as June 2011 that the Krentz Mercy Study dated May 24, 2011 was not in the Mercy project file.

B. Under The State Board's Rules, Advocate And Its Attorneys Were Responsible To Assure That Documents They Submitted Were Timely Received Into The Project File Intended

Advocate and its attorneys had a personal responsibility and affirmative obligation under the State Board's rules to assure that the State Board's Staff had received any comments they submitted within the required timeframes. Section 1130.950(b) of the Board's rules state, "Persons submitting comments are responsible for assuring that the Board's Staff at IDPH receive the comments within the prescribed time frame." 77 Ill. Adm. Code 1130.950(b).

At the time Mr. Ourth submitted the Krentz Mercy Study on June 2, 2011, the State Board had established June 8, 2011 as the deadline for written comments and, after the Mercy project received an intent-to-deny at the June 28, 2011 State Board meeting, the Board re-opened the written comment period which was eventually extended to November 16, 2011. During that entire time, the Staff's public postings of Mr. Ourth's June 2nd submissions remained on the Board's website, and continued to show that the Krentz Mercy Study was *not* in the Mercy project file, and *was* in the Centegra project file. Advocate and its attorneys did nothing to assure that the document was received into the Mercy project file by either the June 8th or the November 16th deadlines, and failed to meet their obligations under the Section 1130.950(b) of the State Board's rules.

C. Advocate And Its Attorneys Had Actual Notice In Early June 2011 That The Krentz Mercy Study Was Not In The Mercy Project File, And They Did Nothing

Under the Illinois Health Facilities Planning Act, the State Board's Staff is required to post on the Board's web site "notices of project-related filings, including notice of public comments related to the application." 20 ILCS 3960/12.2(1.5). Mr. Ourth's June 2, 2011 cover letter and the Krentz Mercy Study were "public comments related to the application" within the meaning of this provision. In accordance with its statutory duty, the State Board's Staff provided notice of the submission of these two documents on the State Board's website within a week of receipt by posting links on its website to PDF files of the full documents. *(See* Appendix 1, Exhibit H, Attachment ¶10.) At that point, Mr. Ourth, Advocate and the public at large had actual notice that the Krentz Mercy Study was not posted under the Mercy project, and was posted under the Centegra project.

Simple ordinary prudence compelled Advocate and its attorneys to insure that documents they submitted to the State Board found their way into the intended project files. *See, Villapiano v. Better Brands of Ill., Inc.*, 26 Ill. App. 3d 512, 516, 325 N.E.2d 722, 725 (1st Dist. 1975)("If it appears a party having knowledge or information of facts sufficient to put a prudent man upon inquiry wholly neglects to make any inquiry, the inference of actual notice is necessary and absolute").

The State Board's Staff provides ample notice and opportunity to allow anyone submitting written comments to confirm they are correctly filed. The Staff allows anyone to check on the status and correct filing of submissions received into a project file. The Staff is highly responsive to these inquiries and quickly corrects any mistakes brought to its attention.

The Staff's posted notices of filed documents in early June show that the Krentz Mercy Study was filed in the Centegra project file and not the Mercy project file ***and that notice was on***

the State Board's website every single day through the close of the final written comment period on November 16, 2011 *(and remains there even to this day).* Advocate's attorneys had over 150 consecutive days of this notice in which they could have properly included the Krentz Mercy Study into the Mercy project file but they failed to do so.

D. Advocate's Attorneys Repeatedly Confused The Centegra And Mercy Projects In Their Submissions To The State Board

Even if the State Board's Staff had mistakenly placed the Krentz Mercy Study into the Centegra project file (and there is no evidence whatsoever by any party that the Staff made such a mistake), it could hardly have been blamed because the project files show that Mr. Ourth repeatedly misidentified the Centegra and Mercy projects in his submissions to the State Board.

In addition to the three different Krentz reports Mr. Ourth submitted into the Mercy project file, he also submitted three Krentz reports into the Centegra project file. As often as not, Mr. Ourth confused the project numbers and names as well as the reports:

Mercy Project File

1. In the Subject line of his June 2, 2011 email to Mike Constantino with Advocate's Safety Net Impact Statement Response ("Response"), Mr. Ourth identified the Response as being for Centegra Hospital-Huntley, not Mercy Crystal Lake, even though the attached Krentz report was for Mercy Crystal Lake. He also attached the Mercy project number to the Centegra project.

2. In the Subject line of his November 16, 2011 email to Mike Constantino containing the Krentz "Assessment of Population Growth [etc.]" for the Centegra project, Mr. Ourth referenced "Project No. 10-0890" which was an agglomeration of the Centegra project number (10-090) and the Mercy project number (10-089). (Note that Mr. Ourth here *intentionally* submitted the Krentz Assessment for the *Centegra* project into the *Mercy* project file.)

3. In the body of the above November 16, 2011 email to Mike Constantino, Mr. Ourth attached the Mercy project number (10-089) to the name of the Centegra project name.

Centegra Project File

4. In the Subject line of his June 2, 2011 email to Mike Constantino with the Safety Net Impact Statement Response that included the Krentz Financial Impact Study for the Centegra project, Mr. Ourth attached the Mercy project number (10-089) to the name of the Centegra project name.

Mr. Ourth's repeated errors and confusion in identifying the two project names and numbers, combined with his erroneous reference to the Krentz reports, together with his *intentional* submission of the Krentz Centegra Study dated November 11, 2011 into the Mercy project file, made his submissions of multiple Krentz reports a matter of pure guess-work as to which project file he subjectively intended the reports to be directed. It also imposed an even greater burden on Mr. Ourth to clarify, assure and confirm with the State Board's Staff that his submissions were directed to the project file that he intended.

Advocate's attorneys even mixed-up the two Krentz studies dated May 24, 2011 in sworn affidavits they submitted to ALJ Hart when attempting to shift blame for the alleged misfiling to the State Board's Staff. In affidavits signed on March 16, 2012, Mr. Ourth and his assistant swore under oath that they sent to the State Board's office for submission into the Mercy project file a cover letter dated June 2, 2011 from Mr. Ourth which is described in the affidavits as "a letter enclosing a Market Assessment and Impact Study for Mercy Crystal Lake Hospital, Project No. 10-089" and identified as Exhibit C to the affidavits, and that they attached to this letter the "Market Assessment and Impact Study – Proposal Mercy Crystal Lake Hospital (Project No. 10-089) identified as Exhibit D to the affidavits. However, the cover page of Exhibit D is in fact the cover page for the Krentz *Centegra* Study dated May 24, 2011 and *not* the Krentz *Mercy* Study as stated in Mr. Ourth's sworn affidavit and his assistant's. The two affidavits are included as Attachment A hereto.

To summarize, the Proposal for Decision may establish bad precedent if project files are deemed in "error" based on misfiled documents especially where, as here, the party responsible for submitting the document had ample notice of the alleged misfiling and took no action whatsoever to correct its mistakes.

II. If The State Board Adopts The ALJ's Proposal For Decision And Schedules Mercy's Project For Reconsideration, The Project Should Be Denied

If the State Board adopts the ALJ's Proposal for Decision and conducts a reconsideration of Mercy's project, the project should be denied. The project is not in substantial compliance with the State Board's Review Criterion. In addition, approval of the project could not be sustained in court especially given that the Illinois Circuit Court *reversed* the decision of the State Board's predecessor agency, the Illinois Health Facility Planning Board ("Planning Board") which had issued a permit to Mercy in 2004 for a 70-bed hospital in Crystal Lake that was *identical* to the project now before the State Board.

A. The Mercy Project Fails To Meet The Performance Requirement Criteria

In its initial denial of Mercy's project on December 7, 2011, the State Board found that Mercy did not meet the criteria requiring that a new Medical/Surgical unit have at least 100 beds and that a new OB unit have at least 20 beds. Mercy is proposing only 56 Medical/Surgical beds and 10 OB beds. This alone requires the denial of Mercy's application as the identical arguments raised by Mercy to justify this undersized hospital have been previously adjudicated against Mercy by the Circuit Court of McHenry County in a final judgment on the merits.

When Mercy downsized its current project from a 128-bed hospital to a 70-bed hospital, it did not bother to come up with a new design. Instead, it submitted the architectural drawings it had used for the hospital it proposed in a 2003 application designated as Project No. 03-049, Mercy Crystal Lake Hospital and Medical Center. In fact, Mercy's modified proposal is now

identical to the project it applied for in 2003. Project No. 03-049 was approved by the Planning Board in April 2004. Subsequently however Mercy's contractor, its lawyer, and the Planning Board's Vice-Chairman were indicted on federal corruption charges. Mercy's contractor and the Board's Vice-Chairman later pled guilty to charges that the contractor had promised a $1 million plus bribe to the Vice-Chairman to use his influence on the Board to obtain Mercy's CON permit in Project No. 03-049. Mercy's lawyer pled guilty to charges relating to other corrupt pay-to-play schemes involving State government.

Centegra filed a complaint against Mercy and the Planning Board to reverse the permit issued on Project No. 03-049. While the corruption allegations were raised in that litigation, the Circuit Court decided the case on the merits of Mercy's application, or rather, on its lack of merit. The Court determined that the Planning Board's decision to issue a permit to Mercy for a 70-bed hospital in Crystal Lake was against the manifest weight of the evidence and was arbitrary and capricious. In attempting to sustain the permit issued for Project No. 03-049, Mercy asserted identical arguments to those it now raises in Project No. 10-089 in justification of the same undersized hospital. The Circuit Court rejected each and every argument raised by Mercy to justify the 70-bed hospital and entered judgment reversing the Planning Board's decision to issue a permit. Mercy did not appeal that judgment. As a result, the Court's decision became a final judgment on the merits. A copy of the Circuit Court's Memorandum Opinion and Order dated May 6, 2005 is attached as Attachment B hereto and appears in the Administrative Record at R. 2326.

Just as it did in 2003, Mercy claims once again that the minimum unit size regulations are "outdated," that patient length of stays have declined, and that a hospital of 70-beds could deliver the same level of care as a 100-bed hospital of the 1980s. The Circuit Court rejected each of

these claims and noted, among other things, that the minimum bed size rule was established in 1992, not in the 1980s as Mercy claimed. Since the filing of the first Mercy application in 2003 and the Circuit Court's decision sustaining the 100-bed minimum rule in 2004, the State Board evaluated and affirmed its minimum unit size rules when it amended the review criteria in 2009. Consequently, Mercy's argument that the rules are "outdated" is even weaker now than in the 2003 project, and the current regulations on minimum bed requirements would certainly be sustained in Court once again.

Mercy's other argument to sustain its permit on the 2003 project was its claim of a "physician shortage" in Crystal Lake that the proposed hospital would somehow remedy. In reversing the Planning Board's decision, the Circuit Court found that the Board had no criteria addressing physician shortages and that its reliance on this factor in issuing a permit to Mercy was "arbitrary and capricious." (Memorandum Opinion and Order at pages 15 to 18.) The Court further observed that while Mercy claimed a 45 physician shortage in the region, its own documentation showed that Crystal Lake itself had no physician shortage. Memorandum Opinion and Order at page 16.

In the present application, Mercy now claims there is a 49 physician shortage in McHenry County based on Thomson Reuters data. As before, this still is not a factor that would justify a new hospital under the State Board's criteria. Moreover, Thomson Reuters data show that, in fact, there is no physician shortage in Crystal Lake.

The Court's judgment in the prior litigation reinforces the correctness of the current State Board's decision to deny Mercy's repeat application for a 70-bed hospital in Crystal Lake. Consequently, the State Board's decision to deny Project No. 10-089 should be affirmed.

B. Mercy Failed To Meet The Planning Area Need Criterion

The State Board's denial of Mercy's application was also based on the State Agency's finding that the proposed project did not meet the Service Accessibility component of Criterion 1110.530(b)(5). This criterion requires an applicant to document that at least one of the following factors exist in the planning area:

i) The absence of the proposed service within the planning area;

ii) Access limitations due to payor status of patients, including, but not limited to, individuals with health care coverage through Medicare, Medicaid, managed care or charity care;

iii) Restrictive admission policies of existing providers;

iv) The area population and existing care system exhibit indicators of medical care problems, such as an average family income level below the State average poverty level, high infant mortality, or designation by the Secretary of Health and Human Services as a Health Professional Shortage Area, a Medically Underserved Area, or a Medically Underserved Population; and

v) For purposes of this subsection (b)(5) only, all services within the 45-minute normal travel time meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100.

As to the above criteria, Mercy did not present evidence satisfying any one of the five factors. Consequently, the State Board properly determined that this Criterion was not satisfied.

C. Mercy Failed To Meet The Criterion For Unnecessary Duplication Of Services/Maldistribution

The State Agency found that Mercy's project failed to meet Criterion 1110.530(c)-Unnecessary Duplication of Services/Maldistribution. This Criterion provides in part that

* * * *

2) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, beds and services characterized by such factors as, but not limited to:

A) A ratio of beds to population that exceeds one and one-half times the State average;

B) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the occupancy standard established pursuant to 77 Ill. Adm. Code 1100; or

C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above occupancy standards.

3) The applicant shall document that, within 24 months after project completion, the proposed project:

A) Will not lower the utilization of other area providers below the occupancy standards specified in 77 Ill. Adm. Code 1100; and

B) Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the occupancy standards.

The State Agency found that Mercy's proposed project would unnecessarily duplicate existing services and create a maldistribution of services due to underutilization of existing facilities. As demonstrated above, Mercy's own physician referral letters show that Mercy's proposed project would result in dramatic underutilization of Centegra Hospital-Woodstock and Centegra Hospital-McHenry in clear violation of the Criterion. The State Board's decision to deny Mercy's application based upon the Criterion was therefore supported by the record.

While there is a need for additional beds in McHenry County, the location of those beds in Crystal Lake would create an unnecessary duplication of services and maldistribution of hospital beds due to the fact that two of the three existing planning area hospitals already serve Crystal Lake and, in fact, are closer to some areas of Crystal Lake than Mercy's proposed project.

The record before the State Board showed that the need for additional beds is in the southern portion of McHenry County. In addition to the fact that IDPH has calculated a

bed-need for Medical/Surgical, OB and ICU services in McHenry County, the record also shows that:

(a) The northern and central portions of McHenry County are served by existing facilities while there are no existing hospitals in southern McHenry County.

(b) Southern McHenry County includes some of the counties largest population centers including Huntley, Algonquin and Lake in the Hills.

(c) Huntley and the surrounding villages have been and remain among the fastest growing in the Chicago Metropolitan Area. Mercy's own documentation shows that Huntley's 10-year population growth rate of 166.2% is ten times greater than Crystal Lake's growth rate of 16.1%. (*See* page 179 of Mercy's CON Application.)

(d) Because there are no hospitals in southern McHenry County, and the area has a rapidly growing population, a new hospital there would have the least impact on existing facilities.

(e) A hospital in southern McHenry County could also serve northern Kane County which is the Planning Area (A-11) with the State's third highest need for Medical/Surgical beds.

(f) A hospital in southern McHenry County could more readily serve the federally designated Medically Underserved Populations ("MUPs") and Health Professional Shortage Areas in northern Kane County.

(g) A hospital in southern McHenry County would be more accessible to Del Webb's Sun City Huntley, an active living community of more than 9,000 seniors. Quick access to hospital services, including emergency services, are imperative for this population.

Consequently, locating a hospital in southern McHenry County would address the Planning Area's calculated bed-need without creating the unnecessary duplication of service or maldistribution of services that Mercy's proposed hospital in Crystal Lake would cause.

D. Mercy Failed To Meet The Criterion For Clinical Services Areas Other Than Categories Of Services

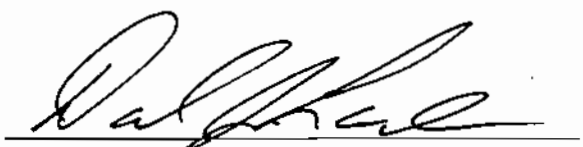
The Criterion for Clinical Service Areas other than Categories of Services has requirements relating to the utilization of existing facilities that are identical to Criterion 1110.530(a) above. The State Agency found that Mercy's project did not meet

Criterion 1110.3030 because Mercy's physician referral letters demonstrate that the project was dependent upon the redirection of patients from existing facilities, primarily from Centegra Hospital-Woodstock and Centegra Hospital-McHenry. The record before the State Board affirms that Mercy's project would materially reduce Centegra's utilization levels for all services across the board in violation of the Criterion.

For the above reasons, Project No. 10-089, Mercy Crystal Lake Hospital and Medical Center is not consistent with the Review Criteria on which the State Board made its decision to deny the application, and the project should be denied if reconsidered.

Respectfully submitted,

CENTEGRA HEALTH SYSTEM, CENTEGRA HOSPITAL-McHENRY and CENTEGRA HOSPITAL-WOODSTOCK,
Intervenors

By: 
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CERTIFICATE OF SERVICE

Daniel J. Lawler, an attorney, hereby certifies that he caused the foregoing **Centegra's Exceptions and Brief in Support of Exceptions to ALJ's Proposal for Decision,** to be served upon the following persons by email this 22nd day of June, 2012 before the hour of 5:00 p.m. and by first class U.S. Mail delivery before the hour of 5:00 p.m.

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Daniel J. Lawler

HEALTH FACILITIES AND SERVICES REVIEW BOARD
STATE OF ILLINOIS

In re:	)	
	)	Docket No.: HFRSB #11-11
CENTEGRA HOSPITAL – HUNTLEY,	)	Project No.: 10-090
	)	
	)	
	)	

Affidavit of Joe Ourth

JOE OURTH, being sworn on oath, states:

1. I am over the age of eighteen (18) and if called to testify in this matter could testify to the matters set forth in this affidavit based on my personal knowledge.

2. I am an attorney licensed to practice by the Illinois Supreme Court and am on the record counsel for Advocate Health and Hospitals Corporation in this matter and was Advocate's attorney in the proceedings before the Health Facilities and Services Review Board.

3. An examination of Arnstein & Lehr LLP's official correspondence file was undertaken immediately after the March 16 emergency status call. From these files, the Centegra transmittal letter was attached to the Centegra Impact Market Assessment and Study. A similar examination of the correspondence file for the Mercy Project shows the Mercy Impact Study was attached to the Mercy transmittal letter. We have every reason to believe that the proper letter was attached to the proper report when it left our offices.

4. On June 2, 2011, I signed and had sent to Mr. Dale Galassie, Chair, Illinois Health Facilities and Services Review Board, a letter enclosing a Market Assessment and Impact Study for Centegra Hospital – Huntley (Project 10-090). (Ex. A)

5. I had attached to the June 2, 2011 letter to be filed in and considered with the Centegra matter was the "Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090)" (Ex. B). Arnstein & Lehr LLP's file has this Market Assessment associated with the June 2, 2011 Centegra letter. (Ex. A)

6. The June 2, 2011 Centegra letter (Ex. A) and Market Assessment for Centegra Hospital (Ex. B) were sent to Mr. Galassie by Federal Express.

7. Also, on June 2, 2011, I separately signed and had sent to Mr. Dale Galassie, Chair, Illinois Health Facilities and Services Review Board, a letter enclosing a Market Assessment and Impact Study for Mercy Crystal Lake Hospital (Project No. 10-089). (Ex. C).

8. I attached to the June 2, 2011 letter to be filed in and considered with the Mercy matter was the whether the "Market Assessment and Impact Study – Proposed Mercy Crystal lake Hospital (Project 10-089)" (Ex. D). Arnstein & Lehr LLP's file has this Market Assessment associated with the June 2, 2011 Mercy letter. (Ex. C)

9. The documents referenced above were not filed electronically or facsimile because the Market Assessment reports were bound.

10. The June 2, 2011 Mercy letter (Ex. C) and Market Assessment for Mercy Crystal Lake Hospital (Ex. D) were sent to Mr. Galassie by Federal Express.

11. When I reviewed the record on Thursday March 15, 2012 I discovered the Market Assessment for Mercy Crystal Lake was part of the record in this matter.

12. By my June 2, 2011 Centegra letter, which attached the "Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090)" (Ex. B), I intended that the Market Assessment for Centegra Hospital would be included in this matter.

STATE OF ILLINOIS

COUNTY OF COOK

SUBSCRIBED AND SWORN
to before me this 16 day
of March, 2012.

OFFICIAL SEAL
NORMA J REAMS-BELL
Notary Public - State of Illinois
My Commission Expires Feb 15, 2015

Notary Public

HEALTH FACILITIES AND SERVICES REVIEW BOARD
STATE OF ILLINOIS

In re:	)	
	)	Docket No.: HFRSB #11-11
CENTEGRA HOSPITAL – HUNTLEY,	)	Project No.: 10-090
	)	
	)	
	)	

Affidavit of Elizabeth K. Aiello

ELIZABETH K. AIELLO, being sworn on oath, states:

1. I am over the age of eighteen (18) and if called to testify in this matter could testify to the matters set forth in this affidavit based on my personal knowledge.

2. I am an assistant with the law firm of Arnstein & Lehr LLP and work with Joe Ourth, who I know is one the record counsel for Advocate Health and Hospitals Corporation in this matter and was Advocate's attorney in the proceedings before the Health Facilities and Services Review Board.

3. On June 2, 2011, I prepared a letter for Mr Ourth to sign, which he did and which I had sent to Mr. Dale Galassie, Chair, Illinois Health Facilities and Services Review Board, a letter enclosing a Market Assessment and Impact Study for Centegra Hospital – Huntley (Project 10-090). (Ex. A)

4. I attached to the June 2, 2011 Centegra letter and enclosed in the federal express envelope a bound "Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090)" (Ex. B). Arnstein & Lehr LLP's file has this Market Assessment associated with the June 2, 2011 Centegra letter. (Ex. A)

5. The June 2, 2011 Centegra letter (Ex. A) and Market Assessment for Centegra Hospital (Ex. B) were sent to Mr. Galassie by Federal Express.

6. Also, on June 2, 2011, I separately prepared a letter for Mr. Ourth to sign, which he did and which I had sent to Mr. Dale Galassie, Chair, Illinois Health Facilities and Services Review Board, a letter enclosing a Market Assessment and Impact Study for Mercy Crystal Lake Hospital (Project No. 10-089). (Ex. C).

7. I attached to the June 2, 2011 Mercy letter and enclosed in the federal express envelope the bound "Market Assessment and Impact Study – Proposed Mercy Crystal Lake Hospital (Project 10-089)" (Ex. D). Arnstein & Lehr LLP's file has this Market Assessment associated with the June 2, 2011 Mercy letter. (Ex. C)

8. The June 2, 2011 Mercy letter (Ex. C) and Market Assessment for Mercy Crystal Lake Hospital (Ex. D) were sent to Mr. Galassie by Federal Express.

Elizabeth K. Aiello

STATE OF ILLINOIS

COUNTY OF COOK

SUBSCRIBED AND SWORN to before me this 16 day of March, 2012.

OFFICIAL SEAL
NORMA J REAMS-BELL
Notary Public - State of Illinois
My Commission Expires Feb 15, 2015

Notary Public

ARNSTEIN & LEHR LLP
ATTORNEYS AT LAW SINCE 1893

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Phone 312.876.7100 - Fax 312.876.0288
www.arnstein.com

Joe Ourth
312.876.7815
jourth@arnstein.com

June 2, 2011

FILE COPY

VIA Federal Express

Mr. Dale Galassie
Chair
Illinois Health Facilities and Services
Review Board
525 W. Jefferson
Springfield, IL 62761

Re: Market Assessment and Impact Study
Centegra Hospital – Huntley
Project No. 10-090

Dear Chairman Galassie:

Sherman Hospital, St. Alexius Medical Center, and Advocate Good Shepherd Hospital wish to submit the enclosed Market Assessment and Impact Study relative to the proposed Centegra Hospital - Huntley project. We believe the enclosed study provides detailed analytical information showing that the proposed new 128-bed hospital is not needed.

Very truly yours,

Joe Ourth

JRO:eka
Enclosures

EXHIBIT
A

Market Assessment and Impact Study

Proposed Centegra-Huntley Hospital (Project 10-090)

May 24, 2011

KRENTZ
CONSULTING

KRENTZ
CONSULTING

Krentz Consulting LLC is pleased to provide this independent *Market Assessment and Impact Study* in response to Centegra Health System's request for Certificate of Need approval (Project 10-090) to build a new hospital in Huntley in Illinois Health Planning Area A-10 (McHenry County).

Krentz Consulting LLC
Krentz Consulting LLC

24 May 2011
Date

About Krentz Consulting LLC

Krentz Consulting LLC is a management consulting firm providing strategic planning services to the health care industry, including community hospitals, health systems, academic medical centers and medical schools, children's hospitals, and industry and professional associations. Krentz Consulting is nationally recognized for its strategic planning expertise, frequently serving as faculty at educational programs and writing articles for national publications.

Susanna E. Krentz, President of Krentz Consulting, has over twenty-nine years experience as a health care consultant and oversaw the process and reviewed all analyses for this project. As a recognized leader in strategy development for health care organizations, she has worked with numerous hospitals and health care systems across the country in the development of strategic plans, physician strategy, growth plans, resource allocation, and competitive strategy. She has a Master of Business Administration from the Booth School of Business, University of Chicago and a Bachelor of Arts from Yale University.

Tracey L. Camp, Senior Consultant, has 25 years of experience in health care planning and strategy and provided the analytical support for this project. Her areas of expertise include strategic planning, service line planning and demand modeling, medical staff development studies, and market research. She is expert at converting data into meaningful information to support decision making. She has a Bachelor of Arts from Northwestern University.

Market Assessment and Impact Study
Proposed Centegra-Huntley Hospital (Project 10-090)

Table of Contents

I. Executive Summary

Executive Summary

Background

Centegra Health System has sought Certificate of Need approval to build a new hospital in Huntley in Illinois Health Planning Area A-10 (McHenry County). Centegra is seeking approval to add 128 beds including 100 medical/surgical, 20 obstetric, and 8 intensive care beds, citing the shortage of beds identified by the Illinois Health Facilities and Services Review Board (HFSRB).

Krentz Consulting was retained by Advocate Good Shepherd Hospital, Sherman Health, and St. Alexius Medical Center (the "Concerned Hospitals") to develop an independent *Market Assessment and Impact Study* to assess the need for a new hospital in McHenry County by reviewing the geographic access for residents, current patient migration patterns, and existing hospital utilization and capacity. As part of this analysis, we have updated the State's projection of bed need for McHenry County using more recent use rates, patient migration information, and Census 2010-based population projections. In addition, we have assessed the utilization impact and expected volume loss that the addition of a new hospital would have on existing area hospitals.

Key Findings

1. Area residents already have timely geographic access to existing hospitals.

100 percent of the population in Centegra-Huntley's proposed service area is within 30 minutes driving time of an existing hospital and 89 percent of the population is within 15 minutes driving time. There are only three ZIP codes in the Centegra-Huntley service where no existing hospital is within 15 minutes drive time of the ZIP code (Huntley, Marengo, and Union), and the combined population base in these ZIP codes represents only 11 percent of Centegra-Huntley's proposed service area.

2. Applicant overstates projected population growth and hospital bed demand.

Census figures for 2010 show that McHenry County's total population is approximately 28,000 people (or 8 percent) lower than the 2010 population estimated by the Department of Commerce and Economic Opportunity (DCEO). 2015 projected population for McHenry County, updated for the lower 2010 Census base population, is expected to be approximately 31,600 lower than the DCEO's original population projection for 2015, reducing projected demand for inpatient hospital beds.

Key Findings (Continued)

3. There is existing hospital capacity to meet the current health care needs of McHenry County residents, only rare instances of emergency bypass, and numerous immediate care centers.

There is capacity at several nearby hospitals with an average of 295 med/surg beds, 34 ICU beds, and 41 OB beds going unoccupied per day even while currently serving patients from Centegra-Huntley's proposed service area. Five of seven area hospitals fall below targeted occupancy levels for med/surg beds.

Area hospitals were rarely on emergency department (ED) bypass in 2010, totaling fewer than 16 hours in aggregate for the entire year and with many hospitals having zero hours on bypass.

Aside from emergency department access, McHenry County has seven immediate care centers to treat urgent, but non-life threatening conditions; six of these seven centers are located in Centegra-Huntley's proposed primary or secondary service area.

4. Area residents are already being served by existing hospitals and a new hospital in McHenry County will have a substantial adverse impact on existing hospitals' volume and payer mix.

The entire proposed service area of the Centegra-Huntley hospital is contained within the current service areas of existing hospitals. Any duplication of services by a new hospital would adversely impact the volumes and capacity of those existing hospitals. Sherman, Advocate Good Shepherd, and Centegra-Woodstock would be impacted most should Centegra build a new hospital in Huntley. Nearly half of Sherman's total facility discharges, 54 percent of Advocate Good Shepherd's total facility discharges, and 75 percent of Centegra-Woodstock's total facility discharges originate from Centegra-Huntley's proposed service area.

In aggregate, area hospitals (including Advocate Good Shepherd, Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph, Sherman Health, and St. Alexius) are estimated to lose over 8,000 inpatient discharges from Centegra-Huntley's defined service area. Of this total, it is estimated that the two existing Centegra hospitals in McHenry County will lose 2,977 cases to the proposed Centegra-Huntley Hospital.

Because Centegra-Huntley will be geographically more proximate to the economically most attractive areas of the region, the volume that area hospitals are estimated to lose from those markets would have an adverse effect on their overall payer mix and compromise their ability to subsidize needed community and safety net services, meet debt obligations, or optimize quality. The loss of commercially-insured patients is particularly problematic for obstetric services, where the Concerned Hospitals' proportion of discharges that are Medicaid/self-pay would increase by six percent.

Key Findings (Continued)

5. Even with population growth, there is not enough demand to support a new 128-bed hospital in McHenry County, and any new beds will largely shift discharges from hospitals already serving residents of the Planning Area.

The HFSRB's most recent calculation of bed need for Planning A-10 (McHenry County) was published on March 1, 2011. The HFSRB determined demand for hospital beds using 2003-2005 use rates and migration patterns. The HFSRB also used population projections for 2015 from the DCEO that were projected using 2000 Census information. Since the HFSRB developed their bed need calculations, new information suggests that the calculated need for 83 medical/surgical beds is overstated.

The bed need formula used by HFSRB also incorporates as a significant consideration the retention of patients who currently leave the Planning Area for care (outmigration), even if the travel times to the hospitals outside the Planning Area are within 15 or 30 minutes. It is not reasonable to assume that a patient traveling just beyond the border of the Planning Area to an adjacent community is undesirable outmigration that needs to be changed.

Key Findings (Continued)

6. The Applicant's volume forecasts understate the impact on current planning area sister hospitals while overstating its ability to draw patients from other areas.

Centegra has indicated that Woodstock (ZIP code 60098) and Crystal Lake (ZIP code 60012) would be part of its secondary service area, not its primary service area. The Centegra-Huntley facility will be 18 minutes driving time from the center of the Woodstock ZIP code and 22 minutes from the center of the Crystal Lake ZIP Code. Because Centegra has shelved its plans to update its Woodstock facility, it is not inconceivable that residents of these ZIP codes would choose to go to a new Centegra facility in Huntley, over an older facility at Woodstock.

On page 327 of Centegra's Certificate of Need (CON) application, the Applicant indicates that Centegra-Woodstock and Centegra-McHenry will lose 619 medical/surgical cases (or less than 10% of their current discharges from Centegra-Huntley's proposed service area) when the new Huntley facility opens. Using the assumptions shown below, the existing Centegra facilities are likely to lose nearly 2,500 discharges.

	2010[1] Medical/Surgical Discharges		
Centegra-Huntley Defined Service Area	**Centegra-Woodstock/ Centegra-McHenry 2010 Discharges**	**Loss Assumption**	**Estimated Lost Discharges**
Centegra PSA-McHenry ZIPs	3,549	50%	1,775
Centegra PSA-Kane ZIPs	46	100%	46
Centegra SSA-East	297	50%	149
Centegra SSA-North	2,519	20%	504
Total Service Area	**6,413**		**2,474**

On page 334 of Centegra's CON application, the Applicant forecast that by 2018, the new Huntley facility would capture 1,952 medical/surgical discharges from the four Kane County ZIP codes of its service area, or 29 percent of the 6,701 total medical/surgical market discharges they forecast for these ZIP codes in 2018. The Applicant also states that the new Huntley facility would capture 5,213 medical/surgical discharges from the McHenry County ZIP codes of its primary service area, which is 32 percent of the 16,468 total medical/surgical discharges they project for these ZIP codes in 2018. While a Centegra-Huntley facility will attract some patients from Kane County, it does not seem reasonable to assume that a new Centegra-Huntley facility would capture a nearly equivalent market share from the Kane County ZIP codes as it would from the McHenry County ZIP codes when over 80% of the population in those Kane County ZIP codes are between 7 and 16 minutes drive time to Sherman Health, a regional medical center with a new replacement facility and tertiary services.

[1] From COMPdata using 9 months CY 2010 discharges (and annualized using a simple annualization method); excludes discharges in obstetric, neonatal, psychiatry, substance abuse, and rehabilitation MS-DRGs.

II. Geographic Access

Area Residents Already Have Timely Geographic Access to Existing Hospitals

Area Residents Already Have Timely Geographic Access to Existing Hospitals

Centegra-Huntley Service Area

Centegra defined a service area for the proposed Huntley hospital that the Applicant states largely mirrors the patient origin of its current ambulatory care facility located at the same site. A map of the proposed service area is shown in *Exhibit 1*. The proposed hospital's primary service area covers southern McHenry County in Planning Area A-10 and extends into northern Kane County in Planning Area A-11. The proposed hospital's secondary service area extends further north in McHenry County as well as east into parts of Lake and Cook County.

As shown in *Exhibit 2*, 100 percent of the population in Centegra-Huntley's proposed service area is within 30 minutes driving time of an existing hospital and 89 percent of the population is within 15 minutes driving time. There are only three ZIP codes in the Centegra-Huntley service where no existing hospital is within 15 minutes drive time of the ZIP code (Huntley, Marengo, and Union), and the combined population base in these ZIP codes (40,381) represents only 11 percent of Centegra-Huntley's proposed service area. *Only Huntley will have a sizeable time savings to a new Centegra-Huntley facility; the other two ZIP codes will still be greater than 15 minutes from the proposed location and would only reduce the travel time from existing hospitals by one minute for Marengo and no more than four minutes for Union.*

A drive time analysis for each ZIP code in Centegra-Huntley's service area is presented in *Attachment 1* and shows that all ZIP codes of the proposed service area are within the State's standard of 30 minutes driving time to existing hospitals.

Exhibit 1
Centegra-Huntley
Proposed Service Area

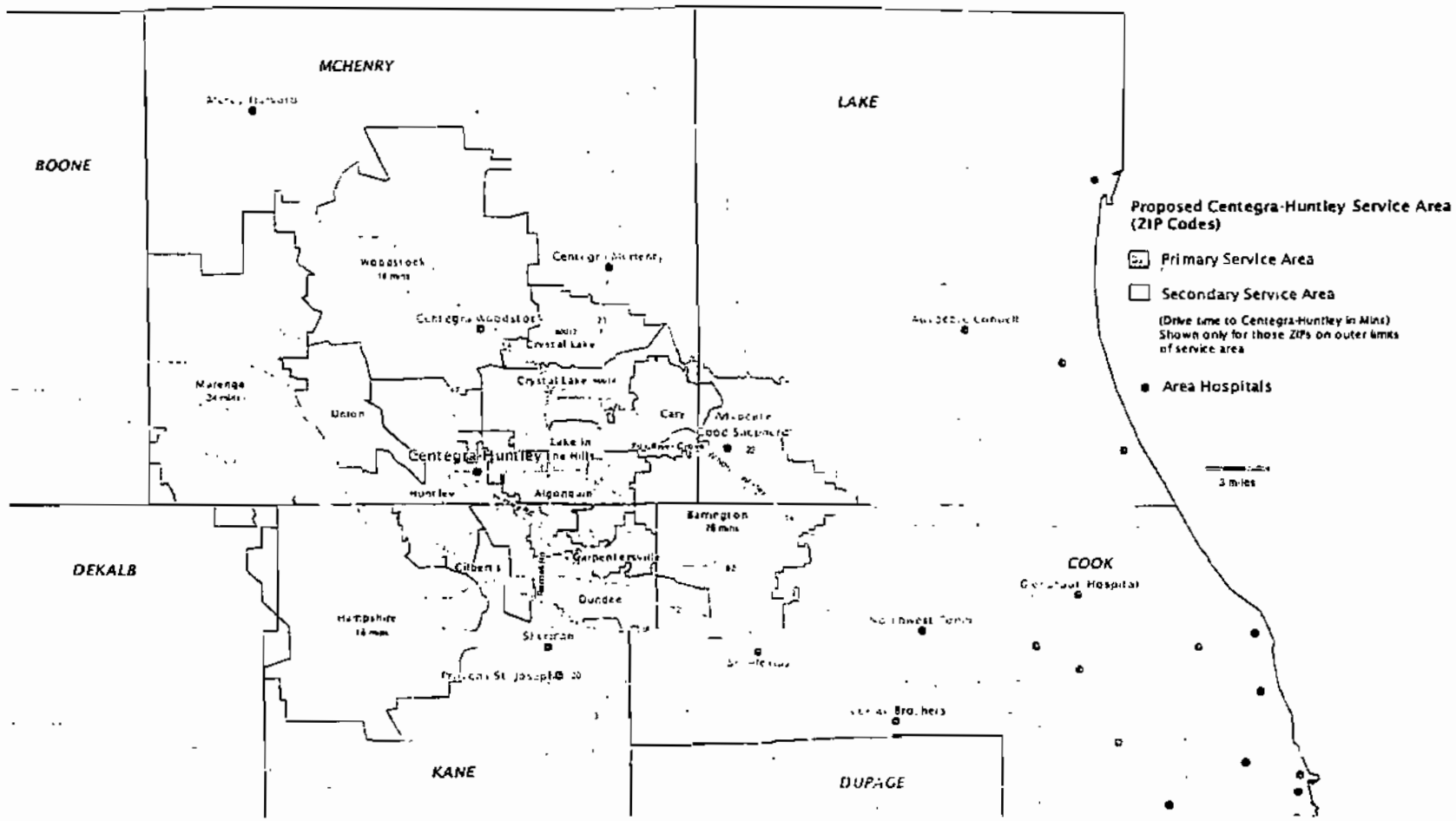

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Exhibit 2
2010 Estimated Population by Drive Time
Proposed Centegra-Huntley Service Area

For ZIP Codes in Centegra-Huntley's Proposed Service Area	2010 Estimated Population		
	Drive Time within 30 Mins of Existing Hospitals	Drive Time within 15 Mins of Existing Hospitals	Total Population in Geography
Primary Service Area	237,016	196,635	237,016
Secondary Service Area	125,368	125,368	125,368
TOTAL SERVICE AREA	**362,384**	**322,033**	**362,384**
Primary Service Area	100%	83%	
Secondary Service Area	100%	100%	
TOTAL SERVICE AREA	**100%**	**89%**	

Source: Nielsen Claritas. Estimate for 2010 population. Does not reflect the most recent Census 2010 population because Census population by ZIP code is not yet available.

III. Population Projections

Applicant Overstates Projected Population Growth and Hospital Bed Demand

Applicant Overstates Projected Population Growth and Hospital Bed Demand

Population projections for 2010 to 2015 are shown in *Exhibit 3* for McHenry County. The 2010 total population for McHenry is based on actual 2010 Census information. Census 2010 data are not yet available by gender and age cohort. The total Census 2010 population for McHenry County (308,760) was distributed by gender and age cohort using the gender and age distributions estimated for 2010 by the DCEO, the HFSRB's preferred source for population estimates and projections. 2015 projections were made by applying DCEO's average annual growth rates for 2010-2015 by age cohort and gender to actual 2010 Census population for McHenry County.

- Census figures for 2010 show that McHenry County's total population is approximately 28,000 people (or 8 percent) lower than the 2010 population estimated by the DCEO. 2015 projected population for McHenry County, updated for the lower 2010 Census base population, is expected to be approximately 31,600 lower than the DCEO's original population projection for 2015, reducing projected demand for inpatient hospital beds.

- Since Census population was not yet available at the time of Centegra's CON filing, the Applicant overstates projected hospital demand.

Exhibit 3
Updated Population Projections for McHenry County, 2010-2015

	DCEO Population Projections - Existing			DCEO Population Projections – Updated with 2010 Census		
	DCEO Estimated 2010	DCEO 2015 Projection	Avg Annual Growth Rate: 2010-2015	2010 Updated Census[1]	2015 Projection Updated[2]	Change: 2010-2015
TOTAL POPULATION	337,034	377,315	2.3%	308,760	345,662	36,902
Distribution by Age Cohort:						
0-14	22.7%	21.4%	1.1%	70,031	73,991	3,960
15-44	42.2%	41.7%	2.1%	130,219	144,144	13,925
45-64	26.1%	26.3%	2.4%	80,649	90,953	10,304
65-74	5.4%	6.7%	6.7%	16,778	23,214	6,437
75+	3.6%	3.9%	3.8%	11,083	13,359	2,276
TOTAL	100.0%	100.0%	2.3%	308,760	345,662	36,902
% 65+	9.0%	10.6%				
FEMALE POPULATION	167,812	188,161	2.3%	153,734	172,376	18,642
Distribution by Age Cohort:						
0-14	22.0%	20.8%	1.1%	33,884	35,829	1,945
15-44	41.6%	41.0%	2.0%	63,945	70,607	6,662
45-64	25.9%	26.0%	2.4%	39,794	44,889	5,095
65-74	5.9%	7.2%	6.7%	9,015	12,491	3,477
75+	4.6%	5.0%	3.8%	7,096	8,559	1,463
TOTAL	100.0%	100.0%	2.3%	153,734	172,376	18,642
% Females 15-44	41.6%	41.0%		41.6%	41.0%	

[1] Census 2010 data are not yet available by gender and age cohort. The total Census 2010 population for McHenry County (308,760) was distributed by gender and age cohort using the gender and age distributions estimated for 2010 by the Department of Commerce and Economic Opportunity (DCEO).
[2] 2015 projections were made by applying DCEO's average annual growth rates for 2010-2015 by age cohort and gender to 2010 Census county total population.
Sources: Department of Commerce and Economic Opportunity population projections for 2010 and 2015, downloaded March 2011, http://www.commerce.state.il.us/dceo/Bureaus/Facts_Figures/Population_Projections. US Census Bureau website for Census 2010 total population.

IV. Existing Hospital Capacity and Access

There is Existing Hospital Capacity to Meet the Current Health Care Needs of McHenry County Residents, Only Rare Instances of Emergency Bypass, and Numerous Immediate Care Centers

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There Are Only Rare Instances of Emergency Bypass

Exhibit 5 shows that area hospitals were rarely on ED bypass in 2010, totaling fewer than 16 hours in aggregate for the entire year and with many hospitals having zero hours on bypass. This low ED bypass rate is an indicator that there are sufficient available beds to meet current health care needs. It is important to note that when hospitals go on bypass, it is only for non life-threatening conditions; trauma patients will always be treated. In addition, a hospital may go on bypass not because an inpatient bed is unavailable, but simply because certain diagnostic equipment is temporarily inoperable in the emergency department.

Exhibit 5
Hours on ED Bypass in 2010 – Nearby Hospitals

Nearby Hospitals	Hours on ED Bypass in 2010
Advocate Good Shepherd	1.98
Centegra-McHenry	0.00
Centegra-Woodstock	0.00
Northwest Community Hospital	0.00
Provena St. Joseph	0.00
Sherman	5.67
St. Alexius	8.07
Total	**15.72**
Average per hospital	2.25

Source: IDPH Hospital Health Alert Network.

There Are Numerous Immediate Care Centers

Aside from emergency department access, McHenry County has a substantial number of immediate care centers to treat urgent, but non-life threatening conditions. The immediate care centers located in McHenry County are shown in *Exhibit 6*. Six of these seven centers are located in Centegra-Huntley's proposed primary or secondary service area.

Exhibit 6
Immediate Care Centers Located in McHenry County

Advocate Good Shepherd Outpatient Center – Crystal Lake*
Centegra Immediate Care – Crystal Lake*
Centegra Immediate Care – Huntley*
Mercy McHenry Medical Center – McHenry
Mercy Woodstock Medical Center – Woodstock*
Provena Acute Care – Lake in the Hills*
Sherman Immediate Care – Algonquin*

*Located in Centegra-Huntley's proposed primary or secondary service area.

V. Current Patient Migration Patterns and Impact on Existing Hospitals

Area Residents are Already Being Served by Existing Hospitals, and A New Hospital in McHenry County Will Have a Substantial Adverse Impact on Existing Hospitals' Volumes and Payer Mix

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Area Residents Are Already Being Served by Existing Hospitals

Exhibit 7 shows the number of inpatients currently being treated at existing area hospitals and the portion of these patients who reside in Centegra-Huntley's proposed service area. Sherman, Advocate Good Shepherd, and Centegra-Woodstock would be impacted most should Centegra build a new hospital in Huntley. Sherman currently treats the most inpatients from this market (6,803), which represents nearly half of its total facility discharges. Advocate Good Shepherd currently treats 6,141 inpatients from this market, representing 54 percent of its total facility discharges. As a smaller facility, Centegra-Woodstock treats fewer inpatients from this market (4,978), but this represents 75 percent of its total facility discharges.

Exhibit 7
Inpatient Patient Origin for Existing Area Hospitals, Annualized 9 Months CY 2010
Centegra-Huntley Proposed Service Area

	Discharges by Where Patients Reside		
Existing Hospital	**Centegra Total Service Area**	**All Other Areas**	**FACILITY TOTAL**
Sherman	6,803	8,181	14,984
Advocate Good Shepherd	6,141	5,196	11,336
Centegra-Woodstock	4,978	1,654	6,632
Centegra-McHenry	2,588	7,485	10,073
St. Alexius	2,070	16,267	18,337
Provena St. Joseph	1,294	3,770	5,065
TOTAL	**23,873**	**42,553**	**66,426**

	Percentage of Discharges by Where Patients Reside		
Existing Hospital	**Centegra Total Service Area**	**All Other Areas**	**FACILITY TOTAL**
Sherman	45.4%	54.6%	100.0%
Advocate Good Shepherd	54.2%	45.8%	100.0%
Centegra-Woodstock	75.1%	24.9%	100.0%
Centegra-McHenry	25.7%	74.3%	100.0%
St. Alexius	11.3%	88.7%	100.0%
Provena St. Joseph	25.6%	74.4%	100.0%
TOTAL	**35.9%**	**64.1%**	**100.0%**

Source: Illinois COMPdata. Data represent a simple annualization of 9 months CY 2010 data. Discharges exclude normal newborns in MS-DRG 795, psychiatry, substance abuse, and rehabilitation (psychiatry, substance abuse, and rehabilitation are not included in Applicant's proposed bed complement).

Service Areas of Existing Hospitals

As shown in the map in *Exhibit 8*, the entire proposed service area of the Centegra-Huntley hospital is contained within the current service areas of the existing hospitals. Any duplication of services by a new hospital would adversely impact the volumes and capacity of those existing hospitals.

A New Hospital in McHenry County Will Have a Substantial Adverse Impact on Existing Hospitals' Volume

Krentz Consulting modeled the impact that the proposed Centegra-Huntley hospital would have on the utilization of existing hospitals. We completed a detailed impact analysis for Advocate Good Shepherd Hospital, Sherman Health, and St. Alexius Medical Center (the "Concerned Hospitals") by service line and level of acuity. The methodology and assumptions used in the impact analysis are described below.

Volume Impact Methodology for Concerned Hospitals

1. Centegra-Huntley's proposed primary and secondary service area was segmented into meaningful sub-geographies with which to judge current and expected patient migration patterns (see *Exhibit 9* for map of sub-geographies).

2. Discharges for inpatients residing in the sub-geographies were grouped into service lines and levels of acuity. The source of the discharge information was obtained by COMPdata for discharges occurring in the first nine months of calendar year 2010 and annualized using a simple annualization method.

3. Service line definitions and levels of acuity were defined by Krentz Consulting using the Centers for Medicare and Medicaid Services' MS-DRGs.

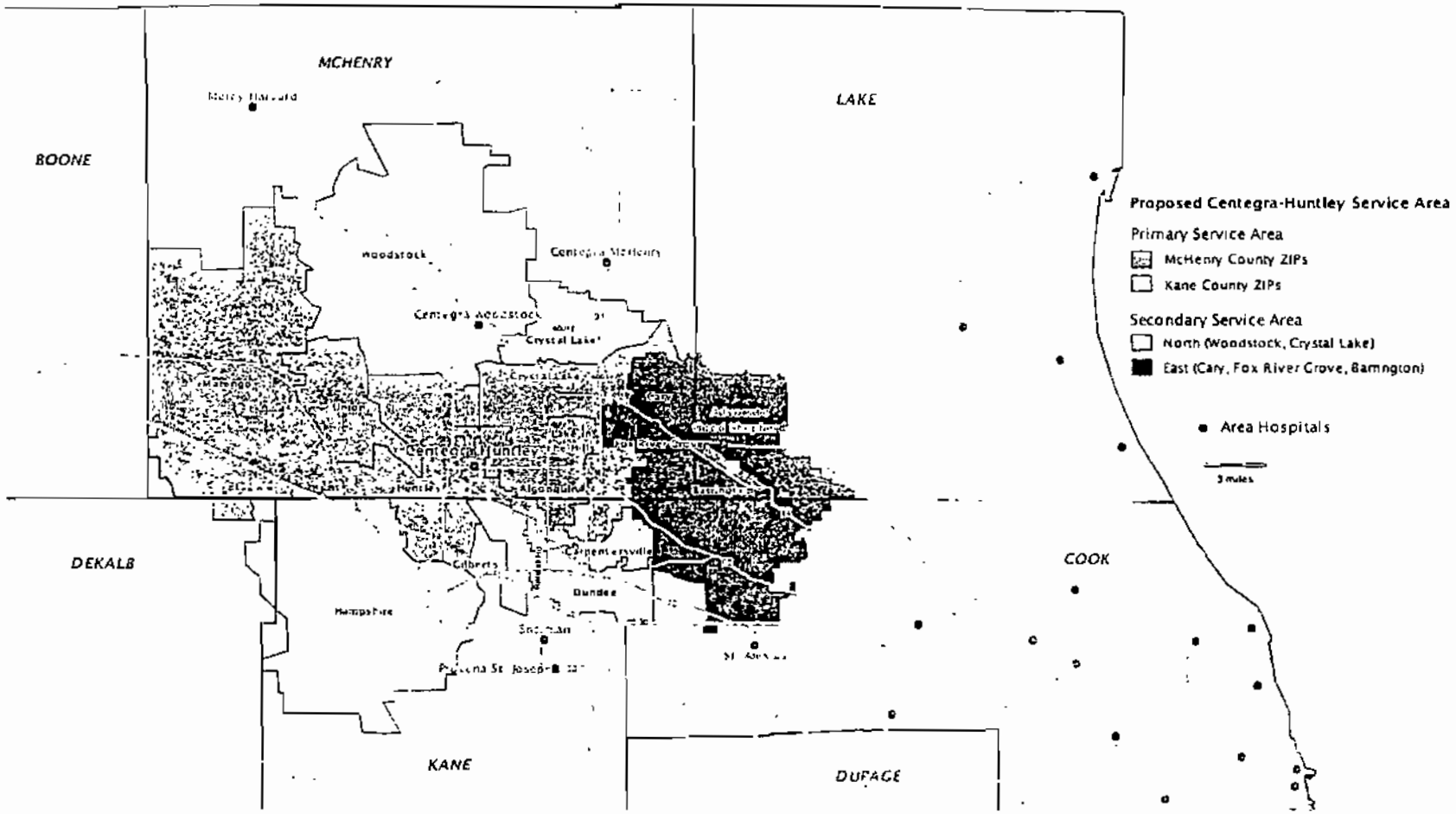
4. For each sub-geography, assumptions of volume loss were made by service line and level of acuity for each of the Concerned Hospitals.

   - It was assumed that the Concerned Hospitals would lose a higher proportion of their lower acuity cases, but a lower proportion of their highest acuity cases.

   - Centegra-Huntley will not offer cardiac catheterization, cardiac angioplasty/stent, or open heart surgery services; it was assumed that none of the existing hospitals would lose that volume.

The utilization impact was also modeled for "Other Area Hospitals" (Centegra-Woodstock, Centegra-McHenry, and Provena St. Joseph) by applying overall assumptions of volume loss by sub-geography for medical, surgical, OB, and neonatal services.

Exhibit 9
Centegra-Huntley Proposed Service Area
Submarkets Defined for Impact Analysis



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McHenry PSA=60014,60102,60142,60152,60156,60180
Kane PSA=60110,60118,60136,60140

North SSA=60012,60098
East SSA=60010,60013,60021

Estimated Volume Impact on Area Hospitals

Exhibit 10 shows the estimated volume impact of a new Centegra-Huntley hospital on the Concerned Hospitals' current discharges from Centegra-Huntley's defined service area[1]. In aggregate, area hospitals are estimated to lose over 8,000 inpatient discharges from Centegra-Huntley's defined service area.

- Among Concerned Hospitals, Sherman Health is estimated to lose over 2,000 discharges or 30 percent of its volume originating from Centegra-Huntley's defined service area. Advocate Good Shepherd is estimated to lose over 1,600 discharges or 27 percent of its volume from this market, and St. Alexius is estimated to lose over 800 discharges or 42 percent of its volume from this market.

- Other Area Hospitals (Centegra-Woodstock, Centegra-McHenry, and Provena St. Joseph) are estimated to lose over 3,400 discharges or 39 percent of their volume originating from Centegra-Huntley's defined service area.

Exhibit 10
Impact of Centegra-Huntley Hospital on Area Hospital Volume

		Total Current Area Hospital Discharges (2010 annualized)					Potential Loss of Area Hospital Discharges (2010)				
	Total Market Discharges (2010 annualized)	Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph)	Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph)
Centegra Total Service Area											
Medical/Surgical	25,232	4,925	5,154	1,612	11,692	7,722	1,140	1,558	640	3,338	2,985
OB	4,310	1,024	1,205	364	2,592	1,008	433	350	186	969	410
Neonatal	1,316	209	493	68	796	211	87	138	46	271	95
TOTAL	30,858	6,158	6,852	2,070	15,080	8,963	1,660	2,046	872	4,578	3,490
Overall % Loss							27%	30%	42%	30%	39%

Notes: Medical/surgical volume would include care delivered in the ICU. Volume excludes normal newborns in MS-DRG 795.

Additional detail by sub-geography is presented in *Attachment 2*.

[1] Source of volume from COMPdata for discharges and patient days occurring in the first nine months of calendar year 2010 and annualized using a simple annualization method.

A New Hospital in McHenry County Will Have a Substantial Adverse Impact on Existing Hospitals' Payer Mix

Because Centegra-Huntley will be geographically more proximate to the economically most attractive areas of the region, the volume that the Concerned Hospitals are estimated to lose from those markets would have an adverse effect on their overall payer mix and compromise their ability to subsidize needed community services. *Exhibit 11* shows that a new Centegra-Huntley facility would capture a high percentage of commercial patients, reducing the Concerned Hospitals' percentage of volume that is commercially insured and increasing their proportion of Medicaid/self-pay patients. This loss of commercially-insured patients is particularly problematic for obstetric services, where the Concerned Hospitals' proportion of discharges that are Medicaid/self-pay would increase by six percent.

Exhibit 11
Impact of Losing Volume to Centegra-Huntley on Payer Mix of Concerned Hospitals

Payer	Concerned Hospitals 2010 Total Actual Payer Mix of Discharges	Centegra-Huntley's Payer Mix of Estimated Volume Shifted from Concerned Hospitals
Medical/Surgical Discharges		
Commercial/HMO	38.6%	45.5%
Medicare	47.8%	43.6%
Medicaid/Self-Pay/Other	13.6%	10.9%
TOTAL	**100.0%**	**100.0%**
Obstetric Discharges		
Commercial/HMO	57.5%	77.2%
Medicare	0.3%	0.1%
Medicaid/Self-Pay/Other	42.2%	22.7%
TOTAL	**100.0%**	**100.0%**

Source: COMPdata, 9 months calendar year 2010 data for all inpatient discharges excluding all neonatal, psychiatry/substance abuse, and rehabilitation patients.

VI. Updated Bed Need in Planning Area

Even with Population Growth, there is Not Enough Demand to Support a New 128-Bed Hospital in McHenry County, and Any New Beds will Largely Shift Discharges from Hospitals Already Serving the Residents of the Planning Area

Even with Population Growth, there is Not Enough Demand to Support a New 128-Bed Hospital in McHenry County

The HFSRB's most recent calculation of bed need for Planning A-10 (McHenry County) was published on March 1, 2011. The HFSRB determined demand for hospital beds using 2003-2005 use rates and migration patterns. The HFSRB also used population projections for 2015 from the DCEO that were projected using 2000 Census information. Since the HFSRB developed their bed need calculations, new information suggests that the calculated need for 83 medical/surgical beds is overstated:

- The actual 2010 census for McHenry County is 8% lower than the estimate for 2010 in the bed need calculations. Since the 2010 population is lower than expected, it is reasonable to assume that the projections for 2015 are overstated by at least a similar amount.

Any New Beds will Largely Shift Discharges from Hospitals Already Serving the Residents of the Service Area

The bed need formula used by HFSRB also incorporates as a significant consideration the retention of patients who currently leave the Planning Area for care (outmigration), even if the travel times to the hospitals outside the Planning Area are within 15 or 30 minutes. It is not reasonable to assume that a patient traveling just beyond the border of the Planning Area to an adjacent community is undesirable outmigration that needs to be changed.

Attachments

Attachment 1

Driving Times (Minutes)
Proposed Centegra-Huntley Service Area

Drive Time ≤ 15 Mins

Drive Time 15-30 Mins

	2010 Estimated Population	Sherman Hospital	Advocate Good Shepherd	Centegra-Woodstock	Centegra-McHenry	St. Alexius	Provena St. Joe
Primary Service Area							
60014 Crystal Lake	51,100	19.6	18.4	11.5	17.3	32.2	26.5
60110 Carpentersville	40,768	15.0	23.0	32.2	28.8	18.4	20.7
60102 Algonquin	34,875	15.0	24.2	26.5	25.3	27.6	20.7
60156 Lake in the Hills	30,066	15.0	21.9	20.7	20.7	32.2	21.9
60142 Huntley	25,824	17.3	33.4	19.6	32.2	32.2	23.0
60118 Dundee	18,930	6.9	27.6	31.1	29.9	16.1	12.7
60140 Hampshire	14,226	16.1	42.6	28.8	41.4	32.2	15.0
60152 Marengo	13,072	31.1	46.0	25.3	40.3	46.0	36.8
60136 Gilberts	6,670	6.9	33.4	32.2	32.2	24.2	13.8
60180 Union	1,485	27.6	43.7	21.9	36.8	42.6	33.4
Secondary Service Area							
60010 Barrington	44,088	28.8	8.1	33.4	29.9	16.1	34.5
60098 Woodstock	33,657	31.1	35.7	6.9	18.4	47.2	38.0
60013 Cary	30,084	26.5	10.4	23.0	18.4	29.9	32.2
60012 Crystal Lake	11,265	27.6	23.0	11.5	9.2	38.0	33.4
60021 Fox River Grove	6,274	29.9	4.6	26.5	21.9	25.3	36.8

Source of 2010 population: Nielsen Claritas, does not reflect recent Census 2010 data. Source of drive times: MapQuest. Per HFSRB rules, travel time from each hospital location to the geographic center of each ZIP code has been calculated using MapQuest's drive time multiplied by 1.15. Ambulance transport times would be faster.

Attachment 2

Impact of Centegra-Huntley Hospital on Area Hospital Volume

	Total Market Discharges (2010 annualized)	Total Current Area Hospital Discharges (2010 annualized)					Potential Loss of Area Hospital Discharges (2010)				
		Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph)	Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph)
Centegra PSA-McHenry ZIPs											
Medical/Surgical	11,803	1,584	2,678	623	4,885	4,244	731	1,211	298	2,240	2,122
OB	1,773	475	354	119	948	528	286	213	72	571	264
Neonatal	499	91	131	55	277	123	55	79	31	165	62
TOTAL	14,075	2,150	3,163	797	6,090	4,895	1,072	1,503	391	2,966	2,447
Overall % Loss							50%	48%	50%	49%	50%
Centegra PSA-Kane ZIPs											
Medical/Surgical	4,732	147	2,313	568	1,028	650	67	298	250	615	198
OB	1,373	99	814	202	1,115	25	49	122	101	272	25
Neonatal	519	21	346	45	413	2	11	52	22	85	5
TOTAL	6,623	267	3,474	816	4,556	681	127	472	373	972	228
Overall % Loss							47%	14%	46%	21%	34%
Centegra SSA-East											
Medical/Surgical	5,258	2,976	83	380	3,439	305	246	14	73	333	156
OB	946	345	20	36	401	95	34	5	9	48	48
Neonatal	166	74	7	13	94	25	7	1	3	11	13
TOTAL	6,070	3,395	110	429	3,933	425	287	20	85	392	217
Overall % Loss							8%	18%	20%	10%	51%
Centegra SSA-North											
Medical/Surgical	1,439	218	80	41	340	2,574	96	35	19	150	509
OB	519	106	16	7	128	660	64	10	4	78	72
Neonatal	132	23	9	0	32	79	14	6	0	20	16
TOTAL	4,090	346	106	48	500	2,963	174	51	23	248	597
Overall % Loss							50%	48%	48%	50%	20%
Centegra Total Service Area											
Medical/Surgical	25,232	4,925	5,154	1,612	11,692	7,722	1,140	1,558	640	3,338	2,985
OB	4,310	1,024	1,205	364	2,592	1,008	433	350	186	969	410
Neonatal	1,116	209	493	94	796	233	87	138	46	271	95
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Overall % Loss							27%	30%	42%	30%	39%

Notes: Medical/surgical volume would include care delivered in the ICU. Volume excludes normal newborns in MS-DRG 795.

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June 2, 2011

FILE COPY

VIA Federal Express

Mr. Dale Galassie
Chair
Illinois Health Facilities and Services
Review Board
525 W. Jefferson
Springfield, IL 62761

Re: Market Assessment and Impact Study
Mercy Crystal Lake Hospital
Project No. 10-089

Dear Chairman Galassie:

Sherman Hospital, St. Alexius Medical Center, and Advocate Good Shepherd Hospital wish to submit the enclosed Market Assessment and Impact Study relative to the proposed Mercy Crystal Lake Hospital project. We believe the enclosed study provides detailed analytical information showing that the proposed new 128-bed hospital is not needed.

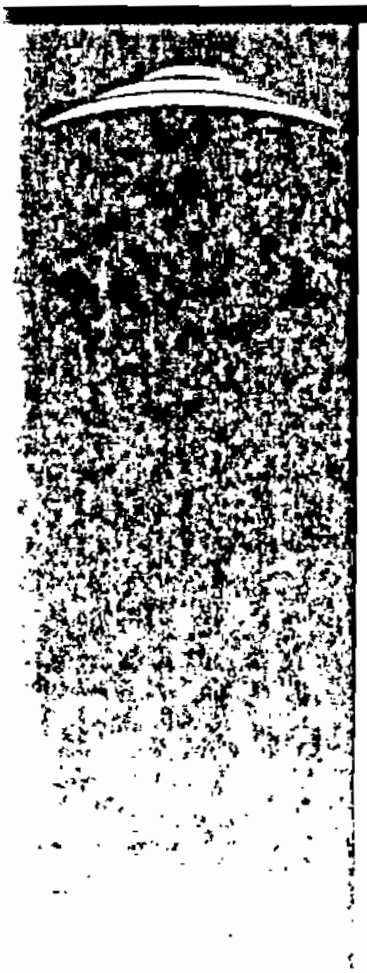
Very truly yours,

Joe Ourth

JRO:eka
Enclosures

EXHIBIT
C

9620613.1



Market Assessment and Impact Study

Proposed Centegra-Huntley Hospital (Project 10-090)

May 24, 2011

KRENTZ CONSULTING

EXHIBIT

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KRENTZ
CONSULTING

Krentz Consulting LLC is pleased to provide this independent *Market Assessment and Impact Study* in response to Mercy Health System's request for Certificate of Need approval (Project 10-089) to build a new hospital in Crystal Lake in Illinois Health Planning Area A-10 (McHenry County).

Krentz Consulting LLC
Krentz Consulting LLC

24 May 2011
Date

About Krentz Consulting LLC

Krentz Consulting LLC is a management consulting firm providing strategic planning services to the health care industry, including community hospitals, health systems, academic medical centers and medical schools, children's hospitals, and industry and professional associations. Krentz Consulting is nationally recognized for its strategic planning expertise, frequently serving as faculty at educational programs and writing articles for national publications.

Susanna E. Krentz, President of Krentz Consulting, has over twenty-nine years experience as a health care consultant and oversaw the process and reviewed all analyses for this project. As a recognized leader in strategy development for health care organizations, she has worked with numerous hospitals and health care systems across the country in the development of strategic plans, physician strategy, growth plans, resource allocation, and competitive strategy. She has a Master of Business Administration from the Booth School of Business, University of Chicago and a Bachelor of Arts from Yale University.

Tracey L. Camp, Senior Consultant, has 25 years of experience in health care planning and strategy and provided the analytical support for this project. Her areas of expertise include strategic planning, service line planning and demand modeling, medical staff development studies, and market research. She is expert at converting data into meaningful information to support decision making. She has a Bachelor of Arts from Northwestern University.

Market Assessment and Impact Study
Proposed Mercy-Crystal Lake Hospital (Project 10-089)

Table of Contents

I. Executive Summary

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Executive Summary

Background

Mercy Health System (MHS) has sought Certificate of Need approval to build a new hospital in Crystal Lake in Illinois Health Planning Area A-10 (McHenry County). Mercy is seeking approval to add 128 beds including 100 medical/surgical, 20 obstetric, and 8 intensive care beds, citing the shortage of beds identified by the Illinois Health Facilities and Services Review Board (HFSRB).

Krentz Consulting was retained by Advocate Good Shepherd Hospital, Sherman Health, and St. Alexius Medical Center (the "Concerned Hospitals") to develop an independent *Market Assessment and Impact Study* to assess the need for a new hospital in McHenry County by reviewing the geographic access for residents, current patient migration patterns, and existing hospital utilization and capacity. As part of this analysis, we have updated the State's projection of bed need for McHenry County using more recent use rates, patient migration information, and Census 2010-based population projections. In addition, we have assessed the utilization impact and expected volume loss that the addition of a new hospital would have on existing area hospitals.

Key Findings

1. Area residents already have timely geographic access to existing hospitals.

100 percent of the population in Mercy's overall service area is within 30 minutes driving time of an existing hospital and 81 percent of the population is within 15 minutes driving time. In ZIP codes where existing hospitals are greater than 15 minutes driving time away, the new Mercy-Crystal Lake facility would actually be farther than at least one, and sometimes as many as four, existing hospitals.

2. Applicant overstates projected population growth and hospital bed demand.

Census figures for 2010 show that McHenry County's total population is approximately 28,000 people (or 8 percent) lower than the 2010 population estimated by the Department of Commerce and Economic Opportunity (DCEO). 2015 projected population for McHenry County, updated for the lower 2010 Census base population, is expected to be approximately 31,600 lower than the DCEO's original population projection for 2015, reducing projected demand for inpatient hospital beds.

Key Findings (Continued)

3. There is existing hospital capacity to meet the current health care needs of McHenry County residents, only rare instances of emergency bypass, and numerous immediate care centers.

There is capacity at several nearby hospitals with an average of 295 med/surg beds, 34 ICU beds, and 41 OB beds going unoccupied per day even while currently serving patients from Mercy-Crystal Lake's proposed service area. Five of seven area hospitals fall below targeted occupancy levels for med/surg beds.

Area hospitals were rarely on emergency department (ED) bypass in 2010, totaling fewer than 16 hours in aggregate for the entire year and with many hospitals having zero hours on bypass.

Aside from emergency department access, McHenry County has seven immediate care centers to treat urgent, but non-life threatening conditions; all of these seven centers are located in Mercy-Crystal Lake's proposed service area.

4. Area residents are already being served by existing hospitals and a new hospital in McHenry County will have a substantial adverse impact on existing hospitals' volume and payer mix.

Virtually the entire proposed service area of the Mercy-Crystal Lake hospital is contained within the current service areas of existing hospitals. Any duplication of services by a new hospital would adversely impact the volumes and capacity of those existing hospitals. More than 85 percent of inpatient discharges at each area hospital (including Advocate Good Shepherd, Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph, Sherman Health, and St. Alexius) originate from Mercy's proposed service area.

In aggregate, area hospitals (including Advocate Good Shepherd, Centegra-Woodstock, Centegra-McHenry, Provena St. Joseph, Sherman Health, and St. Alexius) are estimated to lose over 9,700 inpatient discharges from Mercy-Crystal Lake's defined service area.

Because Mercy-Crystal Lake will be geographically more proximate to the economically most attractive areas of the region, the volume that area hospitals are estimated to lose from those markets would have an adverse effect on their overall payer mix and compromise their ability to subsidize needed community and safety net services, meet debt obligations, or optimize quality. The loss of commercially-insured patients is particularly problematic for obstetric services, where the Concerned Hospitals' proportion of discharges that are Medicaid/self-pay would increase by eight percent.

Key Findings (Continued)

5. **Even with population growth, there is not enough demand to support a new 128-bed hospital in McHenry County, and any new beds will largely shift discharges from hospitals already serving the residents of the Planning Area.**

The HFSRB's most recent calculation of bed need for Planning A-10 (McHenry County) was published on March 1, 2011. The HFSRB determined demand for hospital beds using 2003-2005 use rates and migration patterns. The HFSRB also used population projections for 2015 from the DCEO that were projected using 2000 Census information. Since the HFSRB developed their bed need calculations, new information suggests that the calculated need for 83 medical/surgical beds is overstated.

The bed need formula used by HFSRB also incorporates as a significant consideration the retention of patients who currently leave the Planning Area for care (outmigration), even if the travel times to the hospitals outside the Planning Area are within 15 or 30 minutes. It is not reasonable to assume that a patient traveling just beyond the border of the Planning Area to an adjacent community is undesirable outmigration that needs to be changed.

6. **The Applicant understates its impact on current Planning Area hospitals.**

On page 182 of Mercy's Certificate of Need (CON) application, the Applicant states that they are confident that their proposed hospital will not lower the utilization of other area providers below the State's occupancy standards. Yet, they provide no supporting analysis of current patient migration patterns or current utilization and capacity of Planning Area providers. They simply assert that they will shift referrals from its employed physicians who currently send patients to other hospitals, that the new facility will gain patients through the emergency department, and that health reform will increase admissions.

Mercy's CON application contains supporting letters from 42 of its employed physicians who, in aggregate, stipulate that they will redirect 3,809 cases to the new Mercy facility, 3,368 (or 88%) of which will be shifted from the two existing Centegra hospitals in the Planning Area. They do not intend to shift any of the current admissions presently at Mercy Harvard Hospital.

Key Findings (Continued)

Of the 3,368 cases which would shift from Centegra hospitals to the new Mercy Hospital, 1,368 would be referrals from physicians other than OB/Gyn or pediatric physicians. Assuming an average length of stay of 4.3 days (the medical/surgical/ICU average length of stay of McHenry County residents in CY 2010), the shifting of 1,368 medical/surgical/ICU adult discharges would result in a loss of 16 occupied beds per day at those Centegra facilities. Centegra-Woodstock and Centegra-McHenry had a combined medical/surgical/ICU average daily census of 181.9 patients in CY 2009, or 83 percent occupancy. A reduction of 16 occupied beds would reduce their occupancy to 76 percent.

Mercy's impact on the Centegra hospitals would be even greater on obstetric services. Mercy's obstetric/gynecology physicians stipulate they will redirect 1,289 discharges from the existing Centegra hospitals to a new Mercy facility. Assuming an average length of stay of 2.5 days (the State's standard), these discharges would result in a loss of 9 occupied OB beds per day at those Centegra facilities. This reduction of 9 occupied beds would cut the Centegra facilities' average daily census in OB by half (from 16.7 to 7.9) and reduce their occupancy from 51 percent to 24 percent.

Mercy stipulates that health reform will increase admissions by 5 percent in year 1 of operations and 3 percent in year 2 of operations. They do not supply any analysis to support that assertion. Any expansion of coverage under health reform is also expected to be met with serious cost control initiatives that will create incentives for physicians and hospitals to reduce their admissions including, most notably, efforts to curtail unnecessary hospital readmissions. A conservative analysis of health reform at best would assume stable hospital admission rates.

7. Mercy's Assessment of Emergency Service Access is Outdated.

In Mercy's CON application, they refer to the emergency room bypass rates for Centegra-Woodstock and Centegra-McHenry for 2009 as indicators of a lack of available emergency services. The number of hours on ED bypass at Centegra-Woodstock and Centegra-McHenry went from a total of 65 hours (or a rate of 0.7%) in 2009 to zero hours in 2010. In addition, there are no less than seven immediate care centers in McHenry County, all within Mercy's service area.

8. Mercy's Argument for Excessive Travel Times is Not Pertinent.

Mercy's drive time study which measured round-trip driving times from its proposed new facility to the two existing Centegra hospitals in McHenry County is not particularly pertinent. The more relevant analysis is to measure travel times from existing hospitals with capacity to the ZIP codes where patients reside. As shown in *Exhibit 2* of this market assessment, 100 percent of the population is within 30 minutes driving time and 84 percent of the population in McHenry County is within 15 minutes driving time of an existing hospital with capacity (well below the State's threshold for ready access).

II. Geographic Access

Area Residents Already Have Timely Geographic Access to Existing Hospitals

Area Residents Have Timely Geographic Access to Existing Hospitals

Mercy-Crystal Lake Service Area

Mercy defined a service area for the proposed Crystal Lake hospital that the Applicant states approximates a 30-minute drive time radius from the proposed project site. A map of the proposed service area is shown in *Exhibit 1*. Mercy indicates that the majority (83%) of inpatient services provided by MHS physicians are for residents of this service area. The proposed hospital's service area extends well beyond McHenry County to parts of Cook, Kane, and Lake Counties where five full-service hospitals are located including Sherman, Provena St. Joseph, Advocate Good Shepherd, St. Alexius, and Northwest Community. Two additional full-service hospitals, Alexian Brothers and Advocate Condell, are located just outside this service area.

As shown in *Exhibit 2*, 100 percent of the population in Mercy's overall service area is within 30 minutes driving time of an existing hospital and 81 percent of the population is within 15 minutes driving time. *In ZIP codes where existing hospitals are greater than 15 minutes driving time away, the new Mercy-Crystal Lake facility would actually be farther than at least one, and sometimes as many as four, existing hospitals.*

A drive time analysis for each ZIP code in Mercy-Crystal Lake's proposed service area is presented in *Attachment 1* and shows that all ZIP codes of the proposed service area already have access within the State's standard of 30 minutes driving time to existing hospitals.

Exhibit 1
Mercy-Crystal Lake
Proposed Service Area

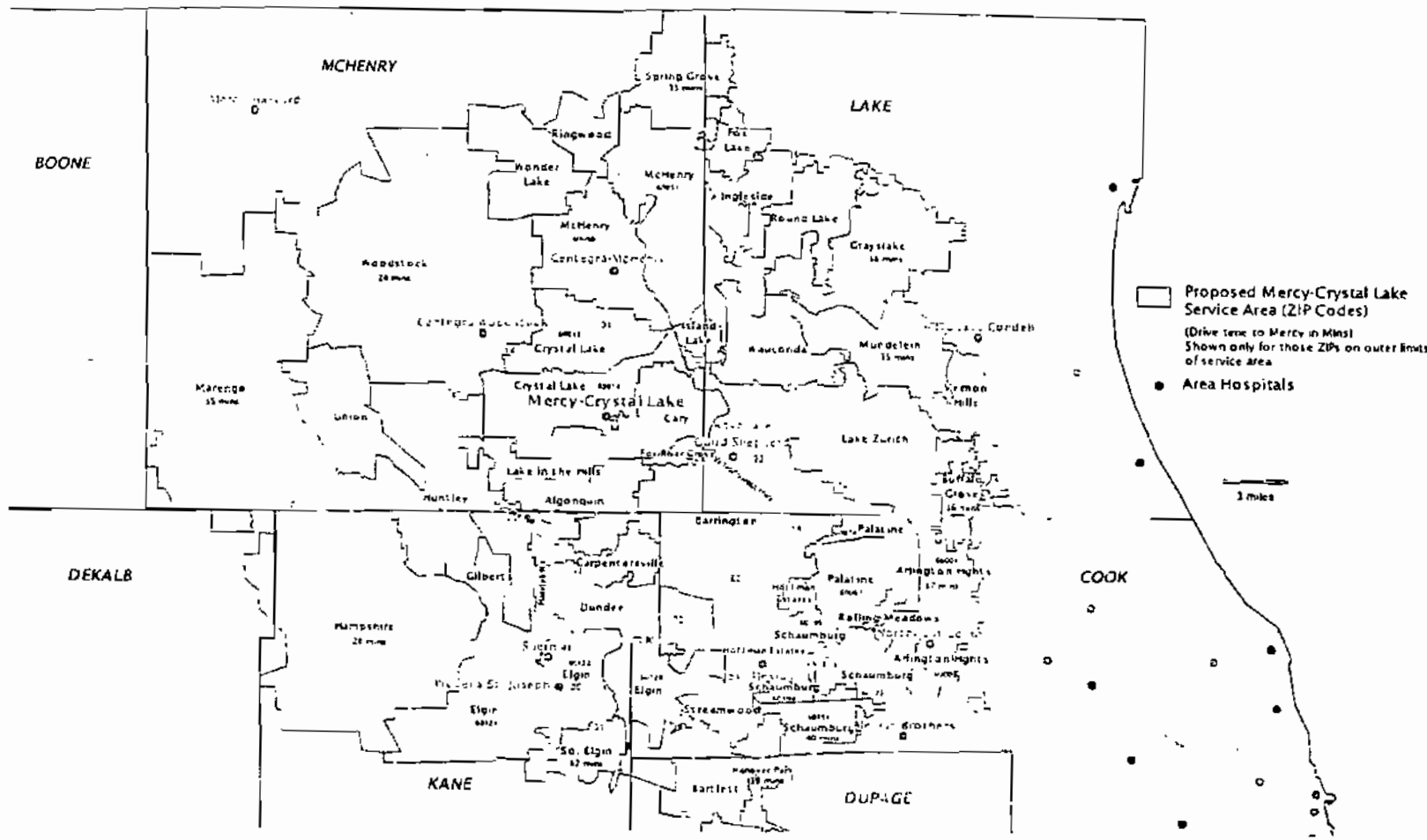

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Exhibit 2
2010 Estimated Population by Drive Time
Proposed Mercy-Crystal Lake Service Area

For ZIP Codes in Mercy's Proposed Service Area	2010 Estimated Population: Drive Time within 30 Mins of Existing Hospitals	2010 Estimated Population: Drive Time within 15 Mins of Existing Hospitals	Total Population in [illegible]
McHenry County ZIP Codes	318,264	267,655	[illegible]
Kane County ZIP Codes	219,585	219,585	[illegible]
Cook County ZIP Codes	418,328	337,633	[illegible]
Lake County ZIP Codes	336,064	216,556	[illegible]
TOTAL SERVICE AREA	**1,292,241**	**1,041,429**	1,29[illegible]
McHenry County ZIP Codes	100%	84%	
Kane County ZIP Codes	100%	100%	
Cook County ZIP Codes	100%	81%	
Lake County ZIP Codes	100%	64%	
TOTAL SERVICE AREA	**100%**	**81%**	

Source: Nielsen Claritas. Estimate for 2010 population. Does not reflect the most recent Census 2010 population because Census population by ZIP code is not yet available.

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III. Population Projections

Applicant Overstates Projected Population Growth and Hospital Bed Demand

Applicant Overstates Projected Population Growth and Hospital Bed Demand

Population projections for 2010 to 2015 are shown in *Exhibit 3* for McHenry County. The 2010 total population for McHenry is based on actual 2010 Census information. Census 2010 data are not yet available by gender and age cohort. The total Census 2010 population for McHenry County (308,760) was distributed by gender and age cohort using the gender and age distributions estimated for 2010 by the DCEO, the HFSRB's preferred source for population estimates and projections. 2015 projections were made by applying DCEO's average annual growth rates for 2010-2015 by age cohort and gender to actual 2010 Census population for McHenry County.

- Census figures for 2010 show that McHenry County's total population is approximately 28,000 people (or 8 percent) lower than the 2010 population estimated by the DCEO. 2015 projected population for McHenry County, updated for the lower 2010 Census base population, is expected to be approximately 31,600 lower than the DCEO's original population projection for 2015, reducing projected demand for inpatient hospital beds.

- Since Census population was not yet available at the time of Mercy's CON filing, the Applicant overstates projected hospital demand.

Exhibit 3
Updated Population Projections for McHenry County, 2010-2015

	DCEO Population Projections - Existing			DCEO Population Projections – Updated with 2010 Census		
	DCEO Estimated 2010	DCEO 2015 Projection	Avg Annual Growth Rate: 2010-2015	2010 Updated Census[1]	2015 Projection Updated[2]	Change: 2010-2015
TOTAL POPULATION	**337,034**	**377,315**	**2.3%**	**308,760**	**345,662**	**36,902**
Distribution by Age Cohort:						
0-14	22.7%	21.4%	1.1%	70,031	73,991	3,960
15-44	42.2%	41.7%	2.1%	130,219	144,144	13,925
45-64	26.1%	26.3%	2.4%	80,649	90,953	10,304
65-74	5.4%	6.7%	6.7%	16,778	23,214	6,437
75+	3.6%	3.9%	3.8%	11,083	13,359	2,276
TOTAL	100.0%	100.0%	2.3%	308,760	345,662	36,902
% 65+	9.0%	10.6%				
FEMALE POPULATION	**167,812**	**188,161**	**2.3%**	**153,734**	**172,376**	**18,642**
Distribution by Age Cohort:						
0-14	22.0%	20.8%	1.1%	33,884	35,829	1,945
15-44	41.6%	41.0%	2.0%	63,945	70,607	6,662
45-64	25.9%	26.0%	2.4%	39,794	44,889	5,095
65-74	5.9%	7.2%	6.7%	9,015	12,491	3,477
75+	4.6%	5.0%	3.8%	7,096	8,559	1,463
TOTAL	100.0%	100.0%	2.3%	153,734	172,376	18,642
% Females 15-44	41.6%	41.0%		41.6%	41.0%	

[1] Census 2010 data are not yet available by gender and age cohort. The total Census 2010 population for McHenry County (308,760) was distributed by gender and age cohort using the gender and age distributions estimated for 2010 by the Department of Commerce and Economic Opportunity (DCEO).
[2] 2015 projections were made by applying DCEO's average annual growth rates for 2010-2015 by age cohort and gender to 2010 Census county total population.
Sources: Department of Commerce and Economic Opportunity population projections for 2010 and 2015, downloaded March 2011, http://www.commerce.state.il.us/dceo/Bureaus/Facts_Figures/Population_Projections. US Census Bureau website for Census 2010 total population.

IV. Existing Hospital Capacity and Access

There is Existing Hospital Capacity to Meet the Current Health Care Needs of McHenry County Residents, Only Rare Instances of Emergency Bypass, and Numerous Immediate Care Centers

There is Existing Hospital Capacity to Meet the Current Health Care Needs of McHenry County Residents

Exhibit 4 shows that there is capacity at several nearby hospitals with an average of 295 med/surg beds, 34 ICU beds, and 41 OB beds going unoccupied per day even while currently serving patients from Centegra-Huntley's proposed service area. Five of seven area hospitals fall below targeted occupancy levels for med/surg beds.

Exhibit 4
Capacity of Nearest Hospitals
Serving Centegra-Huntley's Proposed Service Area

Falls below targeted occupancy level

Nearest Hospitals	Adjusted Authorized CON Beds 12/31/09*	Target Occupancy Based on Bed Size 77 Ill. Adm Code 1100	2009 Occupancy	Unoccupied Beds (on average per day)
Med/Surg (adult and pediatrics)				
Centegra-McHenry	129	85%	78.6%	28
Centegra-Woodstock	60	80%	89.9%	6
Mercy-Harvard	17	80%	26.8%	12
Planning Area A-10	**206**		**77.6%**	**46**
Sherman Health	197	85%	47.9%	103
Advocate Good Shepherd	127	85%	80.3%	25
St. Alexius	274	90%	60.1%	109
Provena St. Joseph	99	80%	87.6%	12
TOTAL Med/Surg	**903**		**67.3%**	**295**
ICU				
Centegra-McHenry	18	60%	95.1%	1
Centegra-Woodstock	12	60%	79.3%	2
Mercy-Harvard	3	60%	10.5%	3
Planning Area A-10	**33**		**81.7%**	**6**
Sherman Health	30	60%	44.3%	17
Advocate Good Shepherd	18	60%	101.1%	0
St. Alexius	29	60%	72.0%	8
Provena St. Joseph	15	60%	76.9%	3
TOTAL ICU	**125**		**72.7%**	**34**
OB				
Centegra-McHenry	19	75%	42.7%	11
Centegra-Woodstock	14	75%	61.3%	5
Mercy-Harvard	0	-	-	-
Planning Area A-10	**33**		**50.6%**	**16**
Sherman Health	28	78%	56.4%	12
Advocate Good Shepherd	24	75%	52.2%	11
St. Alexius	28	78%	91.4%	2
Provena St. Joseph	0	-	-	-
TOTAL OB	**113**		**63.9%**	**41**

*Adjusted beds at Centegra-Woodstock to reflect the abandonment of their CON project which reduces their med/surg bed count by 14 and their OB bed count by 6. Source: 2009 Annual Hospital Questionnaires, IDPH.

There Are Only Rare Instances of Emergency Bypass

Exhibit 5 shows that area hospitals were rarely on ED bypass in 2010, totaling fewer than 16 hours in aggregate for the entire year and with many hospitals having zero hours on bypass. This low ED bypass rate is an indicator that there are sufficient available beds to meet current health care needs. It is important to note that when hospitals go on bypass, it is only for non life-threatening conditions; trauma patients will always be treated. In addition, a hospital may go on bypass not because an inpatient bed is unavailable, but simply because certain diagnostic equipment is temporarily inoperable in the emergency department.

Exhibit 5
Hours on ED Bypass in 2010 – Nearby Hospitals

Nearby Hospitals	Hours on ED Bypass in 2010
Advocate Good Shepherd	1.98
Centegra-McHenry	0.00
Centegra-Woodstock	0.00
Northwest Community Hospital	0.00
Provena St. Joseph	0.00
Sherman	5.67
St. Alexius	8.07
Total	**15.72**
Average per hospital	2.25

Source: IDPH Hospital Health Alert Network.

There Are Numerous Immediate Care Centers

Aside from emergency department access, McHenry County has a substantial number of immediate care centers to treat urgent, but non-life threatening conditions. The immediate care centers located in McHenry County are shown in *Exhibit 6*. All of these seven centers are located in Mercy-Crystal Lake's proposed service area.

Exhibit 6
Immediate Care Centers Located in McHenry County

Advocate Good Shepherd Outpatient Center – Crystal Lake*
Centegra Immediate Care – Crystal Lake*
Centegra Immediate Care – Huntley*
Mercy McHenry Medical Center – McHenry*
Mercy Woodstock Medical Center – Woodstock*
Provena Acute Care – Lake in the Hills*
Sherman Immediate Care – Algonquin*
*Located in Mercy-Crystal Lake's proposed service area.

V. Current Patient Migration Patterns and Impact on Existing Hospitals

Area Residents Already are Being Served by Existing Hospitals, and A New Hospital in McHenry County Will Have a Substantial Adverse Impact on Existing Hospitals' Volume and Payer Mix

Area Residents Are Already Being Served by Existing Hospitals

Exhibit 7 shows the number of inpatients currently being treated at existing area hospitals and the portion of these patients who reside in Mercy-Crystal Lake's proposed service area. More than 85 percent of each area hospital's patients originate from Mercy's proposed service area.

Exhibit 7
Inpatient Patient Origin for Existing Area Hospitals, Annualized 9 Months CY 2010
Mercy-Crystal Lake Proposed Service Area

	Discharges by Where Patients Reside		
Existing Hospital	**Total Mercy Service Area**	**All Other Areas**	**FACILITY TOTAL**
St. Alexius	15,609	2,727	18,337
Sherman	13,842	1,142	14,984
Advocate Good Shepherd	10,593	743	11,336
Centegra-McHenry	8,936	1,136	10,073
Centegra-Woodstock	5,653	979	6,632
Provena St. Joseph	4,582	483	5,065
TOTAL	**59,216**	**7,210**	**66,426**

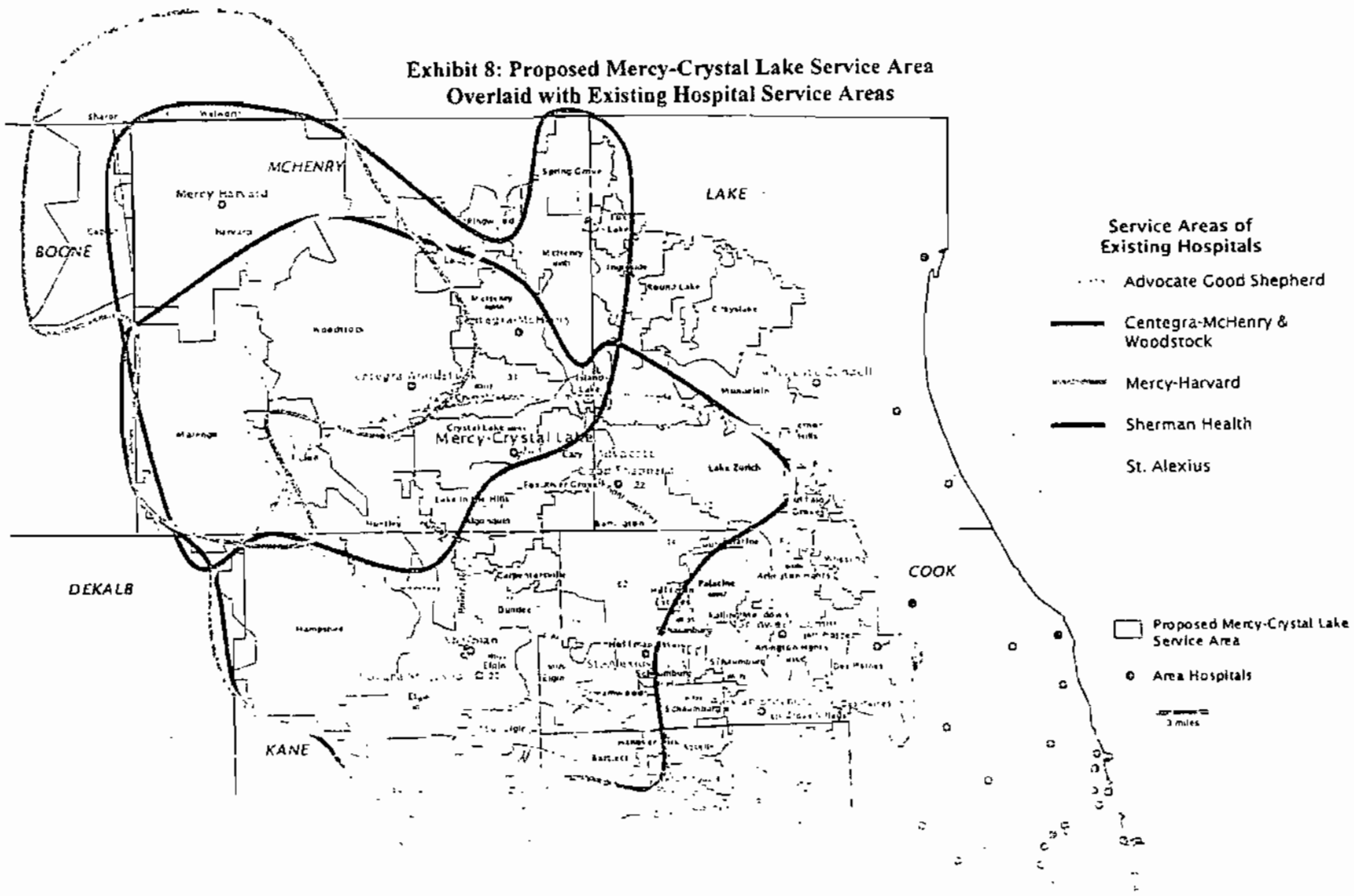
	Percentage of Discharges by Where Patients Reside		
Existing Hospital	**Total Mercy Service Area**	**All Other Areas**	**FACILITY TOTAL**
St. Alexius	85.1%	14.9%	100.0%
Sherman	92.4%	7.6%	100.0%
Advocate Good Shepherd	93.4%	6.6%	100.0%
Centegra-McHenry	88.7%	11.3%	100.0%
Centegra-Woodstock	85.2%	14.8%	100.0%
Provena St. Joseph	90.5%	9.5%	100.0%
TOTAL	**89.1%**	**10.9%**	**100.0%**

Source: Illinois COMPdata. Data represent a simple annualization of 9 months CY 2010 data. Discharges exclude normal newborns in MS-DRG 795, psychiatry, substance abuse, and rehabilitation (psychiatry, substance abuse, and rehabilitation are not included in Applicant's proposed bed complement).

Service Areas of Existing Hospitals

As shown in the map in *Exhibit 8*, virtually the entire proposed service area of the Mercy-Crystal Lake hospital is contained within the current service areas of the existing hospitals. Any duplication of services by a new hospital would adversely impact the volumes and capacity of those existing hospitals.

Exhibit 8: Proposed Mercy-Crystal Lake Service Area Overlaid with Existing Hospital Service Areas



A New Hospital in McHenry County Will Have a Substantial Adverse Impact on Existing Hospitals' Volume

Krentz Consulting modeled the impact that the proposed Mercy-Crystal Lake hospital would have on the utilization of existing hospitals. We completed a detailed impact analysis for Advocate Good Shepherd Hospital, Sherman Health, and St. Alexius Medical Center (the "Concerned Hospitals") by service line and level of acuity. The methodology and assumptions used in the impact analysis are described below. The utilization impact was also modeled for "Other Area Hospitals" (Centegra-Woodstock, Centegra-McHenry, and Provena St. Joseph) by applying overall assumptions of volume loss by sub-geography for medical, surgical, OB, and neonatal services, but not for detailed service lines and acuity levels.

Volume Impact Methodology for Concerned Hospitals

1. Mercy-Crystal Lake's overall proposed service area was segmented into meaningful sub-geographies with which to judge current and expected patient migration patterns (see *Exhibit 9* for map of sub-geographies).

2. Discharges for inpatients residing in the sub-geographies were grouped into service lines and levels of acuity. The source of the discharge information was obtained by COMPdata for discharges occurring in the first nine months of calendar year 2010 and annualized using a simple annualization method.

3. Service line definitions and levels of acuity were defined by Krentz Consulting using the Centers for Medicare and Medicaid Services' MS-DRGs.

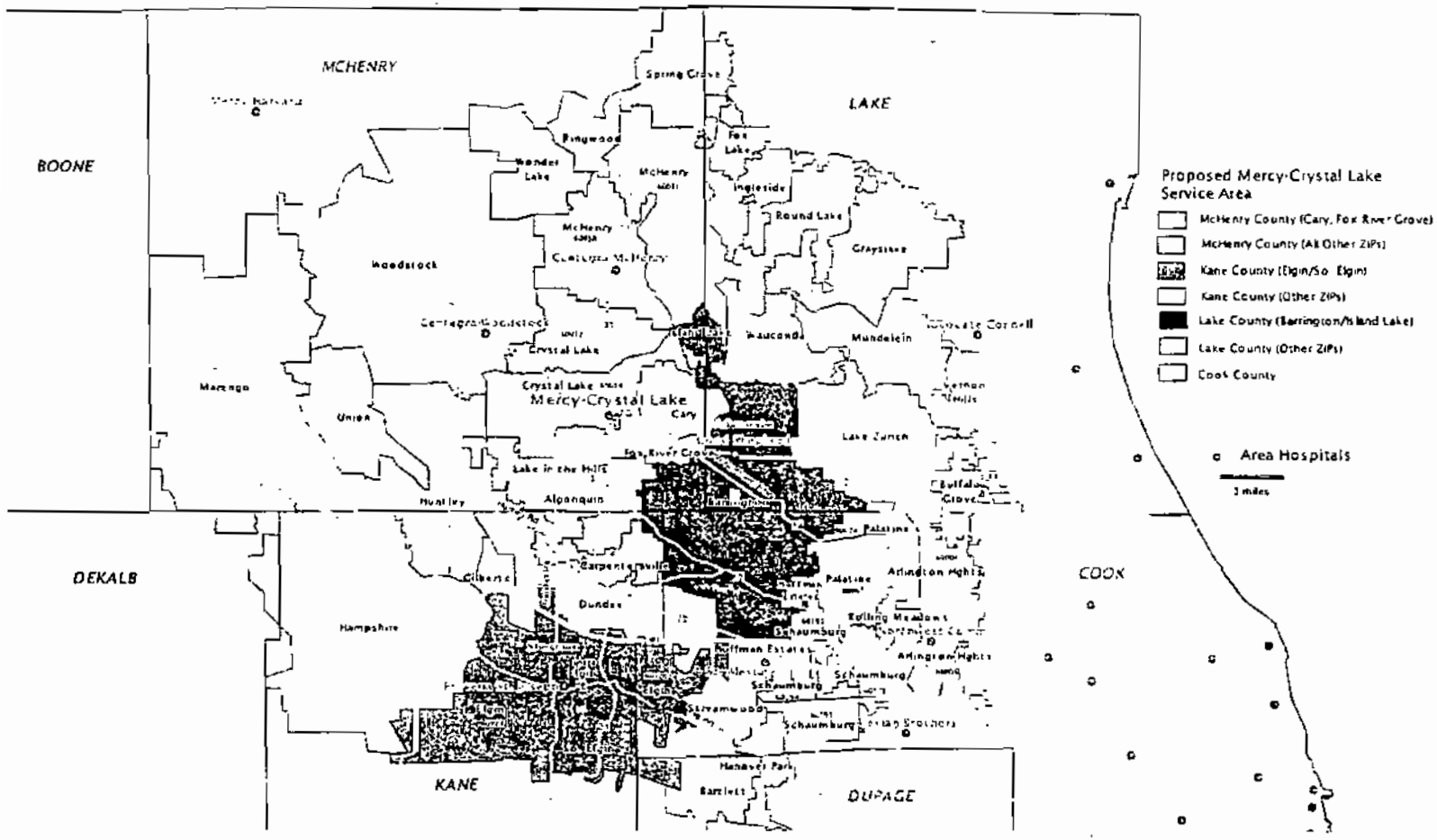
4. For each sub-geography, assumptions of volume loss were made by service line and level of acuity for each of the Concerned Hospitals.

   - It was assumed that the Concerned Hospitals would lose a higher proportion of their lower acuity cases, but a lower proportion of their highest acuity cases.

   - Mercy-Crystal Lake will not offer cardiac angioplasty/stent or open heart surgery services; it was assumed that none of the existing hospitals would lose that volume.

The utilization impact was also modeled for "Other Area Hospitals" (Centegra-Woodstock, Centegra-McHenry, and Provena St. Joseph) by applying overall assumptions of volume loss by sub-geography for medical, surgical, OB, and neonatal services.

Exhibit 9
Mercy-Crystal Lake Proposed Service Area
Submarkets Defined for Impact Analysis



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McHenry (Cary, Fox River Gr)=60013,60021
McHenry (All Other)=60012,60014,60050,60051,60072, 60083,60097,60098,60102,60142,60152,60156,60180
Kane (Elgin, So Elgin)=60120,60123,60124,60177
Kane (Other)=60110,60118,60136,60140)
Lake (Barrington, Island Lake)=60010,60042
Lake (Other)=60020,60030,60041,60047,60060,60061,60073,60084,60089
Cook=60004,60005,60008,60067,60074,60103,60107,60133,60169,60173,60192,60193,60194,6

Estimated Volume Impact on Area Hospitals

Exhibit 10 shows the estimated volume impact of a new Mercy-Crystal Lake hospital on the area hospitals' current discharges from Mercy-Crystal Lake's defined service area.[1] In aggregate, area hospitals are estimated to lose over 9,700 inpatient discharges from Mercy's defined service area.

- Among Concerned Hospitals, Advocate Good Shepherd and Sherman Health are estimated to each lose over 2,100 discharges or between 16 and 22 percent of their volume originating from Mercy's defined service area. St. Alexius is estimated to lose over 800 discharges or 5% of its volume from this market.
- Other Area Hospitals (Centegra-Woodstock, Centegra-McHenry, and Provena St. Joseph) are estimated to lose over 4,400 discharges or 23 percent of their volume originating from Mercy's defined service area.

Exhibit 10
Impact of Mercy-Crystal Lake Hospital on Area Hospital Volume

		Total Current Area Hospital Discharges (2010 annualized)					Potential Loss of Area Hospital Discharges (2010)				
	Total Market Discharges (2010 annualized)	Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra-Woodstock, Centegra McHenry, Provena St Joseph)	Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra-Woodstock, Centegra McHenry, Provena St Joseph)
Mercy Total Service Area											
Medical/Surgical	96,709	8,578	9,811	12,288	30,677	17,225	1,600	1,663	593	3,856	3,858
OB	17,413	1,693	2,979	2,658	7,329	1,711	586	363	164	1,113	482
Neonatal	5,456	358	1,147	667	2,173	424	121	143	46	310	122
TOTAL	119,578	10,629	13,937	15,613	40,179	19,360	2,307	2,169	803	5,279	4,462
Overall % Loss							22%	16%	5%	13%	23%

Notes: Medical/surgical volume would include care delivered in the ICU. Volume excludes normal newborns in MS-DRG 795.

Additional detail by sub-geography is presented in *Attachment 2*.

[1] Source of volume from COMPdata for discharges and patient days occurring in the first nine months of calendar year 2010 and annualized using a simple annualization method.

A New Hospital in McHenry County Will Have a Substantial Adverse Impact on Existing Hospitals' Payer Mix

Because Mercy-Crystal Lake will be geographically more proximate to the economically most attractive areas of the region, the volume that the Concerned Hospitals are estimated to lose from those markets would have an adverse effect on their overall payer mix and compromise their ability to subsidize needed community services. *Exhibit 11* shows that a new Mercy-Crystal Lake facility would capture a high percentage of commercial patients, reducing the Concerned Hospitals' percentage of volume that is commercially insured and increasing their proportion of Medicaid/self-pay patients. This loss of commercially-insured patients is particularly problematic for obstetric services, where the Concerned Hospitals' proportion of discharges that are Medicaid/self-pay would increase by eight percent.

Exhibit 11
Impact of Losing Volume to Mercy-Crystal Lake on Payer Mix of Concerned Hospitals

Payer	Concerned Hospitals 2010 Total Actual Payer Mix of Discharges	Mercy-Crystal Lake's Payer Mix of Estimated Volume Shifted from Concerned Hospitals
Medical/Surgical Discharges		
Commercial/HMO	38.6%	46.8%
Medicare	47.8%	43.0%
Medicaid/Self-Pay/Other	13.6%	10.2%
TOTAL	**100.0%**	**100.0%**
Obstetric Discharges		
Commercial/HMO	57.5%	80.6%
Medicare	0.3%	0.3%
Medicaid/Self-Pay/Other	42.2%	19.1%
TOTAL	**100.0%**	**100.0%**

Source: COMPdata, 9 months calendar year 2010 data for all inpatient discharges excluding all neonatal, psychiatry/substance abuse, and rehabilitation patients.

VI. Updated Bed Need in Planning Area

Even with Population Growth, there is Not Enough Demand to Support a New 128-Bed Hospital in McHenry County, and Any New Beds will Largely Shift Discharges from Hospitals Already Serving the Residents of the Planning Area

Even with Population Growth, there is Not Enough Demand to Support a New 128-Bed Hospital in McHenry County

The HFSRB's most recent calculation of bed need for Planning A-10 (McHenry County) was published on March 1, 2011. The HFSRB determined demand for hospital beds using 2003-2005 use rates and migration patterns. The HFSRB also used population projections for 2015 from the DCEO that were projected using 2000 Census information.

Since the HFSRB developed their bed need calculations, new information suggests that the calculated need for 83 medical/surgical beds is overstated:

- The actual 2010 census for McHenry County is 8% lower than the estimate for 2010 in the bed need calculations. Since the 2010 population is lower than expected, it is reasonable to assume that the projections for 2015 are overstated by at least a similar amount.

Any New Beds will Largely Shift Discharges from Hospitals Already Serving the Residents of the Service Area

The bed need formula used by HFSRB also incorporates as a significant consideration the retention of patients who current leave the Planning Area for care (outmigration), even if the travel times to the hospitals outside the Planning Area are within 15 or 30 minutes. It is not reasonable to assume that a patient traveling just beyond the border of the Planning Area to an adjacent community is undesirable outmigration that needs to be changed.

Attachments

Attachment 1

Drive Time ≤ 15 Mins

Drive Time 15-30 Mins

Driving Times (Minutes)
Proposed Mercy-Crystal Lake Service Area

	2010 Estimated Population	Sherman Hospital	Centegra-McHenry	Centegra-Woodstock	Provena St. Joseph	Advocate Good Shepherd	St. Alexius
McHenry County ZIP Codes in Proposed Service Area							
60014 Crystal Lake	51,100	19.6	17.3	11.5	26.5	18.4	32.2
60102 Algonquin	34,875	15.0	25.3	26.5	20.7	24.2	27.6
60098 Woodstock	33,657	31.1	18.4	6.9	38.0	35.7	47.2
60050 McHenry	32,142	34.5	4.6	19.6	40.3	27.6	42.6
60013 Cary	30,084	26.5	18.4	23.0	32.2	10.4	29.9
60156 Lake in the Hills	30,066	15.0	20.7	20.7	21.9	21.9	32.2
60142 Huntley	25,824	17.3	32.2	19.6	23.0	33.4	32.2
60051 McHenry	25,525	39.1	9.2	25.3	46.0	27.6	46.0
60152 Marengo	13,072	31.1	40.3	25.3	38.0	46.0	46.0
60097 Wonder Lake	11,814	47.2	15.0	23.0	52.9	39.1	55.2
60012 Crystal Lake	11,265	27.6	17.3	11.5	34.5	23.0	38.0
60081 Spring Grove	10,228	52.9	23.0	36.8	59.8	32.2	49.5
60021 Fox River Grove	6,274	29.9	21.9	26.5	36.8	4.6	25.3
60180 Union	1,485	27.6	36.8	21.9	33.4	43.7	42.6
60072 Ringwood	853	43.7	13.8	27.6	49.5	36.8	51.8
Kane County ZIP Codes in Proposed Service Area							
60120 Elgin	49,715	15.0	44.9	46.0	15.0	31.1	12.7
60123 Elgin	49,579	8.1	39.1	40.3	4.6	39.1	21.9
60110 Carpentersville	40,768	15.0	28.8	32.2	21.9	23.0	18.4
60177 South Elgin	22,068	13.8	44.9	46.0	11.5	44.9	26.5
60118 Dundee	18,930	6.9	29.9	31.1	13.8	27.6	16.1
60124 Elgin	17,629	8.1	39.1	38.0	4.6	40.3	24.2
60140 Hampshire	14,226	16.1	41.4	28.8	15.0	42.6	32.2
60136 Gilberts	6,670	6.9	32.2	32.2	13.8	33.4	24.2

Source of 2010 population: Nielsen Claritas, does not reflect recent Census 2010 data. Source of drive times: MapQuest. Per HFSRB rules, travel time from each hospital location to the geographic center of each ZIP code has been calculated using MapQuest's drive time multiplied by 1.15. Ambulance transport times would be faster.

Continued on next page

Attachment 1 (Continued)

Drive Time ≤ 15 Mins

Drive Time 15-30 Mins

Driving Times (Minutes)
Proposed Mercy-Crystal Lake Service Area

	2010 Estimated Population	Northwest Community	St. Alexius	Advocate Condell	Advocate Good Shepherd	Centegra McHenry	Sherman Hospital
Cook County ZIP Codes in Proposed Service Area							
60004 Arlington Hghts	48,990	11.5	20.7	28.8	23.0	43.7	33.4
60103 Bartlett	42,163	34.5	16.1	56.4	34.5	49.5	21.9
60193 Schaumburg	40,269	21.9	13.8	50.6	35.7	52.9	31.1
60074 Palatine	38,532	18.4	20.7	27.6	18.4	39.1	35.7
60067 Palatine	38,393	15.0	16.1	34.5	20.7	41.4	32.2
60133 Hanover Park	36,961	26.5	11.5	52.9	34.5	51.8	24.2
60107 Streamwood	35,116	27.6	8.1	51.8	28.8	44.9	20.7
60169 Hoffman Estates	33,768	17.3	3.5	46.0	26.5	42.6	21.9
60005 Arlington Hghts	28,135	1.2	20.7	40.3	31.1	51.8	34.5
60008 Rolling Meadows	22,428	6.9	16.1	35.7	27.6	48.3	28.8
60194 Schaumburg	20,816	21.9	9.2	50.6	31.1	48.3	26.5
60192 Hoffman Estates	15,606	23.0	5.8	42.6	21.9	39.1	19.6
60173 Schaumburg	12,574	10.4	11.5	39.1	28.8	47.2	27.6
60195 Schaumburg	4,577	16.1	9.2	41.4	26.5	44.9	27.6
Lake County ZIP Codes in Proposed Service Area							
60073 Round Lake	55,624	49.5	46.0	28.8	27.6	25.3	54.1
60089 Buffalo Grove	46,234	21.9	27.6	19.6	21.9	40.3	41.4
60010 Barrington	44,088	27.6	16.1	36.8	8.1	29.9	28.8
60047 Lake Zurich	43,733	26.5	25.3	23.0	12.7	32.2	40.3
60030 Grayslake	40,182	46.0	47.2	15.0	29.9	28.8	57.5
60060 Mundelein	37,701	34.5	35.7	13.8	21.9	29.9	49.5
60061 Vernon Hills	25,370	33.4	38.0	9.2	27.6	40.3	52.9
60084 Wauconda	15,424	36.8	31.1	26.5	13.8	21.9	42.6
60042 Island Lake	10,058	40.3	36.8	34.5	16.1	13.8	33.4
60020 Fox Lake	8,885	48.3	44.9	34.5	26.5	21.9	51.8
60041 Ingleside	8,765	48.3	44.9	29.9	27.6	21.9	51.8

Source of 2010 population: Nielsen Claritas, does not reflect recent Census 2010 data. Source of driving times: MapQuest. Per HFSRB rules, travel time from each hospital location to the geographic center of each ZIP code has been calculated using MapQuest's drive time multiplied by 1.15. Ambulance transport times would be faster.

Attachment 2
Impact of Mercy-Crystal Lake Hospital on Area Hospital Volume

	Total Market Discharges (2010 annualized)	Total Current Area Hospital Discharges (2010 annualized)					Potential Loss of Area Hospital Discharges (2010)				
		Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra Woodstock, Centegra McHenry, Provena St. Joseph)	Advocate Good Shepherd	Sherman Health	St. Alexius	Total Current Concerned Hospital Discharges	Other Area Hospitals (Centegra Woodstock, Centegra McHenry, Provena St. Joseph)
Mercy McHenry ZIPs (Cary/Fox River Grove)											
Medical/Surgical	1,997	1,242	37	40	1,320	277	261	19	22	302	138
OB	360	194	15	15	223	90	58	9	9	76	45
Neonatal	94	43	5	4	52	25	13	3	3	18	13
TOTAL	2,451	1,479	57	59	1,595	392	332	31	33	396	196
Overall % Loss							22%	54%	56%	25%	50%
Mercy McHenry ZIPS (Other)											
Medical/Surgical	22,356	2,364	2,814	730	5,928	11,759	1,100	1,302	349	2,751	3,118
OB	3,213	757	377	136	1,270	1,447	454	226	82	762	362
Neonatal	910	154	143	41	338	157	92	86	25	203	89
TOTAL	26,479	3,274	3,355	908	7,537	13,562	1,646	1,614	456	3,716	3,569
Overall % Loss							50%	48%	50%	49%	26%
Mercy Kane ZIPs (Elgin/So. Elgin)											
Medical/Surgical	10,744	62	4,117	900	5,078	3,134	9	0	0	9	32
OB	2,504	23	1,598	372	1,997	20	6	0	0	6	4
Neonatal	877	4	595	83	682	3	1	0	0	1	1
TOTAL	14,125	88	6,309	1,354	7,757	3,157	16	0	0	16	37
Overall % Loss							18%	0%	0%	0%	1%
Mercy Kane ZIPs (Other)											
Medical/Surgical	4,732	147	2,313	568	3,028	648	68	304	129	500	198
OB	1,373	99	814	202	1,115	25	49	122	50	221	25
Neonatal	519	21	346	85	413	5	11	52	12	75	5
TOTAL	6,623	267	3,474	816	4,556	681	128	478	190	796	228
Overall % Loss							48%	14%	23%	17%	34%
Mercy Lake ZIPs (Barrington/Island Lake)											
Medical/Surgical	3,860	2,062	49	354	2,465	144	162	24	66	252	79
OB	394	194	5	24	223	33	19	3	6	28	19
Neonatal	107	40	1	12	51	11	4	1	1	6	6
TOTAL	4,361	2,296	56	390	2,742	189	185	28	75	288	104
Overall % Loss							8%	50%	19%	11%	55%
Mercy Lake ZIPs (Other)											
Medical/Surgical	19,136	2,298	33	152	2,484	1,082	0	14	28	42	255
OB	3,622	314	5	68	388	92	0	3	17	20	24
Neonatal	1,068	74	3	15	91	20	0	1	4	5	5
TOTAL	23,827	2,686	41	235	2,963	1,174	0	18	49	67	284
Overall % Loss							0%	43%	21%	2%	24%
Mercy Cook ZIPs											
Medical/Surgical	33,883	404	427	9,543	10,374	199	0	0	0	0	37
OB	5,947	112	164	1,841	2,118	4	0	0	0	0	4
Neonatal	1,881	23	53	467	543	1	0	0	0	0	3
TOTAL	41,712	539	644	11,851	13,034	206	0	0	0	0	44
Overall % Loss							0%	0%	0%	0%	21%
Mercy Total Service Area											
Medical/Surgical	96,709	8,578	9,811	12,288	30,677	17,225	1,600	1,663	593	3,856	3,858
OB	17,413	1,693	2,979	2,658	7,329	1,711	586	363	164	1,113	482
Neonatal	5,456	358	1,147	692	2,173	424	121	143	46	310	122
TOTAL	119,578	10,629	13,937	15,613	40,179	19,360	2,307	2,169	803	5,279	4,462
Overall % Loss							22%	16%	5%	13%	23%

Notes: Medical/surgical volume would include care delivered in the ICU. Volume excludes normal newborns in MS-DRG 795.

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IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

NORTHERN ILLINOIS MEDICAL CENTER, MEMORIAL MEDICAL CENTER, AND CENTEGRA HEALTH SYSTEM,

Plaintiff

vs.

CASE NO: 04 MR 106

ILLINOIS HEALTH FACILITIES PLANNING BOARD, ILLINOIS DEPARTMENT OF PUBLIC HEALTH, MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, INC. MERCY HEALTH SYSTEM CORPORATION, ELI L. BEEDING JR. AND THE BEEDING GROUP,

Defendants

MEMORANDUM OPINION AND ORDER

This cause came before the Court on Count I of the Complaint filed by the Plaintiffs' Northern Illinois Medical Center, Memorial Medical Center and Centegra Health System for Administrative Review of the Decision of Illinois Health Facilities Planning Board ("State Board") pursuant to 735 ILCS 5/3-110, 5/3-111 20 ILCS 3960/11. Plaintiffs seek reversal of the Administrative Decision of the State Board which granted a permit to the Mercy Crystal Lake Hospital and Medical Center, Inc. ("Mercy Hospital") to construct a new hospital in Crystal Lake. Plaintiffs contend that the State Board's actions in approving the issuance of the permit were against the manifest weight of the evidence and arbitrary and capricious, particularly in light of the negative reports of the Illinois Department of Public Health ("State Agency").

The Court has reviewed all the relevant pleadings, including Count I of the Complaint for Administrative Review, Plaintiffs' Motion to Reverse Administrative Decision, the Memorandum in support of said Motion, the Response of Mercy Hospital and Mercy Health System Corporation and Reply of Plaintiffs thereto. The Court has further reviewed the entire certified record of administrative proceedings which includes the Application for Permit, documents in support of the application, the State Agency reports, the Record of Public Hearing on September 29, 2003 and the transcripts of hearings before the State Board on December 17, 2003 and April 21, 2004, with corrections made at the June 15, 2004 State Board meeting. The Court has reviewed the case law cited by the parties in their written submissions and has had the benefit of the oral arguments of the attorneys for the Plaintiffs and Defendants.

BACKGROUND

The Illinois Health Facilities Planning Act was instituted "to establish a procedure designed to reverse the trends of increasing in costs of health care resulting from unnecessary construction or modification of health care facilities ... and to improve the financial ability of the public to obtain necessary health services and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public". 20 ILCS 3960/2 To that end, the Planning Act provided for the creation of a Board and defined its duties and functions. The powers and duties of the State Board include the prescribing of rules, regulations, standards, criteria and procedures to carry out the provisions of the Act. 20 ILCS 3960/12 The regulations and criteria are contained in Sections 1110 through 1260 of Title 77 of the Illinois Administrative Code. A health care facility cannot be modified or constructed unless the Board issues a permit. 20 ILCS 3060/5.1 In evaluating an application for

permit or Certificate of Need, the Board is assisted by Illinois Department of Public Health which serves as administrative and staff support for the Board. 20 ILCS 3960/4

On July 11, 2003, Mercy Hospital filed an Application for Certificate of Need (CON) with the Illinois Health Facilities Planning Board. The application requests a permit for establishment and construction of a new 70 bed hospital with adjacent office facilities for 45 physicians in Crystal Lake, Illinois. The proposed hospital would have 56 medical/surgical beds; 10 obstetrics beds and 4 intensive care beds. The hospital site is located within a MSA, known as area A-10. The initial application was deemed incomplete on July 24, 2003 and by letter of that date, additional information was requested. That information was provided on July 30, 2003, which included a listing of all hospitals within 45 minutes of the proposed facility.

A public hearing was conducted on September 29, 2003 in Crystal Lake, Illinois. In addition to persons associated with Mercy Hospital and its parent corporation, Mercy Health System, hundreds of interested persons testified or offered written submissions both in favor of and in opposition of the proposed project.

The Illinois Department of Public Health issued its initial report evaluating Mercy Hospital's application. The report found that overall, Mercy Hospital did not meet the review criteria of Illinois Administrative Code, Sections 1110 and 1120. The State Agency submitted its report to the Board on December 17, 2003 and the Board conducted a hearing on that same date. At the meeting the Board denied the application.

Thereafter, Mercy Hospital submitted additional information for the project to the State Agency and requested another hearing date before the State Board. A Supplemental Agency Report was prepared based on the new materials and submitted to the State Board at its April 21, 2004 meeting. The report did change some of its findings in the supplemental report dealing

with financial and economic considerations under Section 1120 of the Illinois Administrative Code. The evaluations pertaining to Section 1110 remained unchanged. At the Board meeting on April 21, 2004, the Board approved Mercy Hospital's application. The State Agency issued a letter on May 15, 2004 informing the applicant of the State Board's approval of the project.

On May 26, 2004, the Plaintiffs filed its Complaint for Administrative Review of the State Board's decision to grant the CON to Mercy Hospital. The Plaintiffs assert that the decision of the State Board should be reversed because (a) it is against the manifest weight of the evidence; (b) the issuance of the permit was arbitrary and capricious; (c) the vote of the Board on April 21st did not specify the action proposed and the Board did not make any findings; and, (d) the voting process was improper and evidence of arbitrary conduct.

REVIEW OF THE BOARD'S DECISION

A. MANIFEST WEIGHT OF THE EVIDENCE:

The Plaintiffs contend that the Decision of the Board to issue the permit to Mercy Hospital for the establishment and construction of a new hospital in Crystal Lake, Illinois was against the manifest weight of the evidence.

If factual findings are made by an administrative agency, they are viewed as prima facie correct and a reviewing court will not disturb those findings, unless they are contrary to the manifest weight of the evidence. BRIDGESTONE/FIRESTONE, INC. vs. DOHERTY, 305 Ill. App. 3d 141 (1999).

At the administrative hearing on April 21, 2004, no factual findings were made by the State Board. On May 14, 2004, the executive secretary of the Board issued a letter notifying Mercy Hospital that the State Board had approved the Application for Permit. That letter

indicated that Board based its approval upon the project's substantial conformance with the applicable standards and criteria of Part 1110 and 1120. It further stated that, "In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, the State Agency's Report of Public Hearing held on September 29, 2003 and any testimony made before the State Board".

The aforesaid letter does not set forth specific findings of fact. It does state the Board's conclusions and the basis therefore. Section 10 of the Planning Act does not require the Board to specify its findings of facts and conclusions unless negative action on an Application is taken. 20 ILCS 3960/10 In addition, Section 1130.680 of the Administrative Code requires the Board to specify its "finding of fact and conclusions of law" only when the Board denies an application. ACCESS CENTER FOR HEALTH, LTD. Vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996).

In the case at bar, the State Board did not deny Mercy Hospital's Application for Permit or CON. Even if findings were necessary, that may not be enough for the trial court to reverse the Board's decision. If the record contains competent and sufficient evidence that supports the agency's decision, the decision should be affirmed. CATHEDRAL ROCK OF GRANITE CITY, INC. vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD. 308 Ill App 3d 529 (1999).

An administrative agency's decision is against the weight of the evidence only if the opposite conclusion is clearly evident. The mere fact that the opposite conclusion is reasonable or that the reviewing court may have ruled differently does not justify reversal of an administrative decision. A trial court may not reweigh the evidence or make an independent

determination of the facts. ABRAHAMSON vs. ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION, 153 Ill. App 2d 76 (1992)

In order to approve and authorize the issuance of a permit if it finds the State Board must find that the proposed project is consistent with the orderly and economic development of such facilities and is in accord with standards, criteria or plans of need adopted and approved pursuant to provisions of Section 12 of 20 ILCS 3960.

Section 12 of the Illinois Health Facilities Planning Act authorizes the State Board to prescribe rules, regulations, criteria and procedures to carry out the purposes of the Act. That section further enumerates certain factors the Board shall consider in developing health care facility plans. Those factors include the number of existing and planned facilities offering similar programs, the extent of utilization of existing facilities, the availability of facilities which may serve as alternatives or substitutes and the availability of personnel necessary to operate the facility. 20 ILCS 3960/12(1) and (4).

Acting as an administrative and support arm of the State Board, the State Agency prepared two reports for the Board's review and consideration. Those reports consider the application and supporting documentation submitted. The State Agency evaluated Mercy Hospital's application with respect to financial and economic criteria set forth in Section 1120 of Title 77 of the Illinois Administrative Code and the general review criteria and needed related criteria set forth in Section 1110 of the Illinois Administrative Code 77 Illinois Adm. Code. The Administrative Code has the force and effect of law. MEDCAT LEASING CO. vs. WHITLEY, 253 Ill App 3rd 801 (1993).

The Agency report completed for submission to the State Board Hearing on December 17, 2003 found that the Mercy Hospital Application, was in conformity with three of the four

applicable economic feasibility criteria and that the financial feasibility criteria were not applicable. The Agency report found that aside from meeting the background of applicant criterion (1110.230), that Mercy Hospital met none of the other criteria under Section 1110, the general or need related criteria, including the criteria for a variance to bed need.

At the December 17, 2003 State Board Hearing, Mercy Hospital had various representatives present who presented testimony regarding the application and in response to questioning by Board members. Those present for Mercy were Javon Bea, President of Mercy Hospital; Richard Gruber, Vice President of Mercy Hospital; Dan Colby, President of mercy Harvard Hospital and three attorneys representing Mercy. The Board addressed concerns regarding the bed variance, the shortage of obstetrical beds in the M.S.A., the additional physicians that Mercy would bring to staff its proposed hospital and the impact of the hospital on staffing in other area hospitals. At the conclusion of the hearing, the State Board denied Mercy Hospital's application. No findings were made. However, before the Notice of Intent to Deny was sent on January 27, 2004, Mercy Hospital on January 15, 2004 sent a letter with supplemental information requesting leave to reappear before the Board at the February meeting.

After receipt of the supplemental information from Mercy Hospital, the State Agency issued another report for submission to the Board at its April 21, 2004 meeting. No hearing was held regarding Mercy's application between December 17 and the April 21st meeting. The report of the State Agency for the April hearing contained the same findings regarding the general criteria and needed related criteria; that being that except for applicant meeting the background criteria, Mercy Hospital did not meet the other 1110 criteria. The State Agency found that with the change in cost submitted by Mercy in the supplemental materials, Mercy now met all of the economic feasibility factors.

At the hearing on April 21, 2004 before the Board representatives of Mercy appeared as well as its legal counsel. With respect to bed need, Mercy Hospital had submitted data from the Center for Disease Control which indicated that 76% of the hospitals in the United States have less than 100 beds. Upon questioning, hospital personnel acknowledged that this study was not Illinois or McHenry County based but rather reflected nationwide statistics. Documentation regarding the decrease in average patient stays was discussed using 980 figures versus today. Testimony was received regarding the 45 new physicians Mercy would bring to the proposed hospital, which physicians would be in their employ. Mercy representatives opined that with these new doctors in place, patients who resided in the M.S.A. who sought treatment outside of the M.S.A. would return for care. There was discussion concerning the findings by the State Agency on the general criteria and need criteria not being met. Board member Levine believed that the rules were outdated and needed to be revised to reflect current data. He was particularly impressed with the 45 physicians who would be moving to McHenry County to staff the proposed hospital. At the conclusion of the hearing, the Board voted to approve the application and the motion passed. On May 14, 2003, a letter advising of the approval of the application for permit was sent to Mercy Hospital.

Plaintiffs assert that the decision of the State Board is against the manifest weight of the evidence because the proposed project was not in accordance with the standards, criteria or plans of need adopted and approved pursuant to the provisions of the Illinois Health Facilities Planning Act. In particular, the Plaintiffs direct the Court to the State Agency reports wherein it was noted that Mercy Hospital's proposed project was not in conformity with the general review criteria and need related criteria under Sections 1110 of the Illinois Administrative Code.

The Defendants counter Plaintiffs assertions by directing the Court to the standard of review and the discretionary authority the State Board has under 1130.660 of the Illinois Administrative Code. That provision states in pertinent part the follows:

> "The State Board shall consider the application and any supplemental information or modification submitted by the applicant, IDPH report(s), the public hearing testimony, if any and other information coming before it in making its determination whether to approve the project. The applications are reviewed to determine compliance with review criteria enumerated in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more review criteria, as set forth in 77 Ill. Adm. Code 1110 and 1120 shall not prohibit the issuance of a permit."

The applicability of Section 1130.660 has been addressed in a number of cases, which cases have been cited by the parties herein. With the exception of the Court in SPRINGBOARD, the Courts have recognized that the State Board does have the authority to approve an application where one or more of the review criteria were not met. DIMENSIONS MEDICAL CENTER, LTD. Vs. SUBURBAN ENDOSCOPY CENTER, 298 Ill App 3d 93 (1998). ACCESS CENTER FOR HEALTH LTD. vs. HEALTH FACILITIES PLANNING BOARD, 283 Ill App 3d 227 (1996), CATHEDERAL ROCK OF GRANITE CITY vs. ILLINOIS HEALTH FACILITIES PLANNING BOARD, 308 Ill. App 3d 529 (1999) and MARION HOSPITAL CORPORATION vs. ILLINOIS HEALTH PLANNING BOARD, FACILITIES SPRINGWOOD is distinguishable from the aforementioned cases because the Court did not consider the applicability of 1130.660 in that case. SPRINGWOOD ASSOCIATES vs. HEALTH FACILITIES PLANNING BOARD, 269 Ill App 3d 944 (1995).

However, in each of the cases where the Courts upheld the Board's decision to exercise its discretionary authority, the courts looked to the record to determine if there was adequate evidence to support the Board's decision. None of the cases cited by the Defendants have State

Agency Reports that found lack of conformity with essentially all of the need related and general criteria as in the case at bar.

The letter of May 14, 2004, issued on behalf of the State Board found substantial conformance with the applicable standards and criteria of part 1110 and 1120 based on its consideration of the findings contained in the State Agency reports, the application material, the report of public hearing on September 29, 2003 and any testimony made before the State Board.

At the public hearing the majority of those who testified were in opposition to the proposed project. Almost 2000 letters were submitted both in support of and in opposition to Mercy Hospital. More letters were in opposition. Many of the letters submitted were form letters used by supporters of Plaintiffs' and Defendants' respective positions. Some of the letters were from Mercy's website, which did not allow negative input.

The State Agency Reports submitted to the State Board for hearings on December 17, 2003 and April 21, 2004 found that the proposed project was not in conformity with the following general review and need related criteria: 110.320(a): Establishment of Additional Hospitals, 110.320(b); Allocation of Additional Beds, 1110.520(a); Unit Size; 1110.520(b); Variances to Bed Needs, 110.520(b)(2); Medically Underserved Variance, 1110.230(a); Location, 1110.230(c); Alternatives, 1110.230(d); Need for the Project, 1110.230(e); and Size of the Project. The project was in conformity with 1110.230(b), Background of Applicant, which provided that the applicants complied with the necessary licensure and certification information required and are fit, willing, able and have the necessary background to provide a proper standard of healthcare service for the community.

In response to the adverse reports of the State Agency, Mercy Hospital addressed the growing population trends in McHenry County, the shortage of physicians in McHenry County

and the changes in the practice of medicine that have reduced the average length of patient stays in hospitals. Mercy Hospital asserts that as a result of the decline in the patient length of stays, there is no longer a need for the requirement of 100 medical/surgical beds as established in 1980 and that only 67 beds are needed to serve the same number of patients.

Section 1110.320(2) of the Illinois Administrative Code requires that hospitals within a M.S.A. must have a minimum of 100 medical/surgical beds. Hospitals situated outside a M.S.A. do not have such a limitation. Mercy Hospital proposes 56 med/surg. beds with initially 32 of the entire 70 beds being built out and the remaining 38 being shells for later construction. The Defendant hospital did not identify how the 32 beds would be allocated. At the Board hearing of April 21, 2004, Mr. Glaser, on behalf of Mercy Hospital stated that all 70 beds would immediately be built out, contrary to the data in the application and earlier testimony. (R3541) (R.14) Section 1110.230.530(a)(1)(A) provides that a new obstetric unit with a M.S.A. must have 20 beds. Mercy proposal is for 10 obstetric beds.

Mercy Hospital submitted material based on average length of patient stays in 1980 to the present, claiming that 67 beds would now provide care for the same number of patients in a 100 bed facility in 1980. The documentation presented gives nationwide figures with no specific data for Illinois.

The 100 bed standard was established in 1992 and not 1980 and is applicable only to hospitals within a Metropolitan Statistical Area, such as the proposed location. Furthermore, according to the bed inventory data, the A-10 planning area (M.S.A.), where the proposed facility would be located, has 35 excess medical surgical beds and 7 excess ICU beds. Assuming that the present average length of patient stays reduces the need for beds, then the proposed additional beds at Mercy Hospital would only increase the surplus but also affect the target

utilization rates at neighboring hospitals, which is also taken into account under the need related criteria. Presently the hospitals in proximity to the proposed project are generally not operating at the State's target utilization rates.

The only shortage of beds in the M.S.A. is obstetrical beds, which shortage is 20 beds. Mercy's application proposes 10 obstetrical beds. Mercy Health System Corporation operates Mercy Harvard Hospital, which is within M.S.A. 10. Mercy Harvard Hospital closed its obstetrical unit approximately three years ago and has not reopened since Mercy acquired the hospital approximately two years ago.

There are located within planning Area 10 three hospitals which offer the same services as the proposed project. Two of these three hospitals are within 30 minutes of the proposed facility. These are Northern Illinois Medical Center in McHenry and Memorial Medical Center in Woodstock. The third hospital, Mercy Harvard is within 45 minutes of the proposed facility. Additionally, there are four other hospitals not within the planning area, but within 30 minutes of the site of Mercy Hospital. They are Advocate Good Shepherd, Barrington, St. Alexius Medical Center, Hoffman Estates, Sherman Hospital, Elgin and Provena St. Joseph Hospital in Elgin. Each of these health facilities offer the same services as the proposed hospital.

Defendant acknowledges the presence of these other hospitals and that Mercy will offer no services not already provided by these facilities. However, Mercy contends that with the growth of population within the county, the travel times will increase in the future and thereby increasing the travel times in excess of 30 minutes to those hospitals. The estimates of future travel times do not take in account road expansion projects which might be undertaken. The evidence on the travel times and future projections offered by the Defendant are in some instances inaccurate and other instances speculative.

Mercy opines that a significant percentage of patients are leaving the planning area for health care and that with the establishment of a new hospital, a good percentage of those patients will return to the area for treatment. Competent evidence is lacking to support this opinion. Evidence at the public hearing and elsewhere in the record shows that approximately 75% of the residents within zip code targeted area received care at existing hospitals and that other patients leaving the target area are doing so for specialized or tertiary care. It is also unclear if Mercy's opinion takes into account the services received at the hospitals located within 30 minutes but outside of area A-10.

The review criteria does provide for variance for bed need. 77 Ill. Adm. Code 1110.530(b)(2). In order to satisfy the variance to bed need requirements, Mercy Hospital had to document that access to the proposed service is restricted in the planning area by documenting at least one of the following: (i) the absence of service within the planning area; (ii) limitations on government funded or charity patients; (iii) restrictive admissions policies of existing providers; (iv) the area population and existing care system exhibits indicators of median care problems such as an average family income level below the state poverty level, high infant morality or designation as a "Health Manpower Shortage Area:, or (v) the project will provide for a portion of the population who must currently travel over 45 minutes to receive service. Mercy Hospital was found to have documented none of the aforesaid criteria in order to receive a variance. Evidence presented showed that seven hospitals are within 45 minutes and all offer the same services Mercy will offer, if not more. Travel studies submitted by mercy were in some ways misleading as they included round trip travel times which is not the standard for review or were based on future projections. No evidence whatsoever was submitted to document items (i) through (iv).

Much was made by the Board at the April 21, 2003 hearing about the 45 physicians Mercy Hospital would bring to staff its hospital and adjacent offices. It is unclear from the evidence where these physicians will come from. However, Mercy did indicate that with the opening a new hospital, it would close three of its physician staffed facilities now located in and Cary and Crystal Lake. Board member, Mr. Levine, commented at the April 21st meeting how impressed he was that these new physicians would help make a dent in the shortage of physicians in the area. There was a chart provided showing a physician shortage in McHenry County. The underlying data for the information in the chart is unknown. While the Board addressed the shortage of physicians in the area, it appears not to have adequately considered the shortage of healthcare support staff. The evidence in the record reflects that there is a shortage of health care personnel needed to staff hospitals. There are not enough nurses, medical technicians and laboratory technicians to staff hospitals nationwide and in McHenry County. Testimony at the public hearing expressed a concern that the new hospital would not be able to adequately staff its facility and would have to recruit medical personnel from other area hospitals, thereby causing shortages of necessary and required staff in those facilities. Area hospitals have experienced staffing problems which have resulted in their not being able to maximize the use of their facilities.

The record further documents that the proposed hospital would adversely impact the utilization rates at hospitals within the M.S.A. and nearby. Mr. Ryder, of Advocate Health Care in Barrington testified at the public hearing that more than 25% of its patients are from the towns targeted by Mercy Hospital. A study submitted at the public hearing by Plaintiffs and prepared by Deloitte and Touche, at Plaintiff's instance concluded that Northern Illinois Medical Center and Memorial Medical Center, both in A-10 would lose approximately 9,500 cases annually.

Upon a review of the record, there is not sufficient and competent evidence supporting the State Board's decision to grant the issuance of the permit to Mercy Hospital. While the Board has the authority to issue a permit when all of the criteria under 1110 are not met, there needs to be some rationale basis to excuse compliance with the criteria. The record does not reflect that Mercy Hospital presented sufficient evidence showing that the proposed hospital facility was needed, was the most effective or least costly alternative and was in a medically underserved planning area. Sufficient evidence did not establish that the project warranted a variance to bed need.

Mercy Hospital's application did not meet the necessary general review and need related criteria and the factors set forth in 20 ILCS 3960/12. The written submissions and oral testimony did not rebut the Agency's findings that Mercy Hospital's application was not in conformity with the criteria set forth in 77 Ill. Adm. Code 1110. This Court finds that the State Board's decision is against the manifest weight of the evidence.

B. ARBITRARY AND CAPRICIOUS

The Plaintiffs also contend that the Board's decision was arbitrary and capricious. The Illinois Supreme Court in GREER vs. ILLINOIS HOUSING DEVELOPMENT AUTHORITY, 122 Ill 2d 462 (1988) set forth guidelines to be applied by the Court in determining whether the decision of an Agency is arbitrary and capricious. Those guidelines direct the Court to consider: 1. Did the Agency rely on factors the legislature did not intend the agency to consider; 2. Did the Agency fail to consider an important aspect of the problem, or 3. Did the Agency offer an explanation for its decision which runs counter to the evidence before the agency or which is so

implausible that it could not be ascribed to a difference in view or the product of agency expertise.

The State Board in the case at bar excused the mercy Hospital's failure to comply with essentially all of the general and need related criteria. The only rationale for the Board's actions capable of being gleaned from the hearing on April 21st was that the rules and review criteria are outdated and that this new facility will help fill the shortage of physicians in the service area.

At that April Board meeting, Board members expressed concern about the Board's decision being termed "arbitrary and capricious" if it approved the Mercy Hospital Application for Permit in light of the State Agency's two reports showing non conformity with the 1110 criteria. In response thereto, Board member Stuart Levine stated that the rules and criteria are "woefully out of date". He further stated that he has participated in "a lot of applications that were granted that had complete negative findings. And those occurred in instances where there were valid reasons and justifications given in each of the areas that, of course, are in the Board's discretion to do". R 3264. Yet, Mr. Levine did not offer any explanation or justification for the Board's approval in the instant case, other than he was impressed with the 45 new physicians who would be coming to McHenry County and who would make a dent in the physician shortage.

The Board hearing on April 21 focused in large part on the new physicians who would be employed by Mercy Hospital. However, the rules governing the Board's decisions do not provide for criteria which address physician shortages. The documentation provided by Mercy regarding physician shortages was done by Solucient and is in the record at page 2913. The chart shows that Crystal Lake, the location of the proposed hospital, has no physician shortage. Lake in the Hills, Cary and Algonquin are the other target service areas. No data is provided for

physicians in Lake in the Hills. On Solucient's documentation, Cary and Algonquin do show physician shortages. The source for the data is not disclosed. Even with these claimed shortages, Mercy System Corporation is going to close its two physician offices in Crystal Lake and one in Cary.

Furthermore, while there may be a shortage of physicians in the area, the Board did not discuss and apparently did not consider the evidence in the record of the shortages of registered nurses, laboratory technicians and medical technologists in the area. The public hearing record is replete with testimony of medical personal on the shortage of such personnel. These personnel are needed to staff a hospital. Mercy Hospital offered no evidence where this staff would come from other than stating they would recruit medical personnel who worked outside of the area. Northing in the record indicates a surplus of such personnel in other areas of the state. No evidence was presented on the number of resident medical personnel who worked outside of the M.S.A. or beyond the 30 minute travel time. Testimony at the public hearing showed a concern among McHenry County health care workers that Mercy would recruit staff from area facilities thereby affecting the viability of those hospitals.

Upon a review of the record, the Court finds that State Board relied on factors not intended by the legislature and that they failed to consider important aspects of the problem concerning the shortage of medical support staff and the impact the proposed hospital would have on the hospitals within the M.S.A. and within 30 minutes travel time. When the Board first denied the Mercy Hospital's application, it had information on the 45 new employee-physicians who would be at the physician offices adjacent to the hospital. Yet, at the April 21st meeting, the new physicians appeared to be the primary basis for the affirmative vote.

The Court finds that the actions of the State Board, in approving the application for permit for the Mercy Hospital project, was arbitrary and capricious.

C. NECESSARY PARTIES

Plaintiffs contend that the decision should be reversed because the proper party was not joined as a party to the application. Particularly, Plaintiffs claim that Section 1130.220(b) of the Illinois Administrative Code requires that Mercy Health Systems Corporation be a co-applicant.

Section 1130.220 provides in pertinent part as follows:

"The following person(s) must be the applicant(s) for permit or exemption, as applicable:

(b)(3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project."

It is undisputed that Mercy Health System falls within that classification and that they were not parties to the application. The State Agency Report, however, reflects that is considered that entity to be a co-applicant even though it wasn't. Documentation was submitted verifying the bond rating of Mercy Health System Corporation and other data was provided regarding its corporate structure and related entities.

The non inclusion of Mercy Health System as an applicant may have affected the economic review criteria under 1120.310(a). The State Agency found that Criterion 1120.310(a) was "not applicable as the applicant's document proof of an "A "bond rating". Mercy Health System should have been a party to the application for permit. However, the failure to include Mercy Health System Corporation as a co-applicant, standing alone, would not be a basis for a finding of the State Board's decision being against the manifest weight of the evidence.

D. THE VOTING PROCESS

The Plaintiffs claim that the voting process was improper by the Board not specifying the nature of the motion voted on and Board members engaging in off the record discussions. It is apparent from the record that the Board on motion knew that it was voting to approve the permit. While formality is lacking, the record reflects that in the other proceedings that day, which are part of the record the Board used the same methodology in voting.

While the off record comments by Board members may be irregular, they do not constitute ex parte communications. The Court can not attribute any significance to the off record comments in this review.

Based on a review of the record and for the foregoing reasons, the Court hereby finds that the Decision of the Illinois Health Planning Board to grant the issuance of the permit to Mercy Hospital and Mercy Health Systems was against the manifest weight of the evidence and arbitrary and capricious.

IT IS HEREBY ORDERED that the Decision of the Illinois Health Planning Board to issue a permit in Project No. 03-049 is reversed.

DATED: May 6, 2005 ENTERED Maureen P. McIntyre

MAUREEN P. McINTYRE
CIRCUIT JUDGE