

HEALTH FACILITIES AND SERVICES REVIEW BOARD
STATE OF ILLINOIS

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| HEALTH FACILITIES AND SERVICES REVIEW BOARD, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | Docket No. HFSRB 12-10 |
| |) | consolidated with |
| MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER, PROJECT 10-089 |) | HFSRB 12-01 |
| |) | |
| Respondent. |) | |

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Final Decision was sent by certified mail in a sealed envelope, postage prepaid addressed to:

Mr. Steve Hoeft
Ms. Megan Thibert-Ind
McDermott Will & Emery
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Chicago, Illinois 60606

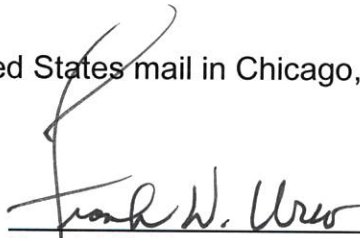
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Honorable Richard E. Hart
Administrative Law Judge
Hart, Southworth & Witsman
One North Old State Capitol Plaza, Suite 501
Springfield, Illinois 62701-1323

That said document was deposited in the United States mail in Chicago, Illinois, on the
16 day of July, 2014



Frank W. Urso
General Counsel

cc: C. Avery
M. Constantino
G. Roate
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| AND MEDICAL CENTER, |) | |
| PROJECT # 10-089 |) | |
| Respondent. |) | |

FINAL DECISION

The Administrative Law Judge has filed with the Illinois Health Facilities and Services Review Board (Board) the Proposal for Decision and the Administrative Law Judge's Report. The Board, after having carefully reviewed and considered the entire record of the proceedings, the Administrative Law Judge's Proposal for Decision and Report, as well as, any written exceptions and brief of the applicant in this matter, and being fully advised in the premises, finds:

That the Board accepts the Administrative Law Judge's April 14, 2014 Report, which includes Findings of Facts, Conclusions of Law, Findings of the Administrative Law Judge and Recommendation. (Attached hereto and incorporated into this Final Decision, as Attachment A)

WHEREFORE, IT IS HEREBY ORDERED:

- A. That the Board adopts the Administrative Law Judge's April 14, 2014 Recommendation that the Board render a final administrative decision to deny Applicant's modified application for a Certificate of Need.
- B. That the Board's final administrative determination to deny Applicant's request for a Certificate of Need in project # 10-089 affirms the Board's September 11, 2012 decision.
- C. This Final Order is subject to judicial review pursuant to the provisions of the Administrative Review Law, (735 ILCS 5/3-101 et seq.).


Kathryn J. Olson, Chair
Health Facilities and Services Review Board

Dated this 14 day of July, 2014.

HEALTH FACILITIES AND SERVICES REVIEW BOARD
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| Respondent. |) | |

ADMINISTRATIVE LAW JUDGE'S REPORT

The Administrative Law Judge makes this written report to the Health Facilities and Services Review Board (the "Board") pursuant to 77 Ill. Admin. Code 1130.1150:

FINDINGS OF FACT

1. MERCY CRYSTAL LAKE HOSPITAL AND MEDICAL CENTER ("Respondent"), applied for a permit from the Board for a proposed construction project under the Illinois Health Facilities Planning Act (the "Application").
2. The Application proposed to construct and establish a 128 bed hospital (consisting of 100 medical/surgical beds, 20 OB beds, and 8 ICU beds) to be located in Crystal Lake, Illinois.
3. On March 18, 2011, the Board held a public hearing on the Application.
4. Thereafter and prior to June 28, 2011 the Board staff prepared a staff report, which found the proposed project not in compliance with Section 1110.140(c) Reasonableness of Project Costs, Section 1110.234(a) Size of Project, Section 1110.530(b) Planning Area Need, Section 1110.530(c) Unnecessary Duplication/Maldistribution, and Section 1110.3030(a) Clinical Services Other Than Categories of Service.
5. At the Board's June 28, 2011 meeting, the Board issued a Notice of Intent to Deny the Application and advised Respondent of its opportunity to submit additional information on the project.

6. Thereafter, Respondent submitted a modified application for permit to the Board for a proposed construction project under the Illinois Health Facilities Planning Act (the "Modified Application").
7. The Modified Application proposed to construct and establish a 70-bed hospital (consisting of 56 medical/surgical beds, 10 OB beds, and 4 ICU beds) to be located in Crystal Lake, Illinois.
8. On October 7, 2011, the Board held a public hearing on the Modified Application.
9. Thereafter and prior to December 7, 2011, the Board staff prepared a supplemental staff report, which found the proposed project not in compliance with Section 1110.530(b) Planning Area Need, Section 1110.530(c) Unnecessary Duplication/Maldistribution, Section 1110.530(f) Performance Requirements, and Section 1110.3030(a) Clinical Services Other Than Categories of Service.
10. At the Board's December 7, 2011 meeting, the Board denied the Modified Application.
11. Respondent exercised its right to have an administrative hearing by a written request directed to the Board.
12. Thereafter, the Board discovered that the record considered by the Board in denying the Modified Application (i) contained a Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090), and (ii) did not contain a Market Assessment and Impact Study – Proposed Mercy-Crystal Lake Hospital (Project 10-089).
13. On May 23, 2012, the Administrative Law Judge recommended to the Board that the Board (i) correct the record in order to include the Market Assessment and Impact Study – Proposed Mercy-Crystal Lake Hospital (Project 10-089), and exclude the Market Assessment and Impact Study – Proposed Centegra-Huntley Hospital (Project 10-090), and (ii) reconsider the Modified Application with the corrected record.
14. As of September 11, 2012, the most recent bed need inventory was the Board's Update to Inventory of August 24, 2012, which described a need for 38 medical/surgical beds, 2 OB beds, and 10 ICU beds.
15. At the Board's September 11, 2012 meeting, the Board denied the Modified Application.
16. Respondent exercised its right to have an administrative hearing by a written request directed to the Board.

17. The Administrative Law Judge conducted an initial hearing occurred by telephone on October 25, 2012. The parties agreed to conduct the initial hearing by telephone and agreed that all procedural requirements regarding notice of the initial hearing had been met. Petitions to intervene filed by Advocate and Centegra were allowed. The parties argued Respondent's Motion to Consolidate Docket Nos. HFSRB 12-01 and No. HFSRB 12-10. An administrative hearing was scheduled for February 19, 2013 in Springfield, Illinois.

18. On November 13, 2012, the Administrative Law Judge denied Respondent's Motion to Consolidate Docket Nos. HFSRB 12-01 and No. HFSRB 12-10.

19. The Administrative Law Judge conducted a status hearing by telephone on November 28, 2012. The parties agreed to conduct the hearing by telephone. Respondent argued its Motion for Reconsideration or Clarification. There were no objections and the motion was allowed. An administrative hearing was scheduled to begin on February 26, 2013 in Chicago, Illinois.

20. The Administrative Law Judge conducted a status hearing by telephone on February 14, 2013. The parties agreed to conduct the hearing by telephone. Respondent expressed concerns about documents having been removed from the record after the Board made its decision in this matter. There were no objections that the documents are to be returned and remain part of the record. Advocate advised that proposed procedures for the upcoming administrative hearing have been circulated to the parties. The parties are preparing responses and are to submit them to the Administrative Law Judge by February 19, 2013.

21. The Administrative Law Judge conducted a status hearing by telephone on February 21, 2013. The parties agreed to conduct the hearing by telephone. The parties argued the Board's Motion in Limine and Respondent's Motion to Compel. Respondent requested additional time to respond to the Board's Motion in Limine. By agreement of all parties, the administrative hearing scheduled for February 26, 2013 was cancelled. All parties may file additional motions by February 28, 2013, responses by March 15, 2013, and any replies by March 22, 2013.

22. By letter dated April 11, 2013, the Administrative Law Judge allowed Advocate's Motion to Confirm Procedure and Protocol for Administrative Hearing with respect to all items agreed upon by the parties, and allowed the following procedures: (i) subpoenas in accordance with 77 Ill. Adm. Code 1130.1140, (ii) written submissions and post-hearing briefs, not to exceed 15 pages, to be filed within 21 days of receipt of the transcript of proceedings from the hearing, and (iii) opening statements limited to 30 minutes. The Administrative Law Judge further allowed the Board's Motion in Limine and denied Respondent's Motion to Compel.

23. The Administrative Law Judge conducted a status hearing by telephone on April 24, 2013. The parties agreed to conduct the hearing by telephone. By agreement of the parties, an administrative hearing was scheduled to begin on July 23, 2013 in Chicago, Illinois. The parties may submit any changes or additions to their witness and exhibit lists up to 21 days before the hearing.

24. The Administrative Law Judge conducted a status hearing by telephone on July 12, 2013. The parties agreed to conduct the hearing by telephone. Respondent requested time to respond to the Board's Motion to Expand or Clarify Judge Hart's Order Granting the Board's Motion in Limine and was granted until July 16, 2013 to file a response. The Board was granted until July 18, 2013 to file any reply.

25. The Administrative Law Judge conducted a status hearing by telephone on July 19, 2013. The parties agreed to conduct the hearing by telephone. Respondent argued Respondent's Emergency Motion to Remand Board's Decision. The Board, Advocate, and Centegra requested additional time to file responses. The parties were granted until August 2, 2013 to file responses and Respondent was granted until August 16, 2013 to file any reply.

26. By letter dated August 20, 2013, the Administrative Law Judge allowed the Board's Motion to Expand or Clarify Judge Hart's Order Granting the Board's Motion in Limine and denied Respondent's Emergency Motion to Remand Board's Decision.

27. The Administrative Law Judge conducted a status hearing by telephone on September 20, 2013. The parties agreed to conduct the status hearing by telephone and to address the scheduling of a hearing. By agreement of the parties, an administrative hearing was scheduled to begin October 29, 2013 in Springfield, Illinois.

28. The Administrative Law Judge conducted a status hearing by telephone on November 4, 2013. The parties agreed to conduct the status hearing by telephone. By agreement of the parties, (i) deadlines and hearings for filing written briefs and for filing responses and replies to pending motions were set, and (ii) oral closing statements and arguments on Respondent's Offer of Proof were scheduled for December 4, 2013 in Chicago, Illinois.

29. The Administrative Law Judge heard closing statements by telephone on December 4, 2013. The parties agreed to make closing statements by telephone. The parties made their oral closing statements.

30. The Administrative Law Judge conducted a further hearing by telephone on January 22, 2013. The parties agreed to conduct the hearing by telephone. The parties argued Centegra's Motion That Official Notice Be Taken of the State Board's Update to Inventory of August 24, 2012 and Respondent's Motion to Strike.

31. By letter dated January 23, 2014, the Administrative Law Judge allowed Centegra's Motion That Official Notice Be Taken of the State Board's Update to Inventory of August 24, 2012 and denied Respondent's Motion to Strike.

CONCLUSIONS OF LAW

1. The purpose of the Illinois Health Facilities Planning Act is stated at 20 ILCS 3960/2, as follows:

This Act shall establish a procedure (1) which requires a person establishing, constructing or modifying a health care facility, as herein defined, to have the qualifications, background, character and financial resources to adequately provide a proper service for the community; (2) that promotes, through the process of comprehensive health planning, the orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of such facilities; (3) that promotes planning for and development of health care facilities needed for comprehensive health care especially in areas where the health planning process has identified unmet needs; and (4) that carries out these purposes in coordination with the Center for Comprehensive Health Planning and the Comprehensive Health Plan developed by that Center.

2. The hearing conducted by the Administrative Law Judge is governed by 77 Ill. Admin. Code 1130.1110.

3. 77 Ill. Adm. Code 1130.1110(e) provides:

- e) In a hearing to consider the denial of a permit or certificate of recognition, the applicant shall have the burden of establishing that the proposed project or application for certificate of recognition, as the case may be, for which application for permit or recognition is made is consistent with the standards, criteria, or plans adopted by HFSRB upon which the finding and decision of HFSRB were made; only testimony and evidence as are relevant shall be offered or accepted.

4. 77 Ill. Adm. Code 1130.660(a) provides:

The number of affirmative votes required for approval of an application and issuance of a permit by HFSRB is specified in the Act. HFSRB shall consider the application and any additional information or modification submitted by the applicant, HFSRB staff reports, the public hearing testimony and written comments, if any, and other information coming before it in making its determination whether to approve the project. Applications are reviewed to determine compliance with review criteria contained in 77 Ill. Adm. Code 1110 and 1120. The failure of a project to meet one or more of the applicable review criteria shall not prohibit the issuance of a permit. A permit is effective on the date of HFSRB authorization.

5. 77 Ill. Adm. Code 1130.620(d) provides:

- 1) All applications will be reviewed and evaluated for conformance with the applicable review criteria in effect at the time the application is deemed complete.

2) Each application will be reviewed and considered on an individual basis unless HFSRB has established review criteria or procedures that pertain or relate to comparative review or 'batching' of applications.

3) Applications for permit shall be subject to the need figures set forth in the most recent update to the Inventory of Health Care Facilities and Services and Need Determinations, as adjusted by HFSRB decisions in effect prior to the date HFSRB takes action on the application. HFSRB action includes the approval, issuance of an intent to deny, or denial of an application.

4) All applications except emergency applications are subject to the public hearing requirements of the Act. All evidence submitted at a public hearing shall be taken into account in the determination of compliance or noncompliance of an application with applicable review criteria.

6. 77 Ill. Adm. Code 1130.530(b) provides:

b) Planning Area Need – Review Criterion

The applicant shall document that the number of beds to be established or added is necessary to serve the planning area's population, based on the following:

1) 77 Ill. Adm. Code 1100 (formula calculation)

A) The number of beds to be established for each category of service is in conformance with the projected bed deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.

B) The number of beds proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population served, in compliance with the occupancy standard specified in 77 Ill. Adm. Code 1100.

2) Service to Planning Area Residents

A) Applicants proposing to establish or add beds shall document that the primary purpose of the project will be to provide necessary health care to the residents of the area in which the proposed project will be physically located (i.e., the planning or geographical service area, as applicable), for each category of service included in the project.

B) Applicants proposing to add beds to an existing category of service shall provide patient origin information for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the area. For all other projects, applicants shall document that at least 50% of the projected patient volume will be from residents of the area.

- C) Applicants proposing to expand an existing category of service shall submit patient origin information by zip code, based upon the patient's legal residence (other than a health care facility).
- 3) **Service Demand – Establishment of Bed Category of Service**
 The number of beds proposed to establish a new category of service is necessary to accommodate the service demand experienced annually by the existing applicant facility over the latest two-year period, as evidenced by historical and projected referrals, or, if the applicant proposes to establish a new hospital, the applicant shall submit projected referrals. The applicant shall document subsection (b)(3)(A) and either subsection (b)(3)(B) or (C):
- A) **Historical Referrals**
 If the applicant is an existing facility, the applicant shall document the number of referrals to other facilities, for each proposed category of service, for each of the latest two years. Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient hospital.
- B) **Projected Referrals**
 An applicant proposing to establish a category of service or establish a new hospital shall submit the following:
- i) Physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application;
 - ii) An estimated number of patients the physician will refer annually to the applicant's facility within a 24-month period after project completion. The anticipated number of referrals cannot exceed the physician's documented historical caseload;
 - iii) The physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty; and
 - iv) Verification by the physician that the patient referrals have not been used to support another pending or approved CON application for the subject services.
- C) **Project Service Demand – Based on Rapid Population Growth**
 If a projected demand for service is based upon rapid population growth in the applicant facility's existing market area (as experienced annually within the latest 24-month period), the projected service demand shall be determined as follows:

- i) The applicant shall define the facility's market area based upon historical patient origin data by zip code or census tract;
 - ii) Population projections shall be produced, using, as a base, the population census or estimate for the most recent year, for county, incorporated place, township or community area, by the U.S. Census Bureau or IDPH;
 - iii) Projections shall be for a maximum period of 10 years from the date the application is submitted;
 - iv) Historical data used to calculate projections shall be for a number of years no less than the number of years projected;
 - v) Projections shall contain documentation of population changes in terms of births, deaths, and net migration for a period of time equal to, or in excess of, the projection horizon;
 - vi) Projections shall be for total population and specified age groups for the applicant's market area, as defined by HFPB, for each category of service in the application; and
 - vii) Documentation on projection methodology, data sources, assumptions and special adjustments shall be submitted to HFPB.
- 4) Service Demand – Expansion of Existing Category of Service
The number of beds to be added for each category of service is necessary to reduce the facility's experienced high occupancy and to meet a projected demand for service. The applicant shall document subsection (b)(4)(A) and either subsection (b)(4)(B) or (C):
- A) Historical Service Demand
 - i) An average annual occupancy rate that has equaled or exceeded occupancy standards for the category of service, as specified in 77 Ill. Adm. Code 1100, for each of the latest two years;
 - ii) If patients have been referred to other facilities in order to receive the subject services, the applicant shall provide documentation of the referrals, including: patient origin by zip code; name and specialty of referring physician; and name and location of the recipient hospital, for each of the latest two years.

B) Projected Referrals

The applicant shall provide the following:

- i) Physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application;
- ii) An estimated number of patients the physician will refer annually to the applicant's facility within a 24-month period after project completion. The anticipated number of referrals cannot exceed the physician's experienced caseload. The percentage of project referrals used to justify the proposed expansion cannot exceed the historical percentage of applicant market share within a 24-month period after project completion;
- iii) Each referral letter shall contain the physician's notarized signature, the typed or printed name of the physician, the physician's office address and the physician's specialty; and
- iv) Verification by the physician that the patient referrals have not been used to support another pending or approved CON application for the subject services.

C) Projected Service Demand – Based on Rapid Population Growth:

If a projected demand for service is based upon rapid population growth in the applicant facility's existing market area (as experienced annually within the latest 24-month period), the projected service demand shall be determined as follows:

- i) The applicant shall define the facility's market area based upon historical patient origin data by zip code or census tract;
- ii) Population projections shall be produced, using, as a base, the population census or estimate for the most recent year, for county, incorporated place, township or community area, by the U.S. Census Bureau or IDPH;
- iii) Projections shall be for a maximum period of 10 years from the date the application is submitted;
- iv) Historical data used to calculate projections shall be for a number of years no less than the number of years projected;

- v) Projections shall contain documentation of population changes in terms of births, deaths and net migration for a period of time equal to or in excess of the projection horizon;
- vi) Projections shall be for total population and specified age groups for the applicant's market area, as defined by HFPB, for each category of service in the application; and
- vii) Documentation on projection methodology, data sources, assumptions and special adjustments shall be submitted to HFPB.

5) Service Accessibility

The number of beds being established or added for each category of service is necessary to improve access for planning area residents. The applicant shall document the following:

A) Service Restrictions

The applicant shall document that at least one of the following factors exists 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;
- 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.

B) Supporting Documentation

The applicant shall provide the following documentation, as applicable, concerning existing restrictions to service access:

- i) The location and utilization of other planning area service providers;
- ii) Patient location information by zip code;
- iii) Independent time-travel studies;
- iv) A certification of waiting times;
- v) Scheduling or admission restrictions that exist in area providers;
- vi) An assessment of area population characteristics that document that access problems exist; and
- vii) Most recently published IDPH Hospital Questionnaire.

7. 77 Ill. Adm. Code 1130.530(c) provides:

- c) Unnecessary Duplication/Maldistribution – Review Criterion
 - 1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:
 - A) A list of all zip code areas that are located, in total or in part, within 30 minutes normal travel time of the project's site;
 - B) The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois); and
 - C) The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide the categories of bed service that are proposed by the project.
 - 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.
8. 77 Ill. Adm. Code 1130.530(f) provides:
- f) Performance Requirements – Bed Capacity Minimum
 - 1) Medical-Surgical
The minimum bed capacity for a medical-surgical category of service within a Metropolitan Statistical Area (MSA) is 100 beds.
 - 2) Obstetrics
 - A) The minimum unit size for a new obstetric unit within an MSA is 20 beds.
 - B) The minimum unit size for a new obstetric unit outside an MSA is 4 beds.
 - 3) Intensive Care
The minimum unit size for an intensive care unit is 4 beds.
 - 4) Pediatrics
The minimum size for a pediatric unit within an MSA is 4 beds.
9. 77 Ill. Adm. Code 1130.3030(a) provides in relevant part:
- 2) The applicant shall also comply with requirements of the review criterion in Section 1110.234(a) (Size of Project), as well as all other applicable requirements in 77 Ill. Adm. Code 1100, 1110 and 1130.
10. 77 Ill. Adm. Code 1130.3030(b) provides:
- b) Need Determination – Establishment
The applicant shall describe how the need for the proposed establishment was determined by documenting the following:
 - 1) Service to the Planning Area Residents

- A) Either:
 - i) The primary purpose of the proposed project is to provide care to the residents of the planning area in which the proposed service will be physically located; or
 - ii) If the applicant service area includes a primary and secondary service area that expands beyond the planning area boundaries, the applicant shall document that the primary purpose of the project is to provide care to residents of the service area; and
 - B) Documentation shall consist of strategic plans or market studies conducted, indicating the historical and projected incidence of disease or health conditions, or use rates of the population. The number of years projected shall not exceed the number of historical years documented. Any projections and/or trend analyses shall not exceed 10 years.
- 2) Service Demand
 To demonstrate need for the proposed CSA services, the applicant shall document one or more of the indicators presented in subsections (b)(2)(A) through (D). For any projections, the number of years projected shall not exceed the number of historical years documented. Any projections and/or trend analyses shall not exceed 10 years.
- A) Referrals from Inpatient Base
 For CSAs that will serve as a support or adjunct service to existing inpatient services, the applicant shall document a minimum two-year historical and two-year projected number of inpatients requiring the subject CSA.
 - B) Physician Referrals
 For CSAs that require physician referrals to create and maintain a patient base volume, the applicant shall document patient origin information for the referrals. The applicant shall submit original signed and notarized referral letters, containing certification by the physicians that the representations contained in the letters are true and correct.
 - C) Historical Referrals to Other Providers
 If, during the latest 12-month period, patients have been sent to other area providers for the proposed CSA services, due to the absence of those services at the applicant facility, the applicant shall submit verification of those referrals, specifying: the service needed; patient origin by zip code; recipient facility; date of referral; and physician certification that the representations contained in the verifications are true and correct.

- D) Population Incidence
The applicant shall submit documentation of incidence of service based upon IDPH statistics or category of service statistics.
- 3) Impact of the Proposed Project on Other Area Providers
The applicant shall document that, within 24 months after project completion, the proposed project will not:
 - A) Lower the utilization of other area providers below the utilization standards specified in Appendix B.
 - B) Lower, to a further extent, the utilization of other area providers that are currently (during the latest 12-month period) operating below the utilization standards.
- 4) Utilization
Projects involving the establishment of CSAs shall meet or exceed the utilization standards for the services, as specified in Appendix B. If no utilization standards exist in Appendix B, the applicant shall document its anticipated utilization in terms of incidence of disease or conditions, or historical population use rates.

FINDINGS OF ADMINISTRATIVE LAW JUDGE

Based upon the evidence presented and the conclusions of law set forth above, the Administrative Law Judge makes the following findings:

1. The Administrative Law Judge's review of the Board's September 11, 2012 decision to deny the Modified Application is not limited to the arbitrary and capricious standard of review applied by courts in reviewing approvals by the Board.
 - A. An administrative hearing officer makes his or her own findings relating to the criteria for which the Board reviewed the respondent's application and makes a recommendation to the Board to approve or deny the application. See Highland Park Convalescent Center, Inc. v. Illinois Health Facilities Planning Board, 217 Ill.App.3d 1088, 1090, 578 N.E.2d 92, 160 Ill. Dec. 913 (1st Dist. 1991); Hinsdale Sanitarium and Hospital v. Illinois Health Facilities Planning Board, 168 Ill. App. 3d 805, 806, 523 N.E.2d 53, 119 Ill. Dec. 585 (1st Dist. 1988).
 - B. The Board may accept or reject the administrative hearing officer's findings and recommendations. Highland Park, 217 Ill. App. 3d at 1092 (citations omitted) ("The Board, not the hearing officer, is the ultimate factfinder and decision-maker. Where an administrative agency is responsible for the decision, the agency is required to consider the findings of the hearing officer, but it is not bound to accept them. Rather, the

agency must make its own decision based upon the evidence in the record. The rule applies even when findings of fact depend on the credibility of witnesses, and it is the hearing officer who observes the witnesses.”).

2. Respondent has failed to establish compliance with 77 Ill. Adm. Code 1110.530(b)(1):

- A. Respondent proposes in the Modified Application to construct and establish a 70-bed hospital (consisting of 56 medical/surgical beds, 10 OB beds, and 4 ICU beds) to be located in Crystal Lake, Illinois.
- B. The Board denied the Modified Application on September 11, 2012.
- C. As of September 11, 2012, the most recent bed need inventory was the Board’s Update to Inventory of August 24, 2012, which described a need for 38 medical/surgical beds, 2 OB beds, and 10 ICU beds.
- D. 77 Ill. Adm. Code 1110.530(b)(1)(B) provides that the number of beds proposed by an applicant shall not exceed the number of the projected deficit as shown in the most recent updates to bed need inventory.
- E. The Board considers the most recent update to bed need inventory at the time of its decision. 77 Ill. Adm. Code §1130.620(d)(3).
- F. Respondent proposes 18 medical/surgical beds and 8 OB beds in excess of the bed need shown in the Board’s Update to Inventory of August 24, 2012.

3. Respondent has failed to establish compliance with 77 Ill. Adm. Code 1110.530(b)(5):

- A. 77 Ill. Adm. Code 1110.530(b)(5) provides that an applicant shall document at least one of the following factors for the planning area: (i) an absence of the proposed service within the planning area, (ii) access limitations due to payor status of patients, (iii) restrictive admission policies of existing providers, (iv) indicators of medical care problems for the area population and existing care system, or (v) all services within 45 minutes meet or exceed utilization standards.
- B. Respondent has not documented that any of the first four factors exist for the planning area.
- C. Facilities within 45 minutes of Respondent’s proposed project do not meet or exceed utilization standards: (i) 8 of 9 facilities within 45 minutes are below target occupancy for medical/surgical beds, (ii) 4 of 9 facilities

within 45 minutes are below target occupancy for ICU beds, and (iii) all facilities within 45 minutes are below target occupancy for OB beds. (R 2685)

- D. Respondent has failed to document that all services within 45 minutes meet or exceed utilization standards.

4. Respondent has failed to establish compliance with 77 Ill. Adm. Code 1110.530(c):

- A. 77 Ill. Adm. Code 1110.530(c) provides that an applicant shall document that the project shall not result in an unnecessary duplication of services or in a maldistribution of services, namely, that the project would not result in an excess supply of facilities, beds and services.
- B. Facilities within 30 minutes of the project proposed in the Modified Application are below utilization standards: (i) 5 of 6 facilities within 30 minutes are below target occupancy for medical/surgical beds, (ii) 2 of 6 facilities within 30 minutes are below target occupancy for ICU beds, and (iii) all facilities within 30 minutes are below target occupancy for OB beds. (R 2687-88)
- C. Respondent proposes 18 medical/surgical beds and 8 OB beds in excess of the bed need shown in the Board's Update to Inventory of August 24, 2012.
- D. Respondent submitted data showing that from July 1, 2009 to June 30, 2010, (i) 53% of county residents received inpatient services outside of the county, (ii) 22% of county residents received inpatient services outside of the planning area, (iii) 70% of planning area residents received inpatient services outside of the county, and (iv) 21% of planning area residents received inpatient services outside of the planning area. (R 1201).
- E. Respondent's data indicates that residents' needs are being met by services within the planning area.
- F. Respondent has not demonstrated that its proposed facility will not result in an unnecessary duplication of services or an excess supply of facilities, beds, and services.

5. Respondent has failed to establish compliance with 77 Ill. Adm. Code 1110.530(f):

- A. Respondent proposes to construct and establish a 70-bed hospital (consisting of 56 medical/surgical beds, 10 OB beds, and 4 ICU beds) to be located in Crystal Lake, Illinois.
- B. 77 Ill. Adm. Code 1110.530(f) provides for a minimum of 100 medical/surgical beds for a proposed facility.
- C. Respondent proposes 44 medical/surgical beds less than the minimum.

6. Respondent has failed to establish compliance with 77 Ill. Adm. Code 1110.3030(a) and (b):

- A. 77 Ill. Adm. Code 1110.3030(b) provides that an applicant shall document that (i) a demand for the services to be provided by the proposed project exists (through historic and projected referrals or other data), (ii) the proposed project will not lower the use of other area providers or further lower the use of other area providers already below target occupancy, and (iii) the proposed project will meet or exceed utilization standards.
- B. Respondent submitted referral letters showing that 3,809 of historic referrals of 42 physicians would be re-directed to Respondent's project (R 1552-53).
- C. Centegra argues that Respondent's referrals have been overstated inasmuch as the historic referrals described in the letters by 20 of 42 physicians do not correspond to data reported to COMPdata and described total historical referral 22% higher than the referrals reported to COMPdata. (R 1552-53).
- D. The referral data indicate a demand for the services to be provided by Respondent's proposed project, even though such demand may not be as great as claimed by Respondent.
- E. Respondent submitted population data in support of the Modified Application showing that the population of McHenry County grew 17% from 2000 to 2005, and approximately 19% from 2000 to 2010 (R 1202, 2173). The data further show that the senior population is estimated to have increased by almost 50% from 2000 to 2010 and is projected to increase an additional 24% by 2015 (R 1203).
- F. The population growth of McHenry County, Illinois has slowed since 2005 (R 1202, 2173).

- G. Prior to the 2010 Census, the Department of Commerce and Economic Opportunity estimated a population of 337,034 in 2010 for McHenry County, Illinois, whereas the 2010 Census data showed an actual population of 308,760 for McHenry County, Illinois (R 2573).
- H. Given the below target occupancy of other area facilities and the lower than estimated population numbers and growth, Respondent has not established that its proposed facility will not lower the use of other area providers or further lower the use of other area providers already below target occupancy, or that Respondent's proposed facility will meet or exceed utilization standards.

7. Neither the number of, nor the alleged character of, Centegra's facilities is a mitigating factor in favor of Respondent.

- A. The planning area contains three (3) existing facilities, namely, Centegra Hospital Woodstock, Centegra Hospital McHenry, and Mercy Harvard Hospital. (R 2652).
- B. 2 of 9 existing facilities within 45 minutes of Respondent's proposed project are operated by Centegra, constituting approximately 17% of total beds within 45 minutes. (R 2685)
- C. 2 of 6 existing facilities within 30 minutes of Respondent's proposed project are operated by Centegra, constituting approximately 24% of total beds within 30 minutes. (R 2687-88)
- D. On July 24, 2012, the Board approved the application for permit of Centegra Hospital Huntley to establish a 128-bed hospital (consisting of 100 medical/surgical beds, 20 OB beds, and 8 ICU beds) within the planning area.
- E. Following the establishment of Centegra Hospital Huntley, 386 of 400 total beds in the planning area will be operated by Centegra, constituting approximately 97% of the total planning area beds.
- F. Respondent's data showing that a majority of residents received inpatient services outside of the county, but only approximately 20% of residents received inpatient services outside of the planning area indicates that residents' need for services is being met within the planning area. (R 1201)
- G. Respondent has not established any failure of other area facilities to provide satisfactory services to residents.

8. The Board's decision to deny the Modified Application is appropriate given the facts and circumstances of this case

- A. The purpose of the Illinois Health Facilities Planning Act, as stated at 20 ILCS 3960/2, is to establish a procedure that promotes the orderly and economic development of facilities and avoids unnecessary duplication, and "promotes planning for and development of health care facilities needed for comprehensive health care especially in areas where the health planning process has identified unmet needs".
- B. The Board's review criteria assist the Board in determining whether a proposed project will further the purposes of the Act.
- C. The Modified Application does not meet all of the review criteria considered by the Board.
- D. Respondent has failed to demonstrate a need for its proposed project and to show that its proposed project does not unnecessarily duplicate services in the planning area.

RECOMMENDATION

The Administrative Law Judge hereby recommends that the Board render a final administrative decision to deny the Modified Application.

The Administrative Law Judge simultaneously submits herewith a transcript of the record, all exhibits admitted into evidence, copies of all pleadings and documents or evidence made a part of the record.

The Administrative Law Judge simultaneously submits herewith a Proposal for Decision, pursuant to 77 Ill. Admin. Code 1130.1160.



Richard E. Hart,
Administrative Law Judge

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Administrative Law Judge's Report was hand delivered to:

Mike Constantino
Health Facilities and Services Review Board
525 West Jefferson
Second Floor
Springfield, Illinois 62761-0001

this 14th day of April, 2014.

Sheila C. Sullivan