



Ms. Courtney Avery
Mr. Mike Constantino
Illinois Health Facilities and Services Review Board
525 W. Jefferson St Second Floor
Springfield, IL 62761
Phone 217-782-3516
Via Fed Ex and Email

RECEIVED

DEC 29 2017

HEALTH FACILITIES &
SERVICES REVIEW BOARD

Re: Project Application 17-044, Smith Crossing – Comment to State Staff Report

Dear Mr. Constantino and Ms. Avery,

I have reviewed the State Board Staff Report and I am submitting this as a comment to that report. As set forth in the objection to the application previously submitted (dated 12/19/2017), there are multiple items the State Board Staff found to be in compliance that are incorrect and should be noted as criteria that are not met. While the State Board Staff did note that 4 of the 16 criteria were not met, there are 3 more that should be addressed as not met, and one that was not addressed at all that was not met, and therefore there would be 8 of 17 areas that failed to meet the criteria.

VII. General Long Term Care –

A) Criterion 1125.320

The applicant does not demonstrate that it will “improve the long term care well-being of the market area population to be served.” The applicant’s own data shows that it serves majority of Cook County residents for HSA 7E. This market is over bedded by 1152 beds, unlike the market area this applicant is claiming to use for its bed need calculation.

In addition, the applicant’s own marketing study (page 127) clearly states “Garnering additional referral volume will mean taking market share from other skilled nursing providers in the market and Smith Crossing will be competing with the planned Alden Estates of New Lenox (expected opening 2/28/19) to maintain and grow referral volume.” This also demonstrates that the area that the applicant is serving does not need the additional beds requested in this CON. [Assuming, arguendo, that any additional beds are needed, the need would be in HSA 9 away from the Cook County border and definitely not for a facility located on the border servicing 87% Cook County residents. For additional information please see my letter dated 12/19/2017 attached.]

According to the applicant and Table Four in the State Board Staff report, the facility had 327 admitted referrals over an 18 month period. These are broken out by zip code and city. When one reviews the actual zip codes the applicant has submitted, it is clear that the vast majority of the referrals are from neither HSA-09 nor Will County. According to Table 4, the majority of the referrals come from Orland Park – 167 from Zip Code 60476 and 32 from Zip Code 60462. Thus, 199 of the 327 referrals indicated (or approximately 61%) are from Orland Park alone in Cook County. When the other Cook County zip codes are added, it appears that



approximately 86% of the admits came from Cook County, not Will County. This shows the correct placement for the bed need and area that should be considered.

Criterion 1125.530(b) Planning Area Need/Service to Planning Area Residents

This criterion requires that at least 50% of the admissions were residents of the area. The staff report notes that:

“... the applicants have determined that approximately 95% of its resident admissions originated from within a 30-minute market contour area. This area includes both Will and Cook counties, due to Orland Parks Proximity to the Cook County line. The applicants attest that their referral base is a 50%/50% split between these two counties.”

However, the applicant’s submission is based on an unsupported assumption: what the applicant stated was “It is reasonable that 50% of the admissions will come from Will County and 50% will come from Cook County.” The applicant’s own data (and Table 4) show that the majority of the admissions for the 18 month period as submitted are not from the Will County planning area in HSA-09. (See also my letter dated 12/19/17 for further detail). Orland Park residential buildings are all in Cook County except for Smith Crossing. Therefore, the entire Orland Park resident population is part of planning area 7E Cook County and not Will County. The applicants provided the information in Table 4 which does not show that this criterion is met, but rather proves that the criterion is not met. The zip codes clearly show that the bulk of the admissions are Cook County residents.

Criterion 1125.640- Assurances-

The Applicant on Page 199 of the application attests that it “understands that it is expected to achieve and maintain the occupancy...” and then qualifies and limits its attestation from “various factors outside of our control,” including “other unexpected issues outside of our control.” This does not meet the Criterion.

In addition, the applicant did not address 1125.580 and merely stated “this item is not germane”. However, based on the information provided that the applicant is not servicing over 50% of its population from the region it is using for bed need purposes, this section is germane and was not addressed. Once reviewed it is clear that section 3(a) and (b) of this section will not be met and the facility will be negatively affecting utilization of under-utilized facilities, and will negatively affect any facilities that are at utilization. (See also my letter dated 12/19/17 and the applicants submission of SNF’s in the market area with occupancy.)

I look forward to your consideration of this information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Natan Weiss".

Natan Weiss

Courtney Avery
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525 W. Jefferson St Second Floor
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Phone 217-782-3516
Via Fed Ex and Email

December 19, 2017
Re: Application 17-044
Smith Crossing – Objection

Dear Ms. Avery,

This letter is an additional protest after reviewing the application for Smith Crossing. The information contained below shows that the applicant does not meet the criteria in multiple areas. We respectfully request that State Staff report reflect the applicant is not in compliance with the criteria.

Criteria 1125.530 - Planning Area Need

“a) Bed Need Determination

- 1) The number of beds to be established for general LTC is in conformance with the projected bed need specified and reflected in the latest updates to the HFSRB Inventory.”

The applicant states it is in HSA 9. There is currently a Bed need in HSA 9, Will County, of 283 beds. While geographically this facility is in Will County, it is only in Will County by only a few feet. Smith Crossing is a unique provider as it is located in the business district of Orland Park. The Business District of Orland Park is located in Will County, and the remainder of Orland Park, including all of its other residential structures, are in Cook County. I called the City to verify how many residential units are in the Will County section of Orland Park and they told me “All residential units in Orland Park are in Cook County other than Smith Crossing which is across the Road in the Business District and ended up in Will County”. The only property that has residential in Will County that is part of Orland Park is Smith Crossing. This means that when Smith Crossing is servicing its market area it is servicing Cook County and not Will County.

The adjacent HSA area 7E, Cook County, that encompasses the remainder of Orland Park is over bedded based on the last State report by 1152 beds, the second largest excess bed count in the

entire State of Illinois. If this facility was across the street there would be no question that there is no bed need.

"b) Service to Planning Area Residents

- 1) Applicants proposing to establish or add beds shall document that the primary purpose of the project will be to provide necessary LTC 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.
- 2) Applicants proposing to add beds to an existing general LTC service shall provide resident/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 resident volume will be from residents of the area.
- 3) Applicants proposing to expand an existing general LTC service shall submit resident/patient origin information by zip code, based upon the resident's/patient's legal residence (other than an LTC facility)."

Based on the answer to a), that the Facility is applying as part of HSA 9, Will County, where there is a bed need of 283 beds it must Document in b) that it services the planning area which it is reporting to have a bed need. In answering the criteria for 1125.530 the applicant clearly did not prove that 50% of its admissions are from its area.

Rather it stated on Page 113 of the application:

"The existing Smith Crossing campus is located in Orland Park and in the Will County side of the Will/Cook County line. It is reasonable that 50% of the admissions will come from Will County and 50% will come from Cook County. Moreover, nearly 60 percent (55.9%) of the admissions came from Will County. Therefore, the primary purpose of the project has served the residents of Will County (Will County Planning Area)."

The assertion that it is reasonable that 50% of the admissions come from Will county is contradicted by the attachment 13B which clearly shows the zip codes of origin for all admissions for the prior 18 months. Of those 346 admissions listed approximately 287 of them have zip codes in Cook County, that is 83% of all admissions and 87 % of admissions from within a 30 minute drive time. Will county Zip Codes only account for 35 admissions or roughly 10% to 11 % of Smith Crossing admissions as a whole or when only reviewing admissions within a 30 minute drive time (Attachment 10B to the application page 69). The applicant is clearly not in conformance with the criteria and nevertheless tried to answer that it was in

conformance. The applicant submitted the data in a way that was unclear and misleading. The Applicant knows full well that these beds are not needed in this area and this location. The vast majority of its resident admissions come from HSA 7E, Cook County, that is over bedded by 1152 Beds and has no need for additional beds.

To further prove the point, the applicant was trying to show it is servicing, and will service in the future, over 50% Will County residents, as required, by stating that nearly 60% of its referrals come from sources in Will County. In making this calculation, the applicant included 6.3% of the referral sources admissions that came from Smith Crossing as Will County residents. Clearly, Smith Crossing residents are by a large majority Cook County residents and should not count twice as Will County Residents (see Attachment 13B page 119 of application). The same would appear to be true if Silver Cross Hospital which makes up 47.4% of the admits and the applicant counts these as 100% Will County Referrals, a mathematical impossibility.

The Criterion is clear that 50% of the residents must be from the planning area that the applicant is applying based on, which in this case is Will county. But the applicant shows under 11% of its residents admitted from Will County.

The fact that its largest referring hospital is in Will County and services residents of both HSA 9 and 7E does not magically convert the residential address of the residents to Will County. The Letter of Recommendation from the facility Medical Director, Ming-Yeng Tang, MD (pg 187 of application), whose office is in Oak Lawn, in Cook County (HSA 7E), not in Will County (HSA 9), is also affiliated with the three major hospitals in the area that refer to Smith Crossing. Two of the three hospitals are also in HSA 7E, Cook County, while one is in Will County. The above all points to the fact that the majority of Smith Crossing residents have come from and will continue to come from Cook County HSA 7E and not Will County HSA 9. The applicant is across the street from a fictitious line and is trying to straddle the fence. They want to be considered HSA 9 for State Inventory and Bed Need Calculation purposes while servicing the drastically over bedded HSA 7E, Cook County residents. This does not meet the Criterion and should be turned down.

"Section 1125.540 Service Demand – Establishment of General Long-Term Care

- a) The number of beds proposed to establish a new general long-term care 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 LTC facility, the applicant shall submit projected referrals. The applicant shall document subsection (c) and subsection (d) or (e).

- c) Historical Referrals
If the applicant is an existing facility and is proposing to establish this category of service, 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: resident/patient origin by zip code; name and specialty of referring physician or identification of another referral source; and name and location of the recipient LTC facility.

d) **Projected Referrals**

An applicant proposing to establish a category of service or establish a new LTC facility shall submit the following:

- 1) Letters from referral sources (hospitals, physicians, social services and others) that attest to total number of prospective residents (by zip code of residence) who have received care at existing LTC facilities located in the area during the 12-month period prior to submission of the application. Referral sources shall verify their projections and the methodology used;
- 2) An estimated number of prospective residents whom the referral sources will refer annually to the applicant's facility within a 24-month period after project completion. The anticipated number of referrals cannot exceed the referral sources' documented historical LTC 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;"

In Section (a), the Criterion is two years and the applicant only submitted 18 months. In Section (c), the applicant submitted information that showed that Silver Cross Hospital and Palos Community Hospital referred a combined total of 4377 discharges to SNF's. Smith crossing is claiming that over 40% of these would have come to Smith Crossing if they had the availability. Smith Crossing only admitted 9% of Silver Cross Discharges and was one of 15 facilities listed that admitted between 1% and 20% of discharges and under 3% of Palos discharges while 19 listed facilities admitted between half a percent up to 23.5% of Palos discharges. It is unsupported, and unsupportable, to assume that Smith Crossing would admit, or be the facility of choice, for over 30% of all discharges from both hospitals if they had adequate beds. The reality of today's referral programs is that hospitals electronically send the referral to many SNF's at once regardless of patient preference, in order to find out which SNF will accept the patient. All referrals from the hospitals shown obtained

appropriate placement and none were turned away from care due to the lack of beds at Smith Crossing.

“Section 1125.570 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 did not prove any of the listed proofs for service accessibility issues as claimed there is a bed need in HSA 9 and “it is reasonable that 50% of the admissions come from the planning area.” Accordingly, this section needs to be addressed. Since it was not, the applicant is not compliant with the criteria.

“Section 1125.580 Unnecessary Duplication/Maldistribution

- a) The applicant shall document that the project will not result in an unnecessary duplication. ...

- b) 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:
 - 2) 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 Section 1125.210(c); ...

- c) The applicant shall document that, within 24 months after project completion, the proposed project:
 - 1) Will not lower the utilization of other area providers below the occupancy standards specified in Section 1125.210(c); and
 - 2) Will not lower, to a further extent, the utilization of other area facilities that are currently (during the latest 12-month period) operating below the occupancy standards.”

The Village President/Mayor of Orland Park sent a letter of recommendation (page 190 of application) dated August 8, 2017, in which he explained that the community of Orland Park is the one of the fastest growing in Illinois and is projected to grow at 17.5% by 2020. This population growth is already accounted for in the State Bed Need Calculation of HSA 7E, in Cook County, that is over-bedded by 1152 beds. Allowing more beds to be added, specifically to service these residents would cause maldistribution of service, which the CON process is setup to avoid per 1125.580.

Any referrals Smith Crossing is projecting will necessarily affect the other SNF's in the area. In regards to (b)(2), it is clear from the data submitted by the applicant and State data that the facilities in this area of HSA 9 and the facilities in this area of HSA 7E that are included in the 30 minute drive time, are not at the required utilization of 90% occupancy. Therefore, the Criterion is not met.

In regards to (c)(1) and (2), Smith Crossing is claiming it will get a larger piece of the pie from the discharges that are already going to facilities below the occupancy standard set by the State. This will in fact lower the utilization below occupancy standards or to a further extent lower other area facilities utilization below occupancy standards.

None of the above accounts for the additional 140 bed CON already approved for Alden of New Lenox, which is situated directly across from the Silver Cross Hospital that Smith Crossing is counting on for its increased admissions. This criterion is not met.

“Section 1125.640 Assurances

- a) The applicant representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's understanding that, by the second year of operation after the project completion, the applicant will achieve and maintain the occupancy standards specified in Section 1125.210(c) for each category of service involved in the proposal.”

The Applicant on Page 199 of the application attests that it “understands that it is expected to achieve and maintain the occupancy...” and then qualifies and limits its attestation from “various factors outside of our control,” including “other unexpected issues outside of our control.” This does not meet the Criterion.

As a final note, I would like to draw the Staff and Board Members attention to an open Session of the Board from 9/24/2013 regarding a SNF addition in HSA 7E. The discussion revolved around 21 beds for a SNF that was 203 beds and could legally add 20 of those beds without board approval had it not spent over the threshold for a CON. From the Transcripts on the Board site:

Pg 58 “RICHARD SEWELL: It seems like there's you, with your letters of referral document a demand for these 21 beds, but there's no need in the planning

area. And I, and I didn't say it like that, but there should be an exclamation point behind it. You know, I don't know why we would approve this just because you can justify the demand. That goes against everything we know about 14 planning. The region does not need the beds”

Pg 62 “DR. JAMES BURDEN: I agree with what I just heard regarding the comments. I'm having trouble understanding how we can overlook the review that demonstrates the (lack of) need of almost of 890 long-term care bed access. What are we talking about? Is there something wrong with that figure? I mean how can we look at this and say yea, go ahead. That to me is almost insurmountable. I mean that's an awesome over access.”

Pg 80 “PHILIP BRADLEY: ...if you believe that our rules are correct and that the planning area need is nonexistent and, in fact, there are 889 more long-term care beds than there should be that are needed... then I think you have to vote no, and that's what I vote.”

Pg 81 “DAVID PENN: Based on excess beds needs in the area and the financial information provided, I'm going to vote no.”

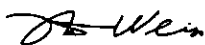
Pg 82 “RICHARD SEWELL: I vote no, because of the bed need, and I'm pretty sure I agree with the applicant, though, on the issue of using all of their corporations for the ratio analysis, but I'm not, I don't think that overrides the bed issue, so I vote no.”

The motion failed 5 to 3. It is clear from the above that the Board does not believe that beds should be added regardless of the other circumstances when there is an excess of beds in the area. This is the same area and it is not more over bedded. There is no way the one facility on the border has a bed need while everyone else that services the same residents is over-bedded. The Bed need in Will County is not in this area and the distribution of beds should be in the place where residents need the access to care.

This does not address any of the issues brought up at the public hearing regarding access to indigent residents that this applicant does not provide. The facility has \$42 million on its balance sheet as deposits from its residents. It is clear that the private rooms being added are for short-term Medicare patients that pay the highest rate sand not for any indigent population as is stated in the purpose of the Administrative code.

I would like this letter to be added as a letter of opposition to this project and included with the materials to the Board Members and Staff for their review prior to the Board meeting. If you have any Questions please call me at 847-410-2811 or email me at nweiss@briaahs.com.

Sincerely,



Natan Weiss, CFO Bria Health Services LLC