



STATE OF ILLINOIS

HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET NO: H-06	BOARD MEETING: December 4, 2018	PROJECT NO: 18-027	PROJECT COST:
FACILITY NAME: Aghapy Surgical Center		CITY: Barrington	Original: \$3,855,000
TYPE OF PROJECT: Substantive			HSA: VIII

PROJECT DESCRIPTION: The Applicants (Aghapy Surgical Center S.C. and George N. Atia, M.D., S.C.) propose to establish a single-specialty ASTC in leased space at a cost of \$3,855,000. The anticipated project completion date is December 31, 2019.

EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- **The Applicants** (Aghapy Surgical Center S.C. and George N. Atia, M.D. S.C.) propose to establish a single-specialty ASTC in 4,850 GSF of leased space at a cost of \$3,855,000. The anticipated project completion date is December 31, 2019.
- The proposed facility will have two procedure rooms, and eight recovery stations. The facility will provide gastroenterological services.
- The proposed ASTC will serve patients of Dr. George Atia, M.D., and other gastroenterologists who practice with him. The historical patient volume was served in area hospitals.

WHY THE PROJECT IS BEFORE THE STATE BOARD:

- The proposed project is before the State Board because it establishes a health care facility as defined at 20/ILCS 3960/3.

PURPOSE OF THE PROJECT:

- The Applicants stated: *"the applicants propose as ASTC to provide gastroenterology services with two procedure rooms and eight recovery stations at 200 Fox Glen Court, Barrington, Illinois. The ASTC will serve the patients of Dr. George Atia, and other gastroenterologists who practice with him, whose procedures that are currently being treated in hospital facilities. A significant percentage of their procedures are for Medicaid patients who do not have easy access to gastroenterology services at existing outpatient facilities. The proposed ASTC will allow these procedures to be performed at lower cost and in closer proximity to many of the patients. The ASTC will provide much-needed gastroenterology services and endoscopy screenings to the community. The proposed ASTC will be located in the lower level of the George Atia, M.D., S.C. medical practice and will be easily accessible to Dr. Atia's patients. The upper level of the building is a medical office building in which Dr. George Atia and other gastroenterologists who practice with him see patients. His medical corporation employs two other physicians and surgeons-Dr. Antwan Atia and Dr. Stacy McKelvey."* [Application for Permit page 43]."

PUBLIC HEARING/COMMENT:

- There was no request for a public hearing. No letters of support or opposition were received by State Board Staff.

SUMMARY:

- The State Board Staff has reviewed the Application for Permit and the materials submitted in support of this project. The proposed project, as mentioned above, is an effort to improve access to the residents of the service area by providing gastroenterological procedures in an outpatient environment to meet the requirements of third party payors.
- The proposed facility is being established in the same building as the medical practices of the referring physicians (Dr. George Atia, Dr. Antwan Atia, and Dr. Stacy McKelvey), in an effort to provide greater access to their patient base.
- The Applicants have stated the space located in the existing physician practice of the applicant Dr. George N. Atia, M.D., S.C. d/b/a Illinois Center for Digestive and Liver Health in a building that was initially designed to ASTC licensing standards and which currently meets those standards, so no construction or modernization costs are associated with this project. Board Staff notes the cost of that space was never approved by the State Board nor by IDPH. The Board Staff notes that licensure and design standards have changed since the building was constructed.
- Per the Applicants *"The Applicant's payor mix will include 17% Medicaid beneficiaries, patients who likely otherwise would not have access to ASTC services in the area. Because fewer of the*

ASTCs provide services to Medicaid beneficiaries, the Applicant would not have as much an impact on other providers in the region. Also, none of the proposed patient volume is coming from any existing ASTC. Consequently, the proposed project will have no impact on existing ASTCs.”

- The Applicants also identified their GSA as a 45-minute area in all direction. However the rule has been changed and the GSA is 10-mile radius.

State Board Standards Not Met	
Criteria	Reasons for Non-compliance
Criterion 1110.225 (c) (2) (B) (i) & (ii) – Service to GSA Residents	By rule the Applicants are to provide documentation that at least 50% of the patients will come from the proposed 10-mile radius. The Applicants did not do this. [See page 10 of this report]
Criterion 1120.120 – Availability of Funds	No financial statements were provided that would provide evidence of sufficient resources to fund the cash portion of the project. [See page 15 of this report]
Criterion 1120.130 – Financial Viability	No financial statements were provided that would provide evidence that the Applicants have sufficient resources to provide a proper standard of care. [See page 15 of this report]

STATE BOARD STAFF REPORT

Project #18-027

Aghapy Surgical Center

APPLICATION/ CHRONOLOGY/SUMMARY	
Applicants(s)	Aghapy Surgical Center, S.C. Dr. George Atia, M.D., S.C.
Facility Name	Agaphy Surgical Center
Location	200 Fox Glen Court, Barrington
Permit Holder	Aghapy Surgical Center, S.C. Dr. George N. Atia, M.D., S.C.
Operating Entity/Licensee	Aghapy Surgical Center, S.C.
Owner of Site	AHF Investments, LLC
Proposed Gross Square Feet	4,850 GSF (3,350 GSF Clinical)
Application Received	August 20, 2018
Application Deemed Complete	August 28, 2018
Financial Commitment Date	December 4, 2019
Anticipated Completion Date	December 31, 2019
Review Period Ends	December 28, 2018
Review Period Extended by the State Board Staff?	No
Can the Applicants request a deferral?	Yes

I. Project Description

The Applicants (Aghapy Surgical Center S.C. and George N. Atia, M.D., S.C.) propose to establish a single-specialty ASTC in leased space at a cost of \$3,855,000. The anticipated project completion date is December 31, 2019.

II. Summary of Findings

- A. State Board Staff finds the proposed project is not in conformance with all relevant provisions of Part 1110.
- B. State Board Staff finds the proposed project is not in conformance with all relevant provisions of Part 1120.

III. General Information

The Applicants are Aghapy Surgical Center S.C. and George N. Atia, M.D. S.C. Dr. George Atia, M.D., his associates, Dr. Antwan Atia, M.D. and Dr. Stacy McKelvey, M.D. have been treating their patient base at area hospitals, and propose to establish a single-specialty ASTC in the lower level of their physician practice, located at 200 Fox Glen Court, Barrington. The ASTC will comprise 4,850 GSF of space, and contain two procedure rooms, and eight recovery stations.

IV. Health Service Area

The proposed ASTC will be located in the HSA VIII Health Service Area. This service area consists of the Illinois Counties of McHenry, Lake, and Kane. The geographic service area for this project is a 10-mile radius [77 ILAC 1100.510 (d)]

V. Project Details

The proposed ASTC will be located in the lower level of the George N. Atia M.D., S.C. medical practice and will be easily accessible to Dr. Atia's patients. Aghapy Surgical Center S.C. is owned 100 % by Dr. Atia. The upper level of the building is a medical office building in which Dr. George Atia and other gastroenterologists who practice with him see patients. Dr. George Atia has been an Illinois-licensed physician and surgeon for approximately twenty years, primarily serving residents in the northwest suburban Chicago region. His medical corporation employs two other physicians and surgeons-Dr. Antwan Atia and Dr. Stacy McKelvey. Dr. Atia's medical practice treats a relatively high percentage of Medicaid patients of over 14%. Medicaid patients do not have access to outpatient facilities because the procedures are not financially viable in an office setting due to the low reimbursement levels and most ASTCs, which can charge a facility fee, still do not accept Medicaid patients. Consequently, most Medicaid patients in need of gastroenterological surgical procedures have the procedures done in a hospital. The proposed project will provide Medicaid patients with the convenience of an outpatient setting for their surgical procedures.

VI. Project Uses and Sources of Funds

The Applicants are funding this project with cash in the amount of \$75,000 and the fair market value of the lease (FMV) amounting to \$3,780,000. There are no estimated start-up costs or operating deficit. Table One illustrates the project use and source of funds.

TABLE ONE				
Project Uses and Sources of Funds				
Uses of Funds	Reviewable	Non reviewable	Total	% of Total
Consulting and Other Fees	\$40,000	\$35,000	\$75,000	1.9%
Movable or Other Equipment	\$2,016,000	\$1,764,000	\$3,780,000	98.1%
Total Uses of Funds	\$2,056,000	\$1,799,000	\$3,855,000	100.00%
Source of Funds				
Cash and Securities	\$40,000	\$35,000	\$75,000	1.9%
Leases (FMV)	\$2,016,000	\$1,764,000	\$3,780,000	98.1%
Total Sources of Funds	\$2,056,00	\$1,799,000	\$3,855,000	100%

VII. Background of the Applicants, Purpose of the Project, Safety Net Impact, Alternatives

A) Criterion 1110.110(a) - Background of the Applicant

To address this criterion the applicants must provide a list of all facilities currently owned in the State of Illinois and an attestation documenting that no adverse actions¹ have been taken against any applicant's facility by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities and Services Review Board or a certified listing of adverse action taken against any applicant's facility; and authorization to the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of the application for permit.

1. The Applicants provided the necessary attestation that they do not own or operate any existing health care facilities and authorization allowing the State Board and IDPH access to all information to verify information in the application for permit. [Application for Permit page 42]
2. Evidence of lease of the site has been provided as required at page 30 of the Application for Permit. Organizational relationships can be found at page 33 of the Application for Permit.
3. Certificates of Good Standing for Aghapy Surgical Center, S.C. and George N. Atia M.D., S.C. An Illinois Certificate of Good Standing is evidence that an Illinois business franchise (i.e. Illinois Corporation, LLC or LP) is in existence, is authorized to transact business in the state of Illinois, and complies with all state of Illinois business requirements and therefore is in "Good Standing" in the State of Illinois. In supplemental material and George N. Atia, M.D., S.C. provided his professional license.
4. The Applicants provided evidence that they were in compliance with Executive Order #2006-05 that requires *all State Agencies responsible for regulating or permitting development within Special Flood Hazard Areas shall take all steps within their authority to ensure that such development meets the requirements of this Order. State Agencies engaged in planning programs or programs for the promotion of development shall inform participants in their programs of the existence and location of Special Flood Hazard Areas and of any State or local floodplain requirements in effect in such areas. Such State Agencies shall ensure that proposed development within Special Flood Hazard Areas would meet the requirements of this Order.* [Application for Permit pages 35-36]

¹ "Adverse action is defined as a disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity that owns or operates or owns and operates a licensed or Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type "A" and Type "AA" violations." (77 IAC 1130.140)

5. The proposed location of the facility is in compliance with the Illinois State Agency Historic Resources Preservation Act which requires *all State Agencies in consultation with the Director of Historic Preservation, institute procedures to ensure that State projects consider the preservation and enhancement of both State owned and non-State owned historic resources* (20 ILCS 3420/1). [Application for Permit page 38]

B) Criterion 1110.110(b) – Purpose of the Project

To demonstrate compliance with this criterion the Applicants must document that the project will provide health services that improve the health care or well-being of the market area population to be served. The Applicants shall define the planning area or market area, or other area, per the applicant's definition. The Applicants shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project.

The Applicants stated:

“The applicants propose an ASTC to provide gastroenterology services with two procedure rooms and eight recovery stations at 200 Fox Glen Court, Barrington, Illinois. The ASTC will serve the patients of Dr. George Atia, and other gastroenterologists who practice with him, whose procedures that are currently being treated in hospital facilities. A significant percentage of their procedures are for Medicaid patients who do not have easy access to gastroenterology services at existing outpatient facilities. The proposed ASTC will allow these procedures to be performed at lower cost and in closer proximity to many of the patients. The ASTC will provide much-needed gastroenterology services and endoscopy screenings to the community. The proposed ASTC will be located in the lower level of the George Atia, M.D., S.C. medical practice and will be easily accessible to Dr. Atia’s patients. The upper level of the building is a medical office building in which Dr. George Atia and other gastroenterologists who practice with him see patients. His medical corporation employs two other physicians and surgeons-Dr. Antwan Atia and Dr. Stacy McKelvey. The proposed ASTC will address the need and improve access to much-needed gastroenterological procedures and cancer screenings for residents of the service area. As noted above, the applicants have focused on providing services for Medicare and Medicaid beneficiaries, accounting for almost 40% of the practice’s patients.”

C) Criterion 1110.110 (c) Safety Net Impact

All health care facilities, with the exception of skilled and intermediate long term care facilities licensed under the Nursing Home Care Act, shall provide a safety net impact statement, which shall be filed with an application for a substantive project (see Section 1110.40). Safety net services are the services provided by health care providers or organizations that deliver health care services to persons with barriers to mainstream health care due to lack of insurance, inability to pay, special needs, ethnic or cultural characteristics, or geographic isolation. [20 ILCS 3960/5.4]

This is a substantive project. A safety net impact statement is required and has been provided on page 106 of the Application for Permit. According to the Applicants the proposed Aghapy Surgical center, S.C., is expected to provide outpatient gastroenterology services to Medicaid patients that are not currently available in the community. To the applicants knowledge, the project will not adversely impact the ability of another provider or health care system to cross-subsidize safety net services.

The applicants do not currently own or operate any health care facilities, so no historical amounts of charity care or Medicaid information exist.

D) Criterion 1110.110 (d) - Alternatives to the Proposed Project

To demonstrate compliance with this criterion the Applicants must document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.

The Applicants considered three alternatives to the proposed project.

1) Project of Greater or Lesser Scope

The applicant's vision for the proposed project involves serving the existing patient base, for which two procedure rooms and eight recovery stations would suffice. A project of greater scope is not needed and would be more costly, and a project of lesser scope would not be sufficient to serve the projected patient volume. The applicants rejected this alternative, and there were no costs identified with this alternative.

2) Pursue a Joint Venture or a Similar Arrangement with One or More Providers

The existing ASTCs in the service area provide limited access to Medicaid patients, which is counterintuitive to the applicant's vision in the proposed project. Additionally, the applicants existing building is designed to ASTC standards, and suitable for the existing three physicians. Pursuit of this option would compromise the vision of serving a high Medicaid patient base, and possibly involve the need to expand or move to new facilities. Based on these conclusions, this alternative was dismissed. There were no costs identified with this alternative.

3) Utilize Other Healthcare Resources

As mentioned earlier, the existing ASTCs in the service area significantly limit access to Medicaid patients. In addition, some hospitals will not accept a high volume of Medicaid patients, severely limiting access for this most-in-need population. Some area hospitals do not accept a number of the Medicaid managed care plans that the applicant accepts. Pursuit of this option would restrict Medicaid patient access. Based on this conclusion, the applicants rejected this alternative.

VIII. Project Scope and Size, Utilization and Unfinished/Shell Space

A) Criterion 1110. 120 (a) - Size of Project

To demonstrate compliance with this criterion the Applicants must document that that the physical space proposed for the project is necessary and appropriate. The proposed square footage cannot deviate from the square footage range indicated in Appendix B, or exceed the square footage standard in Appendix B if the standard is a single number, unless square footage can be justified by documenting, as described in subsection (a)(2).

The Applicant is proposing two procedure rooms, and eight recovery stations in 3,350 GSF of reviewable space for the surgery center.

The State Board Standard for operating rooms is 2,200 GSF of space for a procedure room. The State Board does not have a gross square footage standard for recovery rooms in an ASTC. The Applicants are proposing two procedure rooms for a total of 3,350 GSF of clinical space. The State Standard is 4,400 GSF of space. The Applicants have successfully addressed this criterion.

TABLE TWO				
Cost/Space Requirements				
Department	Cost	Proposed GSF	State Standard GSF	Difference
Procedure Rooms (2)	\$40,000	3,350	4,400	(1,050)
Recovery Rooms (8)		N/A	No Standard	
Total Reviewable	\$40,000	3,350		
Non reviewable				
Office/Waiting	\$35,000	1,500	No Standard	
Total Non-Reviewable	\$35,000	1,500		
TOTAL	\$75,000	4,850		

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION PROJECTED UTILIZATION (77 ILAC 1110.120 (a))

B) Criterion 1110.120 (b) – Projected Utilization

The Applicant are proposing 2 procedure rooms and eight recovery stations in proposed ASTC. The State Board Standard is 1,500 hours per room annually. The Applicants project 4,520 surgical procedures in the first year after completion and estimates that the average length of time per procedure will average 0.75 hours for a total of 3,390 surgical hours. The applicants project at least 4,520 surgical procedures in the second year after project completion, or 3,390 surgical hours, meeting the annual minimum utilization for two procedure rooms which meets the state standard.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION PROJECTED UTILIZATION (77 ILAC 1110.120 (b))

C) Criterion 1110.120 (e) – Assurances

The Applicants have provided the necessary attestation that the proposed facility will be at target occupancy two years after project completion [Application for Permit page 69].

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN
CONFORMANCE WITH CRITERION ASSURANCE (77 ILAC 1110.120 (e))**

IX. Establishment of an Ambulatory Surgical Treatment Center

A) Criterion 1110.225 (c) (2) (B) (i) (ii) - Geographic Service Area Need

The applicant shall document that the ASTC services and the number of surgical/treatment rooms to be established, added or expanded are necessary to serve the planning area's population, based on the following:

A) 77 Ill. Adm. Code 1100 (Formula Calculation)

As stated in 77 Ill. Adm. Code 1100, no formula need determination for the number of ASTCs and the number of surgical/treatment rooms in a geographic service area has been established. Need shall be established pursuant to the applicable review criteria of this Part.

B) Service to Geographic Service Area Residents

The applicant shall document that the primary purpose of the project will be to provide necessary health care to the residents of the geographic service area (GSA) in which the proposed project will be physically located.

i) The applicant shall provide a list of zip code areas (in total or in part) that comprise the GSA. The GSA is the area consisting of all zip code areas that are located within the established radii outlined in 77 Ill. Adm. Code 1100.510(d) of the project's site.

ii) The applicant shall provide patient origin information by zip code for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the GSA. Patient origin information shall be based upon the patient's legal residence (other than a health care facility) for the last 6 months immediately prior to admission.

- i) The proposed GSA for a health facility established in Lake and Cook Counties is a 10-mile radius as per 77 ILAC 1100.510 (d). The Board Staff identified 31 zip codes within the 10-mile radius.

The Applicants provided a 45-minute GSA and the Applicants identified 41 zip codes within this 45-minute GSA. Within this 45-minute GSA approximately 3,340 residents were residents of the 10-mile GSA. The Applicants provided historical referrals of 6,986 residents. Based upon this analysis 47.8% of the residents came from within the 10-mile GSA [$3,340/6,986 = 47.8\%$].

- ii) The Applicants provided the zip code of residence of the patients for the three referring physicians Dr. George Atia, Dr. Antwan Atia and Dr. Stacey McKelvey for a 12-month period ending June 2018.

Board Staff was unable to verify that 50% or more of the historical referrals came from within the proposed GSA.

**STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN
CONFORMANCE WITH CRITERION GEORGRAPHIC SERVICE AREA NEED
(77 ILAC 1110.225 (c) (2) (B) (i) (ii))**

B) Criterion 1110.225 (c) 3) (A) & (B) - Service Demand – Establishment of an ASTC Facility or Additional ASTC Service

The applicant shall document that the proposed project is necessary to accommodate the demand experienced annually by the applicant, over the latest 2-year period, as evidenced by historical and projected referrals. The applicant shall document the information required by subsection (c)(3) and either subsection (c)(3)(B) or (C):

The Applicants provided three referral letters that met all of the requirements of the State Board. The three physicians attested that they referred 6,986 patients to Advocate Good Shepherd, Barrington, Illinois, St. Joseph Health Centers, Chicago, Illinois and Illinois Masonic Medical Center, Chicago, Illinois for the 12-months ending June 2018. Of that number, the physicians believe they will be referring 4,520 patients to the proposed ASTC.

Physician	Historical Referrals	Projected Referrals
George N. Atia, M.D.	3,477	2,250
Antwan N. Atia, M.D.	2,012	1,300
Stacey L. McKelvey, M.D.	1,497	970
Total	6,986	4,520

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION SERVICE DEMAND (77 ILAC 1110.225 (c) (3) (A) & (B))

C) Criterion 1110.225 (c) (5) (A) & (B) - Treatment Room Need Assessment

A) The applicant shall document that the proposed number of surgical/treatment rooms for each ASTC service is necessary to service the projected patient volume. The number of rooms shall be justified based upon an annual minimum utilization of 1,500 hours of use per room, as established in 77 Ill. Adm. Code 1100.

B) For each ASTC service, the applicant shall provide the number of patient treatments/sessions, the average time (including setup and cleanup time) per patient treatment/session, and the methodology used to establish the average time per patient treatment/session (e.g., experienced historical caseload data, industry norms or special studies).

The Applicants project 4,520 surgical procedures in the first year after completion and estimates that the average length of time per procedure will average 0.75 hours for a total of 3,390 surgical hours. The applicants project at least 4,520 surgical procedures in the second year after project completion, or 3,390 surgical hours, meeting the annual minimum utilization for two procedure rooms which meets the state standard.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION TREATMENT ROOM NEED ASSESSMENT (77 ILAC 1110.225 (c) (5) (A) & (B))

D) Criterion 1110.225 (c) (6) - Service Accessibility

The proposed ASTC services being established or added are necessary to improve access for residents of the GSA. The applicant shall document that at least one of the following conditions exists in the GSA:

- A) There are no other IDPH-licensed ASTCs within the identified GSA of the proposed project;
- B) The other IDPH-licensed ASTC and hospital surgical/treatment rooms used for those ASTC services proposed by the project within the identified GSA are utilized at or above the utilization level specified in 77 Ill. Adm. Code 1100;
- C) The ASTC services or specific types of procedures or operations that are components of an ASTC service are not currently available in the GSA or that existing underutilized services in the GSA have restrictive admission policies;
- D) The proposed project is a cooperative venture sponsored by 2 or more persons, at least one of which operates an existing hospital. Documentation shall provide evidence that:
 - i) The existing hospital is currently providing outpatient services to the population of the subject GSA;
 - ii) The existing hospital has sufficient historical workload to justify the number of surgical/treatment rooms at the existing hospital and at the proposed ASTC, based upon the treatment room utilization standard specified in 77 Ill. Adm. Code 1100;
 - iii) The existing hospital agrees not to increase its surgical/treatment room capacity until the proposed project's surgical/treatment rooms are operating at or above the utilization rate specified in 77 Ill. Adm. Code 1100 for a period of at least 12 consecutive months; and
 - iv) The proposed charges for comparable procedures at the ASTC will be lower than those of the existing hospital.

There are two ASTCs and one hospital within the 10-mile radius of the proposed ASTC. Only the hospital currently performs gastro procedures. It would appear that the ASTC services or specific types of procedures or operations that are components of an ASTC service are not currently available in the GSA. The Applicants have met the requirements of this criterion

STATE BOARD STAFF FINDS THE PROPOSED PROJECT CONFORMANCE WITH CRITERION SERVICE ACCESSIBILITY (77 ILAC 1110.225 (c) (6))

Name	City	Miles	Rooms	Time
Barrington Pain and Spine Institute	Barrington	4.2	3	1,460
Algonquin Road Surgery Center	Lake In The Hills	9.7	4	3,792
Advocate Good Shepherd Hospital	Barrington	3.2	19	28,533

Source: 2017 Hospital/ ASTC Profile Information

E) Criterion 1110.225 (c) (7) - Unnecessary Duplication/Mal-distribution

- A) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information for the proposed GSA zip code areas identified in subsection (c) (2) (B) (i):
 - i) the total population of the GSA (based upon the most recent population numbers available for the State of Illinois); and
 - ii) the names and locations of all existing or approved health care facilities located within the GSA that provide the ASTC services that are proposed by the project.

- B) The applicant shall document that the project will not result in mal-distribution of services. Mal-distribution exists when the GSA has an excess supply of facilities and ASTC services characterized by such factors as, but not limited to:
- i) a ratio of surgical/treatment rooms to population that exceeds one and one-half times the State average;
 - ii) historical utilization (for the latest 12-month period prior to submission of the application) for existing surgical/treatment rooms for the ASTC services proposed by the project that are below the utilization standard specified in 77 Ill. Adm. Code 1100; or
 - ii) insufficient population to provide the volume or caseload necessary to utilize the surgical/treatment rooms proposed by the project at or above utilization standards specified in 77 Ill. Adm. Code 1100.
- C) The applicant shall document that, within 24 months after project completion, the proposed project:
- i) will not lower the utilization of other area providers below the utilization standards specified in 77 Ill. Adm. Code 1100; and
 - ii) will not lower, to a further extent, the utilization of other GSA facilities that are currently (during the latest 12-month period) operating below the utilization standards.

As stated above there are three facilities within the 10-mile radius. Two of the three are existing ASTCs and do not provide the services being proposed by this project. The Hospital is currently above the State Board's target utilization of 1,500 hours per operating/procedure room (28,533 hours ÷ 1,500 hours/room = 20 rooms). There will be no unnecessary duplication of service with the establishment of this ASTC in the proposed 10-mile GSA.

By rule the GSA is a 10-mile radius. The Applicants provided a 45-minute GSA. The population within the 10-mile radius is 624,111 residents. As stated above there are 3 health care facilities within this 10-mile radius with 26 operating/procedure rooms. The ratio of operating/procedure rooms to 1,000 population within the 10-mile GSA is .0416 [26 operating/procedure room ÷ (624,111/1,000 or 624.11) = .0416]. The ratio of operating/procedure rooms per 1,000 population in the State of Illinois is .041 [526 operating/procedure rooms ÷ (12,978,800/1,000 or 12,978.8) = .041]. There is no mal-distribution of service (surplus of operating/procedure rooms) in this GSA.

The Applicants do not believe the proposed ASTC will impact other area facilities as other area facilities serve few Medicaid beneficiaries. The Applicants stated "*The Applicant's payor mix will include 17% Medicaid beneficiaries, patients who likely otherwise would not have access to ASTC services in the area. Because fewer of the ASTCs provide services to Medicaid beneficiaries, the Applicant would not have as much an impact on other providers in the region. Also, none of the proposed patient volume is coming from any existing ASTC. Consequently, the proposed project will have no impact on existing ASTCs.*"

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION UNNECESSARY DUPLICATION/MAL-DISTRIBUTION (77 ILAC 110.225(c)(7))

F) Criterion 1110.225 (c) (8) - Staffing

A) Staffing Availability

The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that the staffing requirements of licensure and The Joint Commission or other nationally recognized accrediting bodies can be met. In addition, the applicant shall document that necessary staffing is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.

B) Medical Director

It is recommended that the procedures to be performed for each ASTC service are under the direction of a physician who is board certified or board eligible by the appropriate professional standards organization or entity that credentials or certifies the health care worker for competency in that category of service.

At page 53 of the Application for Permit the Applicants state “The Center for Digestive and Liver Health” will be staffed in accordance with all State and Medicare staffing requirements. It will be staffed as follows:

- 1 Administrator/Director of Clinical Operations
- 1 PA/NP
- 3 Registered Nurses
- 3 other health professionals
- 12 other non-health professionals

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION GEORGRAPHIC SERVICE AREA NEED (77 ILAC 1110.225 (c) (8))

G) Criterion 1110.225 (c) (9) - Charge Commitment

In order to meet the objectives of the Act, which are *to improve the financial ability of the public to obtain necessary health services; and to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; and cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process* [20 ILCS 3960/2], the applicant shall submit the following:

- A)** a statement of all charges, except for any professional fee (physician charge); and
- B)** a commitment that these charges will not increase, at a minimum, for the first 2 years of operation unless a permit is first obtained pursuant to 77 Ill. Adm. Code 1130.310(a).

The Applicant submitted a listing of the charges at pages 53-54 of the Application for Permit as required and the attestation that charges will not increase for the first 2 years of operation unless a permit is obtained Application page 67.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION CHARGE COMMITMENT (77 ILAC 1110.225 (c) (9))

H) Criterion 1110.225 (c) 10) - Assurances

A) The applicant shall attest that a peer review program exists or will be implemented that evaluates whether patient outcomes are consistent with quality standards established by professional organizations for the ASTC services, and if outcomes do not meet or exceed those standards, that a quality improvement plan will be initiated.

B) The applicant shall document that, in the second year of operation after the project completion date, the annual utilization of the surgical/treatment rooms will meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by signed contracts with additional physicians) and the provision of new procedures that would increase utilization

The Applicants provided the necessary attestation at page 69 of the Application for Permit.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION CHARGE COMMITMENT (77 ILAC 1110.225 (c) (10))

X. Financial Viability

The purpose of the Illinois Health Facilities Act *“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 the orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of such facilities; and (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.” [20 ILCS 3960]*

A) Criterion 1120.120 - Availability of Funds

To demonstrate compliance with this criterion the Applicant must document that funds are available.

The Applicants are funding the project with cash in the amount of \$75,000 and the FMV of a Lease of \$3,780,000. The Applicants stated the following: *“There are no costs associated with this project other than filing, consulting and attorney’s fees which have or will be paid out of operations of Dr. George N. Atia’s physician practice.”* No financial statements were provided and the Board Staff was not able to determine if the Applicants could generate sufficient income to fund this project. [See Application for Permit Page 103]

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION AVAILABILITY OF FUNDS (77 ILAC 1120.120)

B) Criterion 1120.130 - Financial Viability

To demonstrate compliance with this criterion the Applicant must provide evidence that sufficient resources are available to fund the project.

The Applicants stated that all capital expenditure are being funded through internal sources. The Applicants did not provide financial statements in order to verify that sufficient internal sources are available to fund this project. [See Application for Permit Page 103]

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION FINANCIAL VIABILITY (77 ILAC 1120.120)

XI. ECONOMIC FEASIBILITY

A) Criterion 1120.140(a) - Reasonableness of Financing Arrangements

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

1. That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or
2. That the total estimated project costs and related costs will be funded in total or in part by borrowing because:
 - A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
 - B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

Section 1120.10 b) 4) states “Debt Financing means all or any portion of project costs financed through borrowing. Leasing, for purposes of this Part, is considered borrowing. Portions of lease payments that are for service, insurance, or other noncapital costs are not considered borrowing.” The Applicants did not provide a notarized statement as required by rule. The Applicants have not met the requirements of this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION 77 ILAC 1120.140 (a))

B) Criterion 1120.140(b) - Terms of Debt Financing

Applicants with projects involving debt financing shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

- 1) That the selected form of debt financing for the project will be at the lowest net cost available;
- 2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;
- 3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.

The Applicants provided a lease agreement for the space in additional information. The lessor is AHF Investments, LLC and the lessee is George N. Atia MD S.C. (co-applicant) lessor: *“The Lessee shall pay the Lessor as base rent for the premises, the sum of \$13,500 each month, monthly in advance. All rent due under the terms of this Lease shall be paid on the 1st of October 2007 and on the first day of each and every month until a new lease shall be agreed upon.”*

Additionally the Applicant provided a lease agreement for medical equipment and fixtures. The lessor is AHF Investments, LLC and the lessee is George N. Atia MD SC

(co-applicant). The Lease states *“The Lessee shall pay the Lessor the base rent for equipment, the sum of \$18,000.00 each month, monthly in advance until the end of the lease. All rent due under the terms of this lease shall be paid on the 1ST of October 2007 and on the first day of each and every month thereafter until this Lease ends”* [Application for Permit page 30].

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION REASONABLENESS OF FINANCING ARRANGEMENTS AND TERMS OF DEBT FINANCING (77 ILAC 1120.140(a) & (b))

C) Criterion 1120.140(c) - Reasonableness of Project Costs

The State Board staff applied the reported clinical costs against the applicable State Board standards.

Consulting and Other Fees – These costs total \$40,000. The State Board does not have a standard for these costs.

Fair Market Value of Leased Space/Equipment – These cost total \$2,016,000. The State Board does not have a standard for these costs.

The Applicants have met the requirements of this criterion.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH THE REASONABLENESS OF PROJECT COSTS CRITERION (77 ILAC 1120.140(c))

D) Criterion 1120.140(d) Projected Operating Costs

To determine compliance with this criterion the Applicant must provide documentation of the projected operating costs per procedure.

The Applicants provided the necessary information as required. The projected operating cost per surgical case is \$533. The State Board has no applicable standard for these costs.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION PROJECTED OPERATING COSTS (77 ILAC 1120.140(d))

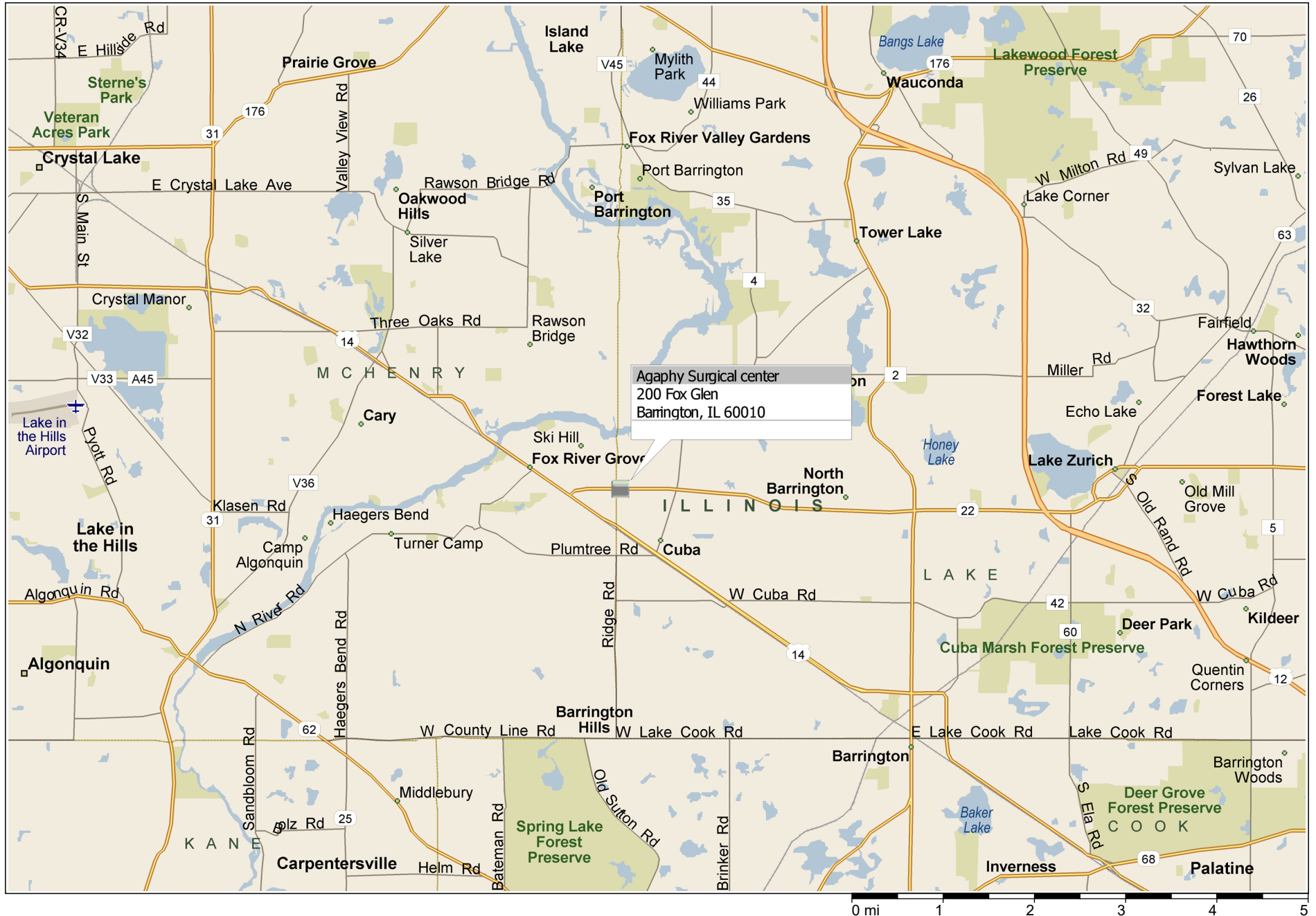
E) Criterion 1120.140(e) – Total Effect of the Project on Capital Costs

To determine compliance with this criterion the Applicant must provide documentation of the projected capital costs per equivalent patient day.

The Applicants stated that there would be no applicable capital costs for the first year after reaching target utilization. The State Board has no applicable standard for these costs.

THE STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS (77 ILAC 1120.140(e))

18-027 Agaphy Surgical Center - Barrington



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