



POLSINELLI

RECEIVED

150 N. Riverside Plaza, Suite 3000, Chicago, IL 60606 • (312) 819-1200

HEALTH FACILITIES &
SERVICES REVIEW BOARD
(312) 873-3639
kfriedman@polsinelli.com

February 14, 2020

Via Hand Delivery and Email

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

**Re: Metroeast Endoscopic Surgery Center (Project No. 19-043) - Technical
Comment to State Board Report**

Dear Ms Avery:

Polsinelli represents Metroeast Endoscopic Surgery Center (the "Applicant"). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board's ("State Board") findings on the Applicant's application for permit to add surgical specialties to an existing ambulatory surgical treatment center (the "Proposed Project"). Pursuant to Section 6(c-5) of the Illinois Health Facilities Planning Act, the Applicant submits the following in response to the State Board's findings.

Overwhelming Community Support/Support Letters

First, we appreciate the Board staff's acknowledging the outpouring of community support for the Proposed Project (page 2 and 3 of the State Board staff report). In fact there are **14 letters of support** on file.¹ That support, which includes the support of area legislators, other area health care providers and community organizations, articulates the valid reasons to approve the Proposed Project. Note that one support letter reference is "Chestor Health System." The actual provider name should be "Chestnut Health Systems" which operates a federally qualified health center treating low-income residents in the area. The East Side Health District is a component of the area health department which cultivates wellness and community empowerment. Dr. Magner with SIHF Healthcare in his letter cites the fact that *"the majority of [his] patients are Medicaid recipients thus have had problems with prompt access to regional specialists. The MESC has helped alleviate this problem because they have managed*

¹ Though it is otherwise clear from the list included, the caption above this list of supporters indicates that there were only three support letters.

Ms. Courtney Avery
Illinois Health Facilities and
Services Review Board
February 14, 2020
Page 2

Medicaid contracts. Therefore, [he] overwhelmingly endorses the expansion of their patient care services."

Commitment to Safety Net Services

The Applicant has demonstrated its commitment to safety net services in two ways. It has documented the fact that it does not cherry pick but rather a significant majority of its admissions are patients who are Medicare and Medicaid patients. This is so despite suboptimal reimbursement. Second, the support letters demonstrate the Applicant's collaboration with other safety net providers (e.g., FQHCs). Despite that and for reasons unknown to the Applicant, the State Board staff report includes statements which minimize such commitment. The reimbursement for these patients is just about a third of commercial (private) payor reimbursement. As documented below, **70% of the Applicant's patients for the most recently reported year are government payor patients.** Below is the detail from the 2018 Annual IDPH Profile for the Applicant:

Metroeast Endoscopy Surgery Center IDPH Annual Questionnaire for 2018				
	Medicare	Medicaid/Other Public	Private Insurance /Pay	Total
# of Cases	1,171	1,466	1,474	3,763
Revenue	434,425	\$461,915	\$1,447,422	\$2,343,762
Revenue/Case	\$370.99	\$315.08	\$981.97	\$622.84

In this effort to minimize the high number of Medicaid patients the Applicant cares for, the State Board report cites the Applicant's Medicaid/Medicare revenues (10%/17%) as a percentage of total revenue received. But the fact is that the vast majority of this provider's patients are Medicare and Medicaid patients and those revenue figures actually bolster the Applicant's case that it is an important safety net provider because 70% of its patients account for only 27% of its revenue due to its significant public payor patient base.

Despite this very impressive track record of being a safety net provider and the fact that a Safety Net Impact Statement is not a component of this type of application, the Board staff report casts doubt that this safety net status will continue into the future with new types of cases (Page 4). Again, the Applicant has a long-standing record that speaks for itself. Further, the Applicant has no plans to change its patient acceptance practices (other than to take on more late pay lien cases that hospitals are typically disinterested in accommodating). All patients will continue to be welcome.

Ms. Courtney Avery
Illinois Health Facilities and
Services Review Board
February 14, 2020
Page 3

Knowing that the Applicant has an excellent track record as a safety net provider (far better than the vast majority of other surgery centers in the State) but seeking to minimize that stellar background as a safety net provider, the Board staff report also states: "Historical ASTCs data statewide indicates more commercially insured, higher reimbursed care is provided at ASTCs, and more governmental, lower reimbursed care provided at the hospitals. Statewide ASTCs provided 1.7% in Medicaid care in 2018." The State Board report includes no evidence for the assertion that hospitals receive lower reimbursement for the care they provide. In fact, as documented in the CON application for the proposed project, hospitals receive significantly higher reimbursement for providing the same care as is available in the ASTC setting. This provider stands in the same position as a safety net provider as hospitals providing the same care. However, its costs to payors and patients are substantially lower.

Further, if the past (here, the Applicant's payor mix track record) is not a useful tool to predict the future, the whole concept of health planning is a charade and a useful method of market rivals to stifle competition.

We are unsure why the Applicant's payor mix information was presented in a negative light or why negative content has been added since the last State Board staff report was issued. Relatedly, the Board Staff report states, "any savings based on lower reimbursements for services need to be compared against the fixed costs that remain in the hospital. It is not clear how much impact the shifting of revenue from one cost center (hospital) to another cost center (ASTC) has on the overall cost to health care delivery."² It is a well-known fact that residents of Illinois residing in the Metro East region often have to cross the state line to travel to Missouri to receive care. With the dissipation of resources in nearby Belleville, the further development of health care services by this Applicant should be considered a win for the State and we trust the Board members will recognize the project for its merits.

Criterion 77 IAC 1110.235(c)(10) – Assurances

As documented in the Board Staff Report for the Applicant's other recent CON Permit Application (Permit 19-010) which was approved last year, the State Board does not have utilization standards for the addition of surgical specialties to an existing ASTC.³ Therefore, the proffered finding on the Assurances criterion can have no force or effect. Therefore, it is not a finding that can be considered by the Board in connection with this application.

² Page 3 State Board staff report.

³ See also, e.g., CON Permit 18-036.

Ms. Courtney Avery
Illinois Health Facilities and
Services Review Board
February 14, 2020
Page 4

References in this letter to other projects are not to suggest that the HFSRB must perform “comparative” review or “batch” projects.⁴ Rather, we put forward that treating similar facts and circumstances disparately results in the variable and inconsistent rule application of the same rules to different projects based on elements of the project that cannot be distinguished by an observer.

Thank you for your consideration of the Applicants’ response to the State Board’s findings for the Applicant’s project.

Sincerely,

A handwritten signature in black ink that reads "Kara Friedman". The signature is written in a cursive, flowing style.

Kara M. Friedman

⁴ In the context of the Board’s regulations, the reference to comparative reviews refers to a practice of administering planning agency matters on a cyclical basis (e.g., twice a year or every quarter). Batching which is administered in three of the four states that health planning consultants at Governors State University studied at the HFSRB’s behest (Michigan, Florida and New Jersey), offers the possibility of comparing the relative merits of several comparable projects all seeking to address the same community need when the community’s need can be adequately filled by any one of the proposed projects. As an aside, despite the fact that these consultants recommended commencing a batching process to improve consistency in application review, batching has not been implemented in Illinois.

<https://www2.illinois.gov/sites/hfsrb/InventoriesData/Other/Documents/CON%20Programs%20A%20Comparative%20Assessment.pdf>