HSHS ILLINOIS

HSHS St. Joseph's Hospital
Breese

HSHS St. Mary's Hospital
Decatur

HSHS St. Anthony's Memorial Hospital
Effingham

HSHS Holy Family Hospital
Greenville

HSHS St. Joseph's Hospital
Highland

HSHS St. Francis Hospital
Litchfield

HSHS St. Elizabeth's Hospital
O'Fallon

HSHS Good Shepherd Hospital
Shelbyville

HSHS St. John's Hospital
Springfield

St. John's College of Nursing
Springfield

July 6, 2021

Via Electronic Delivery

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

Re: Project #20-017, MetroEast Endoscopic Surgery Center, Fairview Heights

Opposition Statement of HSHS following Intent to Deny

Dear Ms. Avery:

On behalf of the Hospital Sisters Health System ("HSHS") and HSHS St. Joseph Hospital Highland ("Highland"), a 25-bed Critical Access Hospital, I respectfully submit this additional objection to the CON application Project #20-017, MetroEast Endoscopic Surgery Center, #20-017, which the Review Board unanimously voted against and issued and Intent to Deny at its meeting on September 22, 2020.

Although the applicant submitted "additional information" following the Intent to Deny, that information did not respond to, or even address, the negative findings upon which the Intent to Deny was based. HSHS has previously responded to the applicant's submissions since the Intent to Deny in my letter of January 5th, a copy of which is attached.

In April of this year, the applicant advised the Review Board in writing that the project's only referring physician had withdrawn all patient referrals for the project. As the project now has no patient referrals supporting the project, and the applicant submitted no additional information responsive to any of the negative criteria on which the Intent to Deny was based, we respectfully submit that the administrative record requires denial of this project.

Very truly yours,

Julie Goebel, MHA
Vice President, Strategy
HSHS Illinois
Attachment

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January 5, 2020

Via Email Delivery

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

Re: Project #20-017, Metroeast Endoscopic Surgery Center, Fairview Heights

Opposition Statement of HSHS following Intent to Deny

Dear Ms. Avery:

On behalf of HSHS St. Joseph Hospital Highland ("Highland"), a 25-bed Critical Access Hospital, and St. Joseph Hospital Breese ("Breese"), I respectfully submit this opposition statement to the additional information submitted by the applicant on Project #20-017, Metroeast Endoscopic Surgery Center, and dated October 26, 2020 and December 9, 2020 (referred to below, respectively, as the "October 26th Letter" and "December 9th Email").

The Project received an Intent to Deny on September 22, 2020 following a unanimous negative vote of 0-5. The applicant's additional information makes no attempt to cure the negative findings in the Board Staff Report, and the project should be denied for the following reasons:

1. Rather than positively respond to the negative findings in the staff report, the applicant argues that the Review Criteria simply should not be applied to this project and falsely claims that the Board's staff "almost never" applies the Criteria.

2. The applicant claims to be "the largest provider of Medicaid among ASTCs" but admits that one of its two referring physicians currently practices at facilities "not enrolled in the Illinois program" and the other physician refused to respond to the Staff's request for Medicaid volume because he "does not want to expend any more time or effort into this project."

3. There are no facility fee cost savings to this project because (a) the newly identified patient volume is *already* being treated in ASTCs, not hospitals, and (b) any facility fee cost savings based on hospital patient volume would be more than offset by the applicant's exorbitant professional fees identified in the CON application.

Each of the above reasons for denial are more fully addressed below.

1. The Staff's Negative Findings are Not Positively Addressed

The Board Staff Report contains three negative findings as to which the applicant has failed to provide any additional information demonstrating compliance. To the contrary, the applicant's additional information shows that the project is now even more out of compliance with the following Review Criteria.

Service to Area Residents, §1110.235(c)(2)(B): An applicant is required to document that at least 50% of admissions were residents of the Geographical Service Area ("GSA"), which is within 17 miles of the site for this project. The Staff Report's negative finding found that:

> "[N]ot one of the referring physician's historical referrals in which zip code information was provided resided within the 17-mile GSA. It does not appear that the proposed orthopedic services will be providing services to the residents in the 17-mile GSA." Staff Report at 10.

The applicant submitted a new referral letter with its October 26th Letter. That letter shows the project is in even worse condition now than when originally reviewed by the Staff. First, the patient referrals have dropped to only 84 patients from the original 220. Of those 84 patients, 72 of them (over 85%) *reside in Missouri.* The twelve Illinois patients reside in zip codes far away from the proposed sites ranging in distances of **24 miles to 111 miles**. Half of the Illinois residents live **50 miles or more** from the project site in the Chester, Centralia and Jonesboro zip codes (62233, 62801, 62952).

The project serves **zero** Illinois patients within the GSA, not the 50% required by the Review Criterion. The project should be denied for this reason alone.

Service Accessibility, §1110.235(c)(6): This Criterion requires a new ASTC to be "necessary to improve access for residents of the GSA" with documentation of the existence of one of the following four conditions in the GSA: (1) There are no other ASTCs within the GSA; (2) All existing ASTC and hospital outpatient surgical rooms are at target utilization levels or existing underutilized services in the GSA have restrictive admission policies; (3) the specific surgical procedures proposed are not currently available in the GSA, or; (4) The proposed project is a cooperative venture sponsored by an existing hospital.

The Staff found that the applicant met none of the four criteria. Specifically, the Staff found that (1) There are eight ASTCs and six hospitals within the 17-mile GSA; (2) All of the hospitals and an ASTC (Anderson Surgery Center) provided the same surgical specialty being

proposed (orthopedic surgery); (3) None of the hospitals and all but one ASTC were operating at target utilization levels, and; (4) The proposed project is not a cooperative venture.

The applicant does not dispute any of the Staff's negative findings. Moreover, as addressed above, this project does not improve access "for residents of the GSA," as required by the Criterion for the plain reason that not a single patient referenced in the new referral letter resided within the 17-mile GSA. The Illinois residents to be served were all located 22 to 111 miles away from the proposed site.

Unnecessary Duplication/Maldistribution, §1110.235(c)(7): An applicant must document that the project will not result in an unnecessary duplication of services or the maldistribution of services. The Staff found that project "will result in an unnecessary duplication of service" and that the applicants "have not successfully addressed this criterion." Staff Report at 14.

Under the Criterion, maldistribution exists where the historical utilization of existing providers is below the utilization standard for the proposed service. The Staff found maldistribution existed because none of the area's six hospitals were at target occupancy, and the Review Board had recently approved a new ASTC in the GSA, Anderson Surgery Center, that the same orthopedic surgery services proposed by the applicant. Once again, the applicant does not dispute the Staff's findings.

The project should be denied because there is no evidence that the project meets any of the three Criterion as to which the Staff has already made negative findings. Rather than attempting to comply with the Review Criteria, the applicant insists that the Criteria should not be applied to its project and then falsely asserts that the Staff has not applied them in other projects. Both contentions are devoid of merit.

The Review Criteria Unequivocally Apply to the Applicant's Project: Under the Review Board's rules, the above Criteria are expressly made applicable to projects that add services to an ASTC. Section 1110.235(c)(1)(C) lists the specific Criteria applicable to ASTC projects by project type. The same Criteria apply to projects that either establish an ASTC or that add services (which is the case here). The applicable Criteria include all of the above Criteria referenced in the Board Staff Report, namely: Service to GSA Residents, §1110.235(c)(2)(B); Service Accessibility, §1110.235(c)(6), and; Unnecessary Duplication/Maldistribution, §1110.235(c)(7). There is no merit to the applicant's contention that these Criteria do not apply to its project.

Board Staff has Consistently Applied the Criteria on Other Projects: The applicant contends on page 5 of its October 26th Letter the Board Staff has "almost never negatively applied" the Service Accessibility and Unnecessary Duplication/Maldistribution Criteria to ASTC projects that add services. A review of the projects listed in the applicant's letter shows that the Staff applied both Criteria in five of the six projects *and found documentation of compliance with both*

Criteria that does not exist in the applicant's project here.[1] For example, in the very first project cited by the applicant, Carle Surgicenter Danville, #18-014, the applicant satisfied the Service Accessibility Criteria and the Unnecessary Duplication/Maldistribution Criterion primarily because the new service being added was not currently being provided in the GSA. By contrast, the service to be added here, orthopedic surgery, is currently available in the area.

The applicant here appears to be arguing that because the applicants in other projects documented compliance with the Criteria, those Criteria should not be "applied negatively" here, even though the undisputed facts establish non-compliance. That is an absurd position to take. It is also highly disappointing to see the applicant disparage Board Staff by accusing it of discriminatory application of the Board's rules when the truth is that Staff has consistently applied the rules; making positive findings where the applicants have documented substantial compliance, as in the projects cited by the applicants, and making negative findings where there is affirmative undisputed documentation of non-compliance, as is the case here.

2. One of the Applicant's Referring Physician Provides *No* Medicaid Services, and The Other "Does Not Want To Expend Any More Time Or Effort Into This Project."

The applicant has claimed throughout this proceeding that it is a significant Medicaid service provider and reasserts in its additional information that it is "the largest provider of Medicaid services among ASTCs in the broader planning area...." (October 26th Letter at 1.) However, when the Staff inquired of the applicant's specific Medicaid volume for the services to be provided by this project, a completely different story emerged.

The Staff requested the applicant to provide the number of Medicaid referrals that Dr. Bradley made to St. Louis health care facilities and the percentage of Medicaid patients Dr. Bradley proposed to refer to the proposed project. In response, the applicant responded that *none* of the St. Louis facilities were enrolled in the Illinois Medicaid program. In addition, the applicant's response contains *no* commitment from Dr. Bradley to refer *any* Medicaid patients the project. While that applicant asserts that "it is anticipated" Dr. Bradley will refer lots of Medicaid patients, there is no assurance from Dr. Bradley himself that he will refer even one. *See* December 9th Email.

It appears that Dr. Bradley is now the applicant's only referring physician as the other specialist, Dr. Ungacta, appears to have washed his hands of the project. The Staff requested the applicant to document Dr. Ungacta's historic referrals, projected referrals, the number of Medicaid patients referred historically and the percentage of Medicaid patients that would be referred to the project. The applicant provided *none* of this information. Instead, the applicant advised Staff that

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1 The two Criteria were not applied in only one project, Center for Ambulatory Treatment II, #19-020. That project involved unusual circumstances where the applicant owned two ASTCs and the project was intended to alleviate over-utilization at one facility by adding a new service at the second, under-utilized facility thereby improving the operation of both facilities. Those circumstances are not present here.

Dr. Ungacta was disappointed and frustrated after he "put in a lot of time and political capital" to attend the Review Board's September 22nd meeting (which he did not attend in person but only participated remotely), and that he "does not want to expend any more time or effort into this process." December 9th Email.

Dr. Ungacta spends neither the time nor effort to respond to the Staff's questions regarding his Medicaid referrals, nor does the applicant. Regardless of the Medicaid volumes the applicant may currently treats in its existing facility, which specializes in gastro-intestinal surgeries, the fact is that the applicant has failed to document a single Medicaid patient would receive orthopedic surgery services from the proposed project.

3. Rather than "Stem Outmigration" of Illinois Residents to St. Louis, the Project Does Just the Opposite in Proposing to Send St. Louis Residents to Illinois

The applicant asserts on page 1 of its October 26th Letter that the project will "help to stem outmigration from Illinois to Missouri[.]" This claim is completely refuted by Dr. Bradley's referral letter that is attached to the submission. The vast majority of Dr. Bradley's referrals (72 out of 84), are residents of Missouri. Only twelve of his patients are residents of Illinois, and Dr. Bradley does not claim that any of those twelve patients were treated in St. Louis. Consequently, the project will do nothing to "stem outmigration."

Moreover, the zip codes of the Missouri patients show that most of them are located in west and northwest region of St. Louis, where there are already existing surgery centers. It does not appear at all convenient or reasonable to require those patients to drive through St. Louis and across the Mississippi River, through East St. Louis, and then another ten-plus miles to Fairview Heights where the project is located.

4. The Project will Not Improve Access to Metroeast Residents because *None* of Dr. Bradley's Patients Reside in That Area

The GSA for this project is a 17-mile radius circle around the project site in Fairview Heights. None of Dr. Bradley twelve Illinois patients reside within that circle. The closest is over 22 miles away and the farthest are 111 miles away. The chart below uses the zip code and patient numbers from Dr. Bradley's referral letter and includes the average driving distances from those zip codes to the site address:

Illinois ZIP Code	#Patients	Driving Distance
62248	5	22.5 miles
62025	1	24.3 miles
62233	2	49.3 miles
62801	3	55.9 miles
62952	2	111.3 miles

The applicant's own documentation establishes that this project will not improve access to residents of the geographical service area.

5. The Project will Not Provide Cost Savings

The applicant claims the project will provide cost savings because hospital based outpatient rates are higher than ASTC rates, primarily due to the different facility fees. That claim fails on two counts here.

First, the applicant's new referral letter shows that all but four of the project's patient referrals (80 of 84 patients) are currently being treated in ASTCs. (October 26th Letter, Attachment 1.) The "savings" on reduced facility fees would therefore only apply to four patients at best. Moreover, those four patients were all treated at a hospital in Missouri and they were most likely Missouri residents. It is highly questionable whether Missouri residents will travel to Fairview Heights, Illinois for their outpatient surgeries.

Second, whatever marginal cost savings that might be obtained by the reduced *facility* fee charged to those four patients would be totally eclipsed by the very large *professional* fee that the applicant has committed to charge. While the applicant submitted a facility fee schedule for some CPT Codes after the filing of its application, its charge commitment on page 79 of the CON application, which appears to include the professional fee, shows what the applicant really intends to charge. For CPT Codes 29807 and 29827, the applicant lists a facility fee of **$2,557**, but its charge commitment in the CON application for those same codes is **$39,897**. The facility for CPT Code 29881 is listed as **$1,173** while the applicant's charge commitment for that procedure is **$18,363**. The applicant has provided no evidence at all that any of the four patients treated at the Missouri hospital would have experienced any cost savings at the applicant's proposed project. (The applicant's facility fee list and its charge commitment from the CON application are attached.)

None of the additional information submitted by the applicant following the Review Board's unanimous issuance of an Intent-to-Deny is responsive to the concerns raised by Board at its meeting on September 22nd or by the Staff in its Report. The project should therefore be denied.

Very truly yours,

Julie Goebel, MHA
Vice President, Strategy
HSHS Illinois

Attachments
cc: Mike Constantino, Lead Project Reviewer, HFSRB

Mr. Michael Constantino
Illinois Health Facilities and Services Review Board
525 West Jefferson Street
Springfield, Illinois 62761

RE: Additional Information for Project #20-017

Dear Mr. Constantino:

Thank you for your email regarding Project #20-017. I appreciate your review and was pleased to see HSHS acknowledge that Dr. Ungacta's practice does not represent a meaningful portion of the orthopedic volumes at any of their facilities. I'm hopeful that in light of this this information, they will chose to suspend their efforts to interfere with the delivery of care at Metroeast Endoscopic Surgery Center (MESC). I am eager to add Orthopedic Surgery to our center to ensure that Illinois residents can get the care they need in Illinois rather than having to travel to Missouri. Doing so is particularly important given the recent shift of many elective surgeries to an outpatient setting as a result of the pandemic and the related economic crisis. To that end, this CON permit would support the availability of quality, cost-efficient care during these times and going forward.

In response to your specific inquiries, please see the following:

1. Below are the five highest volume orthopedic procedures anticipated to be performed at our center:

	# of Procedures	Procedure Code	Description	ASTC Fee*	HOPD Fee*
1	8-10	29827	Rotator Cuff Repair	$2,557	$5,357
2	8-10	29807	Labral/SLAP repair	$2,557	$5,357
3	8-10	29881	Partial Menisectomy	$1,173	$2,451
4	8-10	29879	Chondroplasty	$1,173	$2,451
5	8-10	64712	Carpal Tunnel	$727	$1,539

*Medicare payment amounts adjusted for local market.

As you know, these figures are mere projections and it is difficult to know what the future brings. What we do know is that with the aging population, access to musculoskeletal care services are of upmost importance to seniors whose mobility is severely affected by joint disease and deterioration including osteoarthritis and fractures. Osteoarthritis is caused by inflammation in aging joints, and injury and obesity can also play a role. Eventually, this condition will cause cartilage tissue to break down and cause pain, swelling or deformity. Osteoarthritis leads to pain in your hips, knees, shoulder or spine that can be so severe it interrupts your daily life.

We expect care to focus on those joint procedures that can be safely performed in a freestanding outpatient facility as approved by Medicare and endorsed by private insurers.

2. As a clarification regarding Dr. Ungacta's referral letter, Dr. Ungacta was in practice with Dr. Bradley during the period for which historical case data was provided. Since Dr. Ungacta owned

the practice and was the billing entity, Dr. Bradley's case volumes were assigned to Dr. Ungacta's practice. Accordingly, his referral letter was written on behalf of the practice and reflected the practice's outpatient surgical cases. Dr. Bradley was and still is a much more active procedural physician than Dr. Ungacta; however, both Dr. Bradley and Dr. Ungacta will be credentialed at MESC. They plan to treat Illinois patients in our surgery center, including nearly all of those insured by Medicare and Medicaid.

3. Drs. Ungacta and Bradley plan to accept Medicaid at MESC; however, they do not have a specific quota, as their primary basis for acquiring new Medicaid patients is through emergency room call coverage. Based on the center's current payor mix, we would expect about 15% of the patients to be insured by Medicaid. MESC has a track record of providing excellent service at a fraction of the cost of local hospitals to the indigent population. We are the largest provider of care to Medicaid in South Illinois, and we will continue to do that for years to come.

Please feel free to contact Kara Friedman or me as needed.

Sincerely,

Shakeel Ahmed, M.D.

Section VII, Service Specific Review Criteria
Non-Hospital Based Ambulatory Surgery
Criterion 1110.235(c)(9) – Charge Commitment

Table 1110.1540(c)(9)		
Name of Procedure	**Primary CPT**	**Max Charge**
Remove Part Of Neck Vertebra	22100	$39,897
Remove Part Thorax Vertebra	22101	$18,363
Remove Part Lumbar Vertebra	22102	$39,897
Closed Tx Vert Fx W/O Manj	22310	$5,500
Closed Tx Vert Fx W/Manj	**22315**	**$18,363**
Manipulation Of Spine	22505	$9,193
Perq Cervicothoracic Inject	22510	$18,363
Perq Lumbosacral Injection	22511	$18,363
Perq Vertebral Augmentation	22513	$39,897
Spine Surgery Procedure	22899	$18,363
Tenotomy Shoulder Area 1 Tendon	23405	$39,897
Tenodesis Long Tendon Biceps	23430	$39,897
Open Tx Clavicular Fracture Internal Fixation	23515	$39,897
Arthrt Elbow Capsular Excision Capsular Rls Spx	24006	$18,363
Excision Olecranon Bursa	24105	$18,363
Partial Excision Bone Humerus	24140	$18,363
Partial Excision Bone Olecranon Process	24147	$18,363
Tenolysis Triceps	24332	$18,363
Rinsj Rptd Biceps/Triceps Tdn Dstl W/Wo Tdn Grf	24342	$39,897
Tnot Elbow Lateral/Medial Debride Open	24358	$18,363
Tnot Elbow Lateral/Medial Debride Open Tdn Rpr	24359	$18,363
Arthroscopy Shoulder Surgical Capsulorrhaphy	29806	$39,897
Arthroscopy Shoulder Surgical Repair Slap Lesion	29807	$39,897
Arthroscopy Shoulder Surgical Removal Loose/Fb	29819	$18,363
Arthroscopy Shoulder Surg Debridement Extensive	29823	$18,363
Arthroscopy Shoulder Distal Claviculectomy	29824	$18,363
Arthroscopy Shoulder Ahesiolysis W/Wo Manipj	29825	$18,363
Arthroscopy Shoulder W/Coracoacrm Ligmnt Release	29826	$19,527
Arthroscopy Shoulder Biceps Tenodesis	29828	$39,897
Arthroscopy Elbow Surgical W/Removal Loose/Fb	29834	$18,363
Arthroscopy Elbow Surgical Debridement Extensive	29838	$18,363
Arthroscopy Knee Osteochondral Agrft Mosaicplast	29866	$39,897
Arthroscopy Knee Removal Loose/Foreign Body	29874	$18,363
Arthroscopy Knee Synovectomy 2/>Compartments	29876	$18,363
Arthrs Kne Surg W/Meniscectomy Med/Lat W/Shvg	29881	$18,363
Office Consultation	99244	$4,106
Arthroscopy Shoulder Rotator Cuff Repair	29827	$39,897

Table 1110.235(c)(9) above is a non-exhaustive list of the procedures by primary CPT code that will be typically performed within the new specialty. Each line shows anticipated maximum charges for two years for a surgical case with the primary CPT code shown.