

#20-017 Comment on State Board Staff Report



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July 19, 2021

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Via 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 (Proj. No. 20-017)
Technical Comment to State Board Report**

Dear Ms. Avery:

Polsinelli PC represents Metroeast Endoscopic Surgery Center, LLC (the “Applicant”). In this capacity, we are writing in response to the Illinois Health Facilities and Services Review Board’s (“HFSRB”) findings (“State Board Report”) on the Applicant’s non-substantive application for permit to add orthopedic surgery services to its existing ambulatory surgical treatment center (the “ASTC”) located in Fairview Heights, Illinois (the “Project”). This is a project that involves no construction, no additional services capacity and does not involve a capital expenditure in excess of the capital expenditure minimum. As such, it is both perplexing and a deviation from material precedent that the Project has NOT been submitted to the HFSRB Chair for her desk review and approval, consistent with the treatment of HFSRB Project 20-41 which was identical in all meaningful respects. The fact that the HFSRB staff found the Project does not comply with the application process as it did find with HFSRB Project 19-10 (which was the same type of application)¹ indicates an arbitrary and capricious application of the HFSRB rules to the Project. The negative findings made for the Project’s Board Staff Report should be removed. As counsel for the Applicant, we submit that without meaningful criteria that are consistently applied, there is no basis for regulating the activity. Arbitrary application of rules which are not oriented toward the purpose of the law, improperly impedes the ability of the Applicant to operate as a private business under equal protection and due process principles. The Project application should be corrected to be wholly positive.

¹ The HFSRB Board staff report for Project 19-10 is attached hereto for your reference.

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The Project is considered a “non-substantive project” as defined in the Illinois Health Facilities Planning Act (the “Planning Act”) and is a request to allow an existing multi-specialty surgical provider to offer a health care resource, ASTC-based orthopedic surgery, which does not exist in the county where the ASTC is located. It does not involve a capital expenditure in excess of the capital expenditure minimum (\$3,797,666 as of July 1, 2021) nor does it propose the expansion of operating room capacity at its existing location. Rather, the plan merely involves an expenditure of less than 5% of the capital expenditure minimum and the credentialing of an additional specialist to the medical staff of the ASTC. The Applicants’ plan will improve access to health care services for Illinois residents in and around Fairview Heights by making its existing clinic available to orthopedic physicians to provide their patients a lower cost option for surgical procedures that do not require a hospital stay. Patients residing in St. Clair County which has a large population of 270,000 otherwise often must travel to Missouri for care or receive this service in the higher cost setting of a hospital. The Project supports the requirements and goals of Federal and State government insurance programs (such goals are associated with the core tenets of the Planning Act) along with commercial payors contracted with employers and plan sponsors to improve outcomes and access while lowering health care costs both for the government, for employers, large and small, and to reduce out-of-pocket costs for patients and their families. Providing this option is more important than ever due to the COVID-19 pandemic, which significantly impaired the ability of the public to obtain medical care, particularly marginalized groups. Notably, the African-American population is 30% of the St. Clair County population - more than twice the statewide average as a percentage of population.

As stated above, this proposal follows the Applicant’s recent 2019 application (Project No. 19-010) which added surgical specialties and was identical in all material respects with that of Project No. 19-010.² Though opposition is irrelevant to the applicable criteria, Project 19-10 was not opposed by Hospital Sisters Health System and was approved without negative findings and without controversy. Objectively, one would expect an assessment of the impact of adding surgical capacity on other providers with Project No. 19-010 but that is not relevant in assessing the Project application because the Project doesn’t add surgical capacity. The more negative treatment of the Project compared to Project 19-10 can only be explained by the HSHS opposition and some unexplained desire of the HFSRB staff to project the HSHS market share. But of course,

² As an aside, unlike the Project, Project 19-10 did, in fact, add surgical capacity and we would have expected a more critical eye to the prior project than this one which does not add capacity.

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it is settled law that it is not the role of the HFSRB to project market share of other providers³ as a non-substantive project, safety net impact (Section 1110.110(c)) is not an applicable criterion for the Project.

Despite the fact that Project No. 20-017 is identical to Project No. 19-010 in all material respects, the HFSRB staff issued the State Board Report and made preliminary findings that Project No. 20-017 failed to meet four criteria relative to Part 1110. Such differential treatment is a textbook example of an arbitrary and capricious application of a government agency's rules to exercise authority over a business' property. The situations are identical, with the exception of the opposition leveled at this project by Hospital Sisters Health System. There can be no justification for treating the two petitions in a disparate way. If these findings are not corrected and the CON permit application for the Project is not approved, such a denial is certain to be invalidated in any appeal as there would be no rational connection between the facts found and the choice made.

1. Background

“Improv[ing] the financial ability of the public to obtain necessary health services; . . . guarantee[ing] the availability of quality health care to the general public; maintain[ing] and improv[ing] the provision of essential health care services and increasing the accessibility of those services to the medically underserved and indigent” are core tenets of the Illinois Health Facilities Planning Act (the “Act”). 20 Ill. Comp. Stat. 3960/2. This project, which proposes the addition of orthopedic surgery addresses these principles by providing a high quality, lower cost option to area hospitals thereby increasing the availability of orthopedic surgical services to the underserved residents in the Metroeast.

This Project is a non-substantive project that does not propose the construction, modification, or establishment of health care facility, establishment of a category of service or clinical service area, or acquisition of major medical equipment. 20 Ill. Comp. Stat. 3960/2. Further, the cost of the project (\$180,000) is well below the capital expenditure minimum (\$3,797,666). It will increase utilization at an ASTC that is operating under target capacity by credentialing orthopedic surgeons to perform procedures at the ASTC. The Project is before the State Board solely due to a rule change that went into effect in 2018 that requires a certificate of need permit to credential new types of surgeons to perform cases. 77 Ill. Admin. Code §

³ See Cathedral Rock, 308 Ill.App.3d at 540, 242 Ill.Dec. 158, 720 N.E.2d 1113. Nor does the Planning Act protect jobs. American Federation of State, County & Municipal Employees, Council 31 v. Ryan, 347 Ill.App.3d 732, 741, 283 Ill.Dec. 394, 807 N.E.2d 1235 (2004).

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1110.235(c)(1)(B)(ii). There is no meaningful health planning construct to apply to allow additional types of specialists to perform procedures at a surgical center that will not add capacity to the area. Further, hospitals are not held to a similar requirement to obtain a certificate of need permit to credential additional types of specialists at their facilities. There should be a more level playing field that does not allow hospitals to stifle competition, particularly a safety net provider like the Applicant. As such a level playing field does not exist, it is even more important that any regulation of this type of application adjudication is fair, reasonable and consistent.

At the last HFSRB meeting in May, the HFSRB staff went on the record to state that the HFSRB does not concern itself with the cost of health care services by comparing one provider to another.⁴ This assertion is contrary to the Planning Act's objective to "to improve the financial ability of the public to obtain necessary health services." 20 Ill. Comp. Stat. 3960/2. Moreover, the cooperative joint venture review criteria recognize the value of ASTCs as a lower cost option to hospitals by promoting hospital development of ASTCs. 77 Ill. Admin. Code § 1110.235(c)(6)(D)(iv). Accordingly, the cost of health care services is a central tenet of the certificate of need process and this project will lower the cost of health services by providing local access to patients and allowing cases to be performed in the lower cost setting of a surgery setting.⁵

The Applicants seek a certificate of need permit to add orthopedics as a surgical specialty. Despite the fact the addition of a surgical specialty ***will not add surgical capacity to the area***, the rules suggest that the exact same criteria should apply to this project as are applied to applications to establish a de novo surgery center. Importantly, applications that add physical capacity (additional operating rooms) do not need to address the service accessibility and unnecessary duplication of services review criteria (two criteria for which this project received negative findings). 77 Ill. Admin. Code § 1110.235(c)(1)(C). There is no meaningful health planning construct that the agency might apply to allow additional types of specialists to perform procedures at a surgical center that will not add operating room capacity.

In 2013, the HFSRB approved the Applicant's certificate of need application to establish the surgery center, despite adding capacity (1 procedure room) to the geographic service area. In 2019, the Applicant submitted a certificate of need application to add general surgery, plastic

⁴ "The only cost this Board has ever had jurisdiction over are capital costs." Transcript of May 26, 2021 HFSRB Meeting, page 133.

⁵ The Applicants have previously documented the Medicare reimbursement differential between hospital surgical services and ASTC services noting that ASTCs are usually paid at about 50% the rate that hospitals are paid for the same service.

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surgery, and gynecologic surgery. That project received no negative findings and was unanimously approved (Project No. 19-010).

2. Consider the following information relative to the criteria HFSRB staff addressed in the State Board Report.

a. Service to Residents of the Geographic Service Area

First, the Applicant is not siting a new location or adding services so this criterion should not be applicable. It is meaningless considering the pending request. Second, the vast majority of patients served by the Applicant's existing ASTC reside in the relevant geographic service area⁶ and the residency of the patient base post-approval will remain generally unchanged. The purpose of this review criterion is to ensure an ASTC primarily serves the residents of the applicable geographic service area as documented by 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. As noted throughout this technical comment, this project is for the addition of a surgical specialty. Importantly, it does not propose the construction, modification, or establishment of a health care facility, establishment of a category of service or clinical service area, or acquisition of major medical equipment. 20 Ill. Comp. Stat. 3960/2. Further, the cost of the project (\$180,000) is less than 5% of the capital expenditure minimum (\$3,797,666). The proposed plan will increase utilization at an underutilized ASTC by allowing the ASTC to credential orthopedic surgeons to perform procedures at the surgery center. Notably, this is not an activity that requires a capital expenditure nor does it add a Category of Service to the ASTC. The Project is before the HFSRB solely due to a rule change that went into effect in 2018 that requires a certificate of need permit to add ASTC services in an existing surgery center. 77 Ill. Admin. Code § 1110.235(c)(1)(B)(ii).

Notwithstanding the fact this project is before the HFSRB due to a technicality, the Applicant submitted patient origin information by zip code for all patients treated at the surgery

⁶ The Applicants patients generally reside in the GSA communities of O'Fallon, Troy, Lebanon, Washington Park, Belleville, Granite City, East St. Louis, Fairview Heights, Collinsville, Mascoutah, Caseyville and Glen Carbon.

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center during 2018. Based on analysis of patient origin information, 88% of the ASTC's patients reside in the surgery center's geographic service area. As a result, a positive finding should be made on this criterion or the criterion should not be applicable.

b. Service Demand

As with Service to Geographic Area Residents, this criterion should not be applicable to projects seeking to add ASTC services but not adding capacity. Importantly, applications proposing to add operating and/or procedure rooms must submit referral letters documenting sufficient referrals to justify the additional capacity, *the historical referrals do not need to come from within the geographic service area.* 77 Ill. Admin. Code § 1110.235(c)(4) (emphasis added). Given this is an existing surgery center with a documented history of serving patients in the geographic service area, the same standard should apply as to those projects seeking to add capacity.

Notwithstanding there is no rational basis for applying this review criterion to projects like Project No. 20-017, the Applicants met this review criterion. The Applicant documented it serves the geographic service area. See Application pp 58 – 62. The addition of 16 projected orthopedic cases will not change this. For the reasons stated herein, a positive finding should be made.

c. Service Accessibility & Unnecessary Duplication of Service

As noted above, service accessibility and unnecessary duplication of service are not review criteria for projects proposing to add operating and/or procedure rooms and not applied to Project No. 19-010. Presumably, the rationale for excluding these criteria is due to the fact such projects involve existing surgery centers, which is the case here as well. The primary difference with the Project is that with the Project the Applicant seeks to increase utilization of an existing service and will not add capacity to the geographic service area. It is counterintuitive to rationale health planning and antithetical to the HFSRB's core tenets to implement barriers to care that will force medically underserved and indigent individuals to higher cost settings. Importantly, precedent exists to exclude these review criteria from projects proposing to add surgical specialties without adding capacity and should be done here as well.

3. Non-Substantive Application – No Safety Net Impact Criterion

Hospital Sisters Health System has enlisted its confederacy of acquiescent stakeholders to intervene in this proceeding but has set forth no meaningful basis to deny this proposal. This is due to the fact that the expansion of surgical specialty CON proposals are non-substantive projects

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and the potential impact on any other provider whether or not a safety net provider, has no bearing on the merits of this proposal. But as a reminder, the Applicant and its sister facility, Physicians' Surgical Centre, participate actively in Medicaid managed care plans and this provides a significant access benefit to marginalized populations residing in their service areas

Thank you for your consideration of the Applicant's response to the State Board Report.

Sincerely,

A handwritten signature in black ink that reads "Anne M. Cooper".

Anne M. Cooper

Attachment



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STATE OF ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 • FAX: (217) 785-4111

DOCKET NO: H-06	BOARD MEETING: June 4, 2019	PROJECT NO: 19-010	PROJECT COST:
FACILITY NAME: Metroeast Endoscopic Surgery Center, LLC		CITY: Fairview Heights	Original: \$0
TYPE OF PROJECT: Non-Substantive			HSA: XI

PROJECT DESCRIPTION: The Applicant (Metroeast Endoscopic Surgery Center, LLC) proposes to add General Surgery, Plastic Surgery and Gynecologic surgery services to its current single-specialty ambulatory surgical treatment center (ASTC) located in Fairview Heights, Illinois. The proposed project will also add one procedure room. The reported project costs are \$180,000. The expected completion date is June 1, 2020.

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EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- The Applicant (Metroeast Endoscopic Surgery Center, LLC) proposes to add General Surgery, Plastic Surgery, and Gynecologic surgery services to its existing single-specialty ambulatory surgical treatment center located in Fairview Heights, Illinois. The proposed project will also add one procedure room. The costs associated with the proposed project are \$180,000. The expected completion date is June 1, 2020.

WHY THE PROJECT IS BEFORE THE STATE BOARD:

- The project is before the State Board because the project proposes a substantial change in scope as defined at 20 ILCS 3960/5.
- One of the objectives of the Health Facilities Planning Act is *“to assess the financial burden to patients caused by unnecessary health care construction and modification. Evidence-based assessments, projections and decisions will be applied regarding **capacity, quality, value and equity** in the delivery of health care services in Illinois. Cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process.”* [20 ILCS 3960/2]

PURPOSE OF THE PROJECT:

- The Applicant stated the following: *“The primary purpose of the proposed project is to offer patients residing in Fairview Heights and the surrounding area affordable surgery options. There are no surgical treatment centers within a 17-mile radius of Metroeast that offer the specialties of general surgery, plastic, and gynecology being proposed in this application. There are presently only two active surgery centers within a 17-mile radius, and those centers are single-specialty centers.”*

PUBLIC HEARING/COMMENT:

- A public hearing was offered but was not requested. The project file contains 5 letters of support and no letters of opposition. The support letters are from:
- Mark Freeland, Executive Director, Southern Illinois Regional Wellness Center
- Marc Larue, Patient, Metroeast Endoscopic Center, Fairview Heights
- Scott Kocurek, Patient, Metroeast Endoscopic Center, Fairview Heights
- Cathy Schilling, Patient, Metroeast Endoscopic Center, Fairview Heights
- Mark T. Kupsky, Mayor, Fairview Heights

SUMMARY:

- The purpose of the project as stated above is to improve patient access to lower cost surgical alternatives for general surgery, plastic, and gynecology surgical procedures, and improve utilization of the existing ASTC (Metroeast Endoscopic Surgery Center). If approved, the ASTC will be reclassified a multi-specialty.
- The Applicant has addressed a total 15 criteria and have successfully addressed them all.

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STATE BOARD STAFF REPORT Project #19-010 Metroeast Endoscopic Surgery Center

APPLICATION/SUMMARY CHRONOLOGY	
Applicant(s)	Metroeast Endoscopic Surgery Center, LLC
Facility Name	Metroeast Endoscopic Surgery Center
Location	5023 North Illinois Street, Fairview Heights, Illinois
Permit Holder	Metroeast Endoscopic Surgery Center, LLC
Operating Entity/Licensee	Metroeast Endoscopic Surgery Center, LLC
Owner of Site	Ahmed Investments, LLC
Gross Square Feet	2,642 GSF
Application Received	March 6, 2019
Application Deemed Complete	March 7, 2019
Financial Commitment Date	June 1, 2020
Anticipated Completion Date	June 1, 2020
Review Period Ends	July 7, 2019
Review Period Extended by the State Board Staff?	Yes
Can the Applicant request a deferral?	Yes

I. Project Description

The Applicant (Metroeast Endoscopic Surgery Center, LLC) proposes to add general surgery, plastic, and gynecology surgery services to its current single-specialty ambulatory surgical treatment center located at 5023 North Illinois Street, Fairview Heights, Illinois. The proposed project will add an additional procedure room to a facility currently containing one procedure room, two Stage 1 recovery stations and two Stage 2 recovery stations. The project costs associated with this project are \$180,000. The expected completion date is June 1, 2020.

II. Summary of Findings

- A. State Board Staff finds the proposed project is in conformance with all relevant provisions of Part 1110 (77 ILAC 1110).
- B. State Board Staff finds that all relevant provisions of Part 1120 (77 ILAC 1120) are not applicable to this project.

III. General Information

The Applicant proposes to add General Surgery, Plastic, and Gynecology surgery services to its current single-specialty ambulatory surgical treatment center located at 5023 North Illinois Street, Fairview Heights, Illinois. The existing ASTC includes one procedure room, two Stage 1 recovery stations and two Stage 2 recovery stations. The project proposes to add one additional procedure room to the facility. The project-related costs total \$180,000, and the expected completion date is June 1, 2020.

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Metroeast Endoscopic Surgery Center, LLC was organized as a Limited Liability Company (LLC) in November of 2011, and is wholly owned by Dr. Shakeel Ahmed, M.D. The facility is in the HSA XI Health Service Area which includes Madison, St. Clair, Clinton and Monroe Counties, in southwestern Illinois. Should the State Board approve this project, it will be reclassified as a multi-specialty ASTC, offering the following surgical services: Endoscopy, Plastic Surgery, General Surgery, and Gynecology.

The proposed project is a non-substantive project subject to a Part 1110 and Part 1120 review. Non-substantive projects are all projects not considered substantive projects. Substantive projects include no more than the following:

1. Projects to construct a new or replacement facility located on a new site; or a replacement facility located on the same site as the original facility and the costs of the replacement facility exceed the capital expenditure minimum.
2. Projects proposing a new service or discontinuation of a service, which shall be reviewed by the Board within 60 days.
3. Projects proposing a change in the bed capacity of a health care facility by an increase in the total number of beds or by a redistribution of beds among various categories of service or by a relocation of beds from one facility to another by more than 20 beds or more than 10% of total bed capacity, as defined by the State Board in the Inventory, whichever is less, over a 2-year period. [20 ILCS 3960/12]

IV. Project Uses and Sources of Funds

The Applicant is adding three surgical specialties, and reports project-related costs totaling \$180,000 for this project.

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V. Background of the Applicant

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

An Applicant must demonstrate that it is fit, willing and able, and has the qualifications, background and character to adequately provide a proper standard of health care service for the community. To demonstrate compliance with this criterion the Applicant must provide

- A) A listing of all health care facilities currently owned and/or operated by the Applicant in Illinois or elsewhere, including licensing, certification and accreditation identification numbers, as applicable;
- B) A listing of all health care facilities currently owned and/or operated in Illinois, by any corporate officers or directors, LLC members, partners, or owners of at least 5% of the proposed health care facility;
- C) Authorization permitting HFSRB and IDPH access to any documents necessary to verify the information submitted, including, but not limited to: official records of IDPH or other State agencies; the licensing or certification records of other states, when applicable; and the records of nationally recognized accreditation organizations. Failure to provide the authorization shall constitute an abandonment or withdrawal of the application without any further action by HFSRB.
- D) An attestation that the Applicant have had no *adverse action*¹ taken against any facility they own or operate or a listing of adverse action taken against facilities the Applicant own.

1. The Applicant has attested that there has been no adverse action taken against Metroeast Endoscopy Surgery Center, LLC during the three (3) years prior to filing the application. [Application for Permit page 65]
2. The Applicant has authorized the Illinois Health Facilities and Services Review Board and the Illinois Department of Public Health to have access to any documents necessary to verify information submitted in connection to the Applicant's certificate of need to add two specialties. The authorization includes but is not limited to: official records of IDPH or other State agencies; the licensing or certification records of other states, when applicable; and the records of nationally recognized accreditation organizations. [Application for Permit pages 65]
3. The site is owned by Ahmed Investments, LLC and evidence of this can be found at pages 27-42 of the application for permit.
4. Compliance with Executive Order #2006-05 and the Illinois State Agency Historic Resources Preservation Act/Flood Plains Act is located on pages 47-56 of the application for permit.
5. A Certificate of Good Standing from the State of Illinois has been provided at page 26 of the Application for Permit. License and accreditation are provided at pages 60 through 64 of the Application for Permit.

¹Adverse 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)

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VI. Purpose of Project, Safety Net Impact Statement and Alternatives

The following three (3) criteria are informational; no conclusion on the adequacy of the information submitted is being made.

A) **Criterion 1110.110 (b) Purpose of the Project**

To demonstrate compliance with this criterion the Applicant 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 Applicant states: *“The primary purpose of the proposed project is to offer patients residing in Fairview Heights and the surrounding area affordable surgery options. There are no surgical treatment centers within a 17-mile radius of Metroeast that offer the specialties of general surgery, plastic, and gynecology being proposed in this application. There are presently only two active surgery centers within a 17-mile radius, and those centers are single-specialty centers.”*

B) **Criterion 1110.110 (c) - Safety Net Impact Statement**

This project is a non-substantive project and a safety net impact statement is not required for non-substantive projects. Charity care information is required, and the Applicant supplied the required data for Metroeast Endoscopy Surgery Center, LLC (see Table One).

TABLE ONE			
Charity Care/Safety Net Information			
Metroeast Endoscopy Surgery Center, LLC			
Ravine Way Surgery Center			
Year	2015	2016	2017
Net Patient Revenue	\$2,178,073	\$3,971,552	\$2,705,717
Amount of Charity Care (charges)	\$6,000	\$9,850	\$16,500
Cost of Charity Care	\$6,000	\$9,850	\$16,500
Ratio (charity care to net patient revenue)	.3%	.2%	.6%

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C) Criterion 1110.110 (d) - Alternatives to the Project

To demonstrate compliance with this criterion the Applicant must document all alternatives to the proposed project that were considered.

The Applicant considered five alternatives in regard to this project.

Do Nothing/Maintain Status Quo

The alternative to do nothing had no associated capital costs, and was rejected due to its inability to address existing patient access issues to ambulatory/outpatient surgical options to services other than endoscopy. The applicants realized a need for general surgery, plastic surgery, and gynecology surgery services in the service area, and wishes to address this need.

Utilize Existing Facilities

The Applicant explored this option and notes the utilization of existing OR facilities, and notes that no other facilities exist within a seventeen mile radius of the applicant facility performing these specialties, rendering this option as infeasible.

Construct an Addition to the Center

The Applicant considered adding new square footage (appx. 2,500 GSF) to establish a new operating room. However, cost estimates of approximately \$1,000,000 prevented this option from realization.

Joint Venture with Other Providers

The Applicant notes that Metroeast Endoscopic Surgery Center is an existing ASTC proposing to introduce additional surgical services, and another procedure room, to its existing one-procedure-room ASTC in Fairview Heights. The Applicant feels that the existing footprint of the facility would not lend itself to any joint venture arrangements. This alternative was rejected.

Proposed Alternative

The Applicants decision to add one procedure room and three additional surgical specialties (general, gynecology, plastic), without construction of new space was deemed as most the most feasible option to introduce additional surgical services to the area in the most economical and efficient manner. Cost of the proposed alternative: \$180,000.

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VIII. Project Scope and Size, Utilization and Assurances

A) **Criterion 1110.120 (a) - Size of Project**

To demonstrate compliance with this criterion the Applicant must document that the proposed size of the project is in compliance with the State Board Standard in Part 1110 Appendix B.

The Applicant is proposing to add one procedure room and three surgical specialties to an existing ASTC containing one procedure room, and four recovery stations. No new construction will occur, and 1,882 GSF of existing clinical space will be modernized, for a total of 2,642 GSF of clinical space. The State standards for space is 2,750 GSF per room (5,500 GSF total), and it appears the Applicant has successfully addressed this criterion.

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

B) **Criterion 1110.120(b) – Projected Utilization**

To demonstrate compliance with this criterion the Applicant must document that the facility will be at target occupancy as specified in Part 1100.

The State Board does not have a specific utilization standard to add a specialty to an existing ASTC. The utilization standard for an ASTC is 1,500 hours per operating/procedure room. The Applicant is proposing to add one procedure room, and anticipates the addition of three surgical specialties (Plastic surgery, general surgery and gynecology) to increase access in the service area. The Applicant notes having performed 1,542 hours of endoscopic procedures in 2017, and projects to provide 3,027 surgical hours by the second year after project completion (2021). The projected referral volume appears to meet the operational standard (3,000 procedure hours), and has successfully addressed this criterion.

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

C) **Criterion 1110.120(e) – Assurances**

To demonstrate compliance with this criterion the Applicant must document that the proposed project will be that by the end of the second year of operation after project completion, the Applicant will meet or exceed the utilization standards specified in Appendix B.

As documented above the State Board does not have utilization standards for the addition of surgical specialties to an existing ASTC. The Applicant attests to enough referral volume to support the two procedure rooms proposed. The Applicant has successfully addressed this criterion.

STATE BOARD STANDARD IS IN CONFORMANCE WITH CRITERION ASSURANCES (77 ILAC 1110.120(e))

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VIII. Non-Hospital Based Ambulatory Surgical Treatment Center Services

A) **Criterion 1110.235(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) **Criterion 1110.235(c) (2) (B) (i) & (ii) - Service to Geographic Service Area Residents**

To demonstrate compliance with this criterion the Applicant must 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 must 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 must 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.

The Geographic Service Area for the facility located in Fairview Heights, Illinois is 17 miles in all directions per 77 ILAC 1100.510(d). The applicant supplied a patient/zip code list containing 171 zip codes and 4,151 patients. [See Application for Permit pages 81-85]. The applicants also supplied a zip code listing for the 17-mile service area, identifying 78 zip codes, and a population of 730,840 residents (see project file). A comparative analysis between the zip code listings shows that of the 4,151-patient served by the Endoscopy Center, 2,984 (71.9%) originate from within the prescribed service area. A positive finding results for this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION SERVICE TO GEOGRAPHIC SERVICE AREA RESIDENTS (77 ILAC 1110.235(c) (2) (B) (i) & (ii))

C) **Criterion 1110.235(c)(3)(A) & (B) - Service Demand – Establishment of an ASTC Facility or Additional ASTC Service**

To demonstrate compliance with this criterion the Applicant must document that the proposed project is necessary to accommodate the service 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):

A) **Historical Referrals**

The Applicant shall provide physician referral letters that attest to the physician's total number of treatments for each ASTC service that has been referred to existing IDPH-licensed ASTCs or hospitals located in the GSA during the 12-month period prior to submission of the application. The documentation of physician referrals shall include the following information:

- i) patient origin by zip code of residence;
- ii) name and specialty of referring physician;
- iii) name and location of the recipient hospital or ASTC; and

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- iv) **number of referrals to other facilities for each proposed ASTC service for each of the latest 2 years.**

The Applicants provided referral letters from three (3) physicians practicing within the service area, Dr. Fareesa Khan, M.D., Dr. Howard Lederer, M.D., and Dr. Stanley Librach, M.D. These physicians referred the majority of their patient base to one of 8 (8) facilities listed in Table Two. Board staff notes that Dr. Librach listed 50 referrals from his office practice, which are inadmissible under State Board standards, and were not counted toward the total amount of referrals. These data, combined with the referral letters, provided patient origin by zip code of residence, name and specialty of referring physician, name and location of the health care facility the patient was referred, and the number of referrals for 12 month preceding this application. The Applicant has successfully addressed this criterion.

Table Two										
Referring Physicians and Referral Sources FY 2017										
Facility/ Physician	Mercy South Hosp.*	St. Luke's Hosp. *	Mercy Hosp. *	St. Mary's Hosp.	Missouri Baptist Hosp.*	DePaul Hosp.*	Office Practice #	DesPere Hosp.*	Gateway Hosp.	Total
Dr. Khan	101	20	5	0	5	2	0	0	0	133
Dr. Lederer	0	0	0	0	0	0	0	282	20	302
Dr. Librach	0	0	0	250	0	0	50	0	0	300
TOTAL	2,165	265	473		226	20		10	156	435
*Located in St. Louis, Missouri										
#Inadmissible Referral Data										

Table Three				
Referring Physicians and Referral Sources (zip codes)				
Zip Code/ Physician	Lederer	Khan	Librach	City/ Township
63131	94	20	78	St Louis*
63017	56	15	84	Chesterfield*
63122	40	0	0	Kirkwood*
63011	44	5	58	Ballwin*
63141	35	16	51	Creve Coeur*
62040	27	0	0	Granite City
62234	6	0	0	Collinsville
63128	0	38	0	St. Louis*
63123	0	17	0	St. Louis*
63126	0	3	0	St. Louis*
63129	0	11	0	St. Louis*
63146	0	8	0	St. Louis*
63124	0	0	29	Clayton*
TOTAL	302	133	300	
*Cities in Missouri				

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Physician	Referrals
Dr. Lederer	302
Dr. Khan	133
Dr. Librach	115
Total Projected Referrals	550

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION SERVICE TO GEOGRAPHIC SERVICE AREA RESIDENTS (77 ILAC 1110.235(c) (3) (A) & (B))

D) Criterion 1110.235(c)(5)(A) & (B) - Treatment Room Need Assessment

A) To demonstrate compliance with this criterion the Applicant must 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 must 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 Applicant currently has one procedure room, two Stage One, and two Stage Two recovery stations. One additional procedure room is being proposed.

The table below shows the historical utilization at the facility for the period 2015-2017. Based upon the historical and projected utilization data, the Applicant can justify the two procedure rooms.

Year	2015	2016	2017	2020	2021
Hours	1,198	1,610	1,542	3,008	3,027

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION TREATMENT ROOM NEED ASSESSMENT (77 ILAC 1110.235(c) (3) (A) & (B))

G) Criterion 1110.235(c)(8)(A) & (B) - Staffing

A) Staffing Availability

To demonstrate compliance with this criterion the Applicant must 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

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organization or entity that credentials or certifies the health care worker for competency in that category of service.

Metroeast Endoscopy Center is currently staffed in accordance with IDPH and Joint Commission accreditation² staffing requirements. The Applicant anticipate all staff from the existing ASTC will continue to practice there when additional specialties are added. The Applicants intend to hire a full-time RN for the second procedure room, and a medical assistant for ancillary support. The applicants also anticipate the recruitment of a CRNA for anesthesia services.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION STAFFING (77 ILAC 1110.235(c) (8) (A) & (B))

H) Criterion 1110.235(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 must 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).

A listing of procedures by primary CPT code for the proposed new specialties with the maximum charge has been provided as required and includes a certified attestation that the charges for these procedures will not increase in the two years following project completion (Application for Permit pages 98-99). The Applicant have met the requirements of this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION CHARGE COMMITMENT (77 ILAC 1110.235(c) (9))

D) Criterion 1110.235(c)(10)(A) & (B) - Assurances

To document compliance with this criterion

- A) The Applicant must 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.

² The **Joint Commission** is a United States-based nonprofit tax-exempt 501(c) organization that accredits more than 21,000 US health care organizations and programs. The international branch accredits medical services from around the world. A majority of US state governments recognize Joint Commission accreditation as a condition of licensure for the receipt of Medicaid and Medicare reimbursements.

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The Applicant notes Metroeast Endoscopy Center will continue its existing peer review program that evaluates whether patient outcomes are consistent with quality standards established by professional organizations for surgical services. If outcomes do not meet or exceed those standards, a quality improvement plan will be initiated.

The Applicant is adding capacity and surgical specialties to improve service access for residents of the geographical service area. It appears that this proposed project meets the intent of Part 1100 Health Care Facilities Plan that states *“The standards presented herein are designed to promote development of needed facilities and services, avoid duplication of services and prevent unnecessary construction.”*

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION ASSURANCES (77 ILAC 1110.235(c) (10) (A) & (B))

IX. Financial Viability

A) Criterion 1120.120 – Availability of Funds

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

The applicant is funding the project in its entirety with cash on hand, amount to \$180,000. The applicants Dr. Ahmed has no audited financial statements but has supplied a letter from Buckingham Strategic Wealth (application, p. 104), attesting to the presence of sufficient financial resources to finance the proposed project in its entirety.

B) Criterion 1120.130 - Financial Viability

To demonstrate compliance with this criterion the Applicant must document an “A” or better bond rating or provide 3 years of historical financial ratios as required by the State Board or qualify for the financial waiver.

The Applicant notes the project is funded entirely with cash/securities (internally), therefore The above mentioned criteria is inapplicable to this project.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION AVAILABILITY OF FUNDS (77 IAC 1120.120) AND FINANCIAL VIABILITY (77 IAC 1120.130).

X. Economic Feasibility

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

To demonstrate compliance with this criterion the Applicant must document an “A” or better bond rating or attest to 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

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- 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.

B) Criterion 1120.140(b) – Conditions of Debt Financing

To demonstrate compliance with this criterion the Applicant must 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 is less costly than constructing a new facility or purchasing new equipment.

The Applicant notes the project is funded entirely with cash/securities (internally), therefore the above-mentioned criteria are inapplicable to this project.

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

To demonstrate compliance with this criterion the Applicant must document that the estimated project costs are reasonable and shall document compliance

Only Clinical Costs are reviewed in this criterion. The clinical gross square footage for the proposed modernization is 1,882 GSF. The Applicants have met the State Board Standards for the following criteria, and a positive finding result.

Site Survey/Site Preparation – These costs total \$10,000, which is 9.5% of the modernization and contingencies costs (\$105,000). This appears reasonable compared to the State standard of 5%.

Modernization and Contingencies – These costs total \$105,000 or \$55.79 GSF. ($\$105,000/1,882=\55.79). This appears reasonable when compared to the State Board Standard of \$281.00/GSF [modernization2019 mid-point of construction].

Contingencies – These costs total \$5,000 and are 5% of modernization costs. This appears reasonable when compared to the State Board Standard of 10%-15%.

Architectural and Engineering Fees – These costs total \$7,000 and are 6.7% of modernization and contingencies. These costs appear reasonable when compared to the State Board Standard of 10.16% -15.26%.

Consulting and Other Fees – These costs are \$30,000. The State Board does not have a standard for these costs.

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Movable Equipment – These costs total \$25,000 and are in compliance with the State Board standard of \$489,744 per operating room.

Other Costs to be Capitalized – These costs total \$3,000. The State Board does not have a standard for these costs.

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

D) Criterion 1120.140(d) – Projected Direct Operating Costs

To document compliance with this criterion the Applicant must document the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct costs mean the fully allocated costs of salaries, benefits and supplies for the service.

The Applicant is estimating \$614.70 in direct operating costs per surgical case by the second year after project completion at the ASTC. The State Board does not have a standard for this criterion.

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

To document compliance with this criterion the Applicant must document the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

The Applicant is estimating \$21.48 in capital costs per surgical case by the second year after project completion at the ASTC. The State Board does not have a standard for this criterion.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION REASONABLENESS OF PROJECT COSTS (77 IAC 1120.140(a) TERMS OF DEBT FINANCING (77 IAC 1120.140(b), REASONABLENESS OF PROJECT COSTS (77 IAC 1120.140(c), PROJECTED DIRECT OPERATING COSTS (77 ILAC 1120.140(d), and PROJECTED TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS (77 ILAC 1120.140(e)).

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Reference Numbers	Facility Id 7003185	Number of Operating Rooms	0
Health Service Area 011	Planning Service Area 163	Procedure Rooms	1
Metroeast Endoscopic Surgery Center		Exam Rooms	0
5023 North Illinois Street		Number of Recovery Stations Stage 1	2
Fairview Heights, IL 62208		Number of Recovery Stations Stage 2	2

Administrator	Date Complete
Laurie Craig	3/13/2018
Contact Person	Telephone
Laurie Craig	618-239-0678

Type of Ownership
Limited Liability Company (RA required)

Registered Agent
Shakeel Ahmed

Property Owner

Legal Owner(s)

Shakeel Ahmed, MD

HOSPITAL TRANSFER RELATIONSHIPS

HOSPITAL NAME	NUMBER OF PATIENTS
Gateway Regional, Granite City	0
Memorial Hospital, Belleville	1

STAFFING PATTERNS

PERSONNEL	FULL-TIME EQUIVALENTS
Administrator	1.00
Physicians	1.00
Nurse Anesthetists	1.00
Director of Nurses	1.00
Registered Nurses	2.00
Certified Aides	0.00
Other Health Profs.	2.00
Other Non-Health Profs	5.00
TOTAL	13.00

DAYS AND HOURS OF OPERATION

Monday	10
Tuesday	10
Wednesday	10
Thursday	10
Friday	10
Saturday	0
Sunday	0

NUMBER OF PATIENTS BY AGE GROUP

AGE	MALE	FEMALE	TOTAL
0-14 years	0	0	0
15-44 years	288	674	962
45-64 years	907	1,294	2,201
65-74 years	346	433	779
75+ years	107	155	262
TOTAL	1,648	2,556	4,204

NUMBER OF PATIENTS BY PRIMARY PAYMENT SOURCE

PAYMENT SOURCE	MALE	FEMALE	TOTAL
Medicaid	365	768	1,133
Medicare	510	770	1,280
Other Public Insurance	131	164	295
Private Pay	8	29	37
Charity Care	1	4	5
TOTAL	1,648	2,556	4,204

NET REVENUE BY PAYOR SOURCE FOR FISCAL YEAR

Medicare	Medicaid	Other Public	Private Insurance	Private Pay	TOTALS	Charity Care Expense	Charity Care Expense as % of Total Net Revenue
18.6%	14.7%	6.3%	57.0%	3.4%	100.0%		
502,837	397,044	170,466	1,542,257	93,113	2,705,717	16,500	1%

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OPERATING ROOM UTILIZATION FOR THE REPORTING YEAR

SURGERY AREA	TOTAL SURGERIES	SURGERY TIME (HOURS)	SURGERY PREP AND CLEAN-UP TIME (HOURS)	TOTAL SURGERY TIME (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiovascular	0	0.00	0.00	0.00	0.00
Dermatology	0	0.00	0.00	0.00	0.00
Gastroenterology	0	0.00	0.00	0.00	0.00
General	0	0.00	0.00	0.00	0.00
Laser Eye Surgery	0	0.00	0.00	0.00	0.00
Neurology	0	0.00	0.00	0.00	0.00
OB/Gynecology	0	0.00	0.00	0.00	0.00
Ophthalmology	0	0.00	0.00	0.00	0.00
Oral/Maxillofacial	0	0.00	0.00	0.00	0.00
Orthopedic	0	0.00	0.00	0.00	0.00
Otolaryngology	0	0.00	0.00	0.00	0.00
Pain Management	0	0.00	0.00	0.00	0.00
Plastic Surgery	0	0.00	0.00	0.00	0.00
Podiatry	0	0.00	0.00	0.00	0.00
Thoracic	0	0.00	0.00	0.00	0.00
Urology	0	0.00	0.00	0.00	0.00
TOTAL	0	0.00	0.00	0.00	0.00

PROCEDURE ROOM UTILIZATION FOR THE REPORTING YEAR

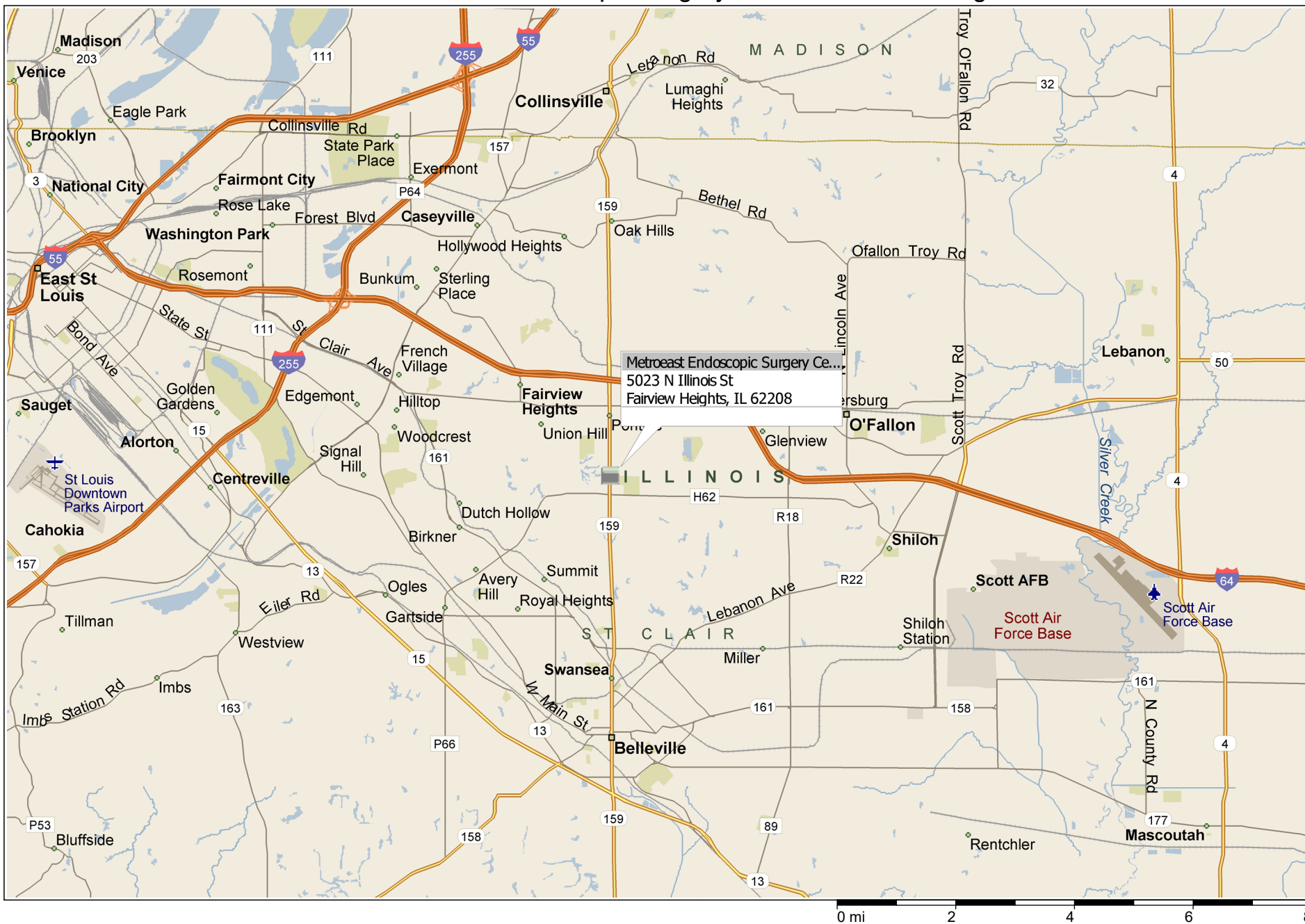
SURGERY AREA	PROCEDURE ROOMS	TOTAL SURGERIES	SURGERY TIME (HOURS)	PREP AND CLEAN-UP TIME (HOURS)	TOTAL SURGERY TIME (HOURS)	AVERAGE CASE TIME (HOURS)
Cardiac Catheterizat	0	0	0	0	0	0.00
Gastro-Intestinal	1	4204	841	701	1542	0.37
Laser Eye	0	0	0	0	0	0.00
Pain Management	0	0	0	0	0	0.00
TOTALS	1	4204	841	701	1542	0.37

Leading Locations of Patient Residence

Zip Code	City	County	Patients
62269	O'Fallon		441
62226	Belleville		400
62040	Granite City		328
62221	Belleville		306
62208	Fairview Heights		274
62234	Collinsville		245
62223	Belleville		205
62220	Belleville		182
62206	Cahokia		123
62203	East St. Louis		118
62258	Mascoutah		117
62232	Caseyville		114
62204	Washington Park		79
62205	East St. Louis		76
62254	Lebanon		74
62207	Alorton		71
62025	Edwardsville		70
62294	Troy		51
62060	Madison		48
62260	Millstadt		47
62285	Smithton		45
62243	Freeburg		41
62034	Glen Carbon		39
62239	Dupo		35

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19-010 Metroeast Endoscopic Surgery Center - Fairview Heights



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