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VIA EMAIL AND REGULAR MAIL

Ms. Debra Savage
Chairwoman
Illinois Health Facilities and Services Review Board
525 W. Jefferson St., Second Floor
Springfield, IL 62761

Re: Letter of Concern Regarding Applicant's Skewed Forecast of Utilization and Failure to Submit Updated OIG Opinion Letter

Dear Chairwoman Savage,

On February 2, 2022, to bolster its proposed Certificate of Need ("CON") application to establish a Hospital, applicant Quincy Medical Group ("QMG") submitted an "updated forecast" of utilization to the Illinois Health Facilities and Services Review Board ("HFSRB" or "Board"). While the "updated forecast" is presented as evidence justifying the need for this project, at best it is an exercise in creative mathematics. The submission selectively manipulates available data to support the claim that its proposed hospital is somehow needed, despite established standards and Board staff findings to the contrary. Additionally, the HFSRB must consider whether it can place any reliance on an OIG advisory opinion that was obtained upon entirely different facts than the application currently before it.

To create the illusion of need, QMG undertook the following analyses:

- QMG applied the Board's need methodology ***only after*** unilaterally disregarding the 20 beds properly added to Blessing Hospital; and

- QMG proposed two of its own methodologies, neither of which are consistent with HFSRB process or regulations, and which reflect an unsupportable manipulation and flawed comparison of Medicare Cost-Reporting Data with HFSRB utilization data.

Not surprisingly, every analysis presented by QMG shows there is a need for their proposed project, despite the established HFSRB regulations and process and Board staff findings clearly reflecting that there is no need for this proposed project.

QMG further performs various other manipulations of fact and regulation to distract from the truth that there is no need for the proposed project and that, in fact, the project would undermine the stability of the longstanding sole-community hospital serving the Quincy community and region.

QMG criticizes Blessing Hospital for following the Illinois Health Facilities Planning Act, 20 ILCS 3960, (the "Act") when it added beds via the provisions of Section 5(c) of the Act - commonly referred to as the "20-bed rule." Section 5(c) provides that HFSRB approval is only required for changes to "the bed capacity of a health care facility by increasing the total number of beds or by distributing beds among various categories of service … by more than 20 beds or more than 10% of total bed capacity as defined by the State Board, whichever is less, over a 2-year period." 20 ILCS 3960/5(c). The addition of beds Blessing undertook were entirely consistent with the Planning Act, its rules, and its purpose.

Better utilizing existing facilities and avoiding the establishment of unnecessary facilities is core to the purpose of the Certificate of Need program. The 20-bed rule exists to support the core CON principles that prefers the better utilization of existing facilities over the establishment of unnecessary duplicative facilities. It avoids the unnecessary expenditure of limited healthcare resources, avoids unnecessarily taxing an already challenged healthcare workforce, and is not only consistent with the established rules, but consistent with the statutory purpose behind the Certificate of Need program. Nothing better illustrates this cost/value proposition than the fact that Blessing was able to appropriately add 20-beds to its inventory with the issuance of a letter while QMG is proposing to spend $61 Million to establish 25 beds a mere 1.9 miles away from Blessing. By criticizing Blessing's addition of beds utilizing the 20-bed rule, what QMG has revealed is the inconsistency of its proposed project with the core principles of the CON program.

Consider the 'value' and 'cost' of the $61 Million QMG proposes to spend. The QMG Hospital:

- Adds no categories of service that is not already available in the community at Blessing.
- The services available (and not available) reveal that this project is designed to divert private insurance (read profitable) patients from Blessing to QMG and is designed to avoid having to care for significantly ill (read expensive) patients.
- The hospital does not propose to establish an ICU. Presumably, patients requiring significant care will be transferred back to Blessing.
- The foundation to justify this hospital is built on reducing the available capacity of services for the rural communities that have 'divested' their beds for the benefit of QMG. No explanation has been offered as to why these hospitals were willing to "donate" their beds to QMG and what, if anything, they received in return remains a mystery. Even if this Board disregards this tactic, it reveals QMG's advancement of its own interests ahead of the community.
- Establishment of the QMG hospital will undoubtedly cost Blessing (and the Quincy community) the benefit of sole-community hospital status by CMS. This will cost the community millions in federal healthcare dollars.

None of this is consistent with the orderly and economic healthcare planning envisioned by the Certificate of Need Program. Moreover, it is perplexing how QMG can at one point tout the unquestionable need for additional hospital services (which can only be filled by the approval of its proposed hospital) while at the same time questioning Blessing's addition of beds as being

unnecessary improper and monopolistic. Blessing, as the sole community hospital serving this community, is obligated to meet the needs of the Quincy community and region - both today and tomorrow. What this reveals is that QMG's core issue is not whether a need exists but, rather, that it wants to own a hospital. It reveals this application to be a Certificate of Want, not a Certificate of Need.

QMG created its own need method, when the established HFSRB method did not suit its purpose. When it comes to the need analysis performed in their February 2 letter, before even beginning the analysis, QMG ***reframed the facts*** to suit the arguments they want to make – rather than evaluating the circumstances as they actually exist.

Their first tactic was to challenge the Blessing medical/surgical bed complement: Is it 158? 178? 198? Despite QMG's protestations, it is 198 - properly and recognized by and in adherence with the Illinois Health Facilities Planning Act and HFSRB regulations. Nevertheless, in applying the Board's established need methodology, QMG elects to pretend the medical/surgical bed complement is 178. Why? So that it can argue that if the facts were different QMG could show a need for the project. Unfortunately, under the established rules and process, QMG cannot.

Their next approach involved entirely abandoning the Board's need methodology. Despite the Certificate of Need program being driven by historical utilization as reported to the Board, QMG performs its own analysis utilizing federal cost reports. The mechanisms and methodology for reporting state utilization and federal cost reports is not an apples-to-apples comparison. Nevertheless, QMG selects a data set and randomized timeframes that, by coincidence, yield them being able to establish a need for the proposed project. Moreover, as Manatt pointed out in its March 29, 2022 correspondence to the Board (posted March 30, 2022) QMG simply misinterpreted the Medicare Cost Report data - failing to account for the inclusion of Acute Mental Illness days in the total reported days. While fully explained there, it clearly shows that what QMG contended was evidence of a notable increase in patient days (from 44,943 to 53,476) was actually a slight decrease in utilization (44,943 to 44,805) once you properly account for the 8,671 AMI days contained in the Medicare Cost Report but not reflected in the HFSRB facility profile. Whether this error was based upon a lack of understanding or was strategic is irrelevant - what it reveals is the claims presented in the February 2 letter are not reliable.

QMG created its own growth trajectory, when established methods show otherwise. At one point, QMG predicts a 7.7% growth projection based upon three years of data. This analysis is rooted in over-reliance upon 2020 data which is intentionally presented without any acknowledgement of the impact that the global pandemic may have had upon the delivery of services. It does nothing to acknowledge the decreasing census of Adams County (3% reduction between 2014 and 2020) nor does it do anything to acknowledge the industry-wide projections forecasting a decline in inpatient utilization. Moreover, since the overwhelming majority of the need for the proposed project is redirection of patients from Blessing, QMG creates a logical fallacy presenting the position that Blessing will somehow continue to grow ***and*** remain fully utilized while, at the same time, questioning and vilifying Blessing's decision to add to its existing bed complement.

Despite arguing in both directions, QMG settles on a predictive 4.6% growth rate that, once again, *fortuitously* and perfectly fits this particular QMG narrative that every facility in the community will be fully utilized. Without explanation, QMG predicts that inpatient utilization will increase from 48,128 patient days in 2020 to 70,567 in 2028 - over a 46% increase - miraculously achieving a 97.6% occupancy rate - thereby justifying the full utilization of both Blessing and QMG. However, even if this unsustainable growth were accepted as true - which it should not be - this ignores the fact that during this interim 6-year period of time, Blessing is allowed to, in fact the HFSRB regulations and the Planning Act are designed so that, Blessing could add another 60 beds under the 20-bed rule. And if there were a need for those additional services, that would be the preferred means of achieving that growth under Board rules. There is no basis to approve a project that is rooted in tenuous claims of growth that intentionally ignore less expensive means of meeting any need that might, actually, arise. **The justification by QMG for this project is so unsupported that it cannot act as a rational basis by which the Board would utilize its discretion to act inconsistently with its established rules.**

QMG, if anything, has effectively demonstrated that any additional need that develops can be met by the existing hospital simply expanding its existing services – rather than by unnecessarily establishing a new facility. Moreover, QMG has illustrated that the growth necessary to justify its project is purely fanciful and inconsistent with responsible health planning. This, once again, reveals that this project is about QMG wanting its own hospital in order to cherry pick the most profitable hospital services from Blessing. Moreover, it demonstrates that they want it so much that they are willing to disregard the HFSRB's rules, they are willing to create multiple narratives hoping one will be sufficient to obtain approval, and they are willing to pursue a course of action whereby they will undermine the stability of the sole community hospital serving this region if successful.

To justify its project, QMG:

- **Picks and defines data sets so that they will support their conclusions;**
- **Asks that the Board ignore the data that undermines their preferred conclusion;**
- **Ignores the Board's rules and substitute its own when beneficial; and**
- **Criticizes Blessing for actually following the Act and the CON rules.**

QMG has not shown sufficient appreciation for the HFSRB and the CON process. Understanding the Board's rightful appreciation for innovation, they try to wrap this project up in the cloak of innovation. So the record is clear, ***diverting profitable patients away from a hospital for the benefit of physicians and private equity investors is not innovative***. Using a hospital Emergency Room to draw in patients who can be subsequently referred for the benefit of QMG's other for-profit other practices, entities, and physicians is not innovative. The only aspect that is innovative, if any, is the idea that they are proposing a hospital so incapable of treating significantly ill patients (remember it has no ICU) that their plan for truly sick patients is to send those patients back to Blessing hospital.

If QMG does not like the process and wants the law to change, they can pursue that process and undertake the public comment procedures that accompany such an endeavor. However, it is

imprudent for QMG to continue asking the Board to consider factors that the legislature never intended them to consider and, in this case, several factors the legislature explicitly provided the Board should not.

QMG's criticism is almost ironic when juxtaposed with the exhibited willingness of QMG to disregard the established rules every time adherence to the rules would undermine its preferred conclusions. In addition to the entire analysis reflected in its February 2 correspondence to the Board, other examples of their disregarding the Board's rules include:

- QMG solicited "donated" beds[1] from regional hospitals (an act not permitted by the Act or any other state law) to create the appearance they were not adding beds;

- QMG has not presented an updated Advisory Opinion letter from the Office of the Inspector General to the HFSRB despite clear changes in the organizational structure.

Further evaluation of the OIG opinion letter is warranted. QMG considered the OIG advisory opinion sufficiently important to obtain and to present it to the HFSRB to justify the notion that the QMG referral of patients to a QMG controlled non-profit hospital would not violate federal regulations. However, **the facts have notably changed since this advisory opinion was obtained** and there are both technical and substantive limitations based upon QMG's reliance upon this opinion. Consider the following:

- The advisory opinion clearly states "this advisory opinion may not be introduced into evidence in any matter involving an entity or individual that is not the Requestor of this opinion." CON p. 85. The applicant for this CON did not exist when this advisory opinion was obtained making this, at best, a technical violation.

- However, there is reason to believe its use is improper for more substantive reasons. The advisory opinion also clearly states that "this advisory opinion is limited in scope to the specific arrangement described in this letter". CON p. 85.

  However, this arrangement has materially changed since the issuance of this OIG opinion:

  - The original requestor is listed as a "multidisciplinary physician practice, organized as a medical service corporation" in which "physician owners have an aggregate 60 percent ownership interest in the Practice, and the remaining 40 percent ownership is held by non-physicians". CON p. 79.

  - This 40% interest was, presumably, held by Unity Point so **this representation regarding there being a 40% non-physician ownership no longer appears**

[1] The term 'donated' is used because it has never been clarified what, of value, was promised to these hospitals to entice them to donate hospital beds that could otherwise be used to provide care to the members of these more rural communities in the actual communities where they live.

to be true now that Duly Health and Care (formerly DMG) has acquired QMG and that 40% interest.

- Based on information obtained from FOIA requests to the Board, it appears that the 40% ownership in QMG previously held by UnityPoint is now held by a DMG/Duly physician - which would make this facility 100% physician owned.
- 100% physician ownership[2] is significant because the analysis of physician referrals to a hospital entirely owned and controlled by those same physicians - even if filtered through a non-profit entity those physicians control - is not the arrangement the OIG opined upon and, on its face, would appear potentially problematic.

- The OIG specifically states that "if material facts were not disclosed or were misrepresented, this advisory opinion is without force and effect." CON p. 79.

Continued presentation of this Advisory Opinion by QMG seems questionable and reliance upon it by the HFSRB would appear inappropriate.

Moreover, while there is an opinion offered regarding the referral of patients from QMG into its non-profit hospital, there is an important discussion that is entirely absent from the discourse. **What limitations are there when the non-profit QMG hospital refers patients out to its for-profit counterparts? Does it allow for the avoidance of providing emergency department treatment by shuffling patients from the non-profit ER to the for-profit physician offices? Will they be able to relocate deliveries from the non-profit hospital to their for-profit Birthing Center? Does this encourage the re-scheduling of surgeries from the non-profit hospital to the surgical suite at their for-profit ASC?**

Consider also, that the role of Ares Capital and Duly DMG in the operation of this non-profit hospital has not been explained at all. Private Equity healthcare is, generally, not known for (or consistent with) the establishment and operation of non-profit healthcare facilities. What agreements are in place as to how these for-profit entities will derive benefit from this non-profit hospital they propose to control through QMG's sole corporate membership? Since the hospital "will not be permitted to make any ownership or profit distributions" (CON p. 80), it seems worthy of exploration and explanation as to how this is consistent with any competing obligations to private equity investors.

For these reasons and the multitude reflected in the documentation submitted by Blessing hospital, we must encourage the Board to continue following its rules and deny this project as an

[2] If QMG challenges that this hospital will be 100% physician owned because of some hyper-technical or legal argument, it will highlight the fundamental problem with the lack of transparency from QMG regarding its acquisition by Duly/DMG. In a recent CON application, DMG described itself as "the largest independent, multi-specialty physician group in the Chicago area with more than 700 physicians…" and, as they now say on their website, "DuPage Medical Group is now Duly Health and Care." That certainly appears to be physician owned… fundamentally different than that which was described to and approved by the OIG.

unnecessary duplication of services, rooted more in the desire of QMG than in any documentable need for the project.

Best regards,

BENESCH, FRIEDLANDER,
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