

October 6, 2021

VIA EMAIL

Courtney Avery
Board Administrator
Health Facilities and Services Review Board
Illinois Department of Public Health
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: Letter of Opposition NorthPointe Birth Center, Project #21-021

Dear Ms. Avery:

We represent Mercyhealth, a provider of the same healthcare services proposed by the Applicants and within the same Health Planning Area. We are opposed to the establishment of the NorthPointe Birth Center, Project #21-021, as the application itself does not contain necessary information for consideration by the Board and the proposed facility would be an unnecessary duplication of services that would cause a negative impact on area providers. Additionally, the application, as proposed, is not consistent with established regulatory requirements and its approval would not be consistent with the Health Facilities Planning Act.

Significant questions exist as to under what laws, what rules, and by what standards this application will be considered. At the time this application was submitted, Birthing Centers only existed under the Alternative Health Care Delivery Act (“AHCDA”) (210 ILCS 3). However, since this application was deemed complete, the Illinois Legislature passed House Bill 3995, better known as the Birth Center Licensing Act. Importantly there are no rules promulgated or even proposed by Illinois Department of Public Health (“IDPH”) for the oversight and licensure of these types of facilities. This makes it impossible for the applicant, the public, competitors, or even the Board to know by what standards this application would be evaluated, making its approval inherently arbitrary and capricious.

The Project Application Does Not Contain a Transfer Agreement or Link with an Illinois Birthing Hospital

Whether this project is evaluated under either the AHCDA or the Birth Center Licensing Act, the proposed facility is required to have an established agreement or facility link with at least one Illinois birthing Hospital. The term “Hospital” is universally defined by the Illinois Health Facilities Planning Act (20 ILCS 3960/3), and by the IDPH promulgated AHCDA administrative rules (77 Ill. Admin. Code Section 265.1050) as “any institution, place, building or agency licensed pursuant to the Hospital Licensing Act (210 ILCS 85).” Clearly, in order for a hospital to be licensed in Illinois, it must be physically located within the state. The Applicants have not provided

the Board with the required transfer agreement nor any evidence of a facility link with an Illinois licensed Hospital. Therefore, the Applicants do not meet this Board's requirements nor would the proposed facility be eligible to be licensed by IDPH.

Mercyhealth requested a public hearing which was held on September 20, 2021 and expressed their opposition to the application. At this same public hearing the Applicants representative stated on the record "*We do have existing transfer agreements with our own hospital, Beloit Memorial Hospital which is the closest hospital, in addition to Swedish American Health System Physicians.*"¹ As shown in the application for the proposed facility, the Beloit Memorial Hospital is located in Wisconsin and licensed in that state. This facility neither meets the Board's standards nor IDPH licensing requirements that the proposed facility have an agreement with an Illinois birthing Hospital. Furthermore, the "Swedish American Health System Physicians" are not a licensed hospital, but rather a physician group. Simply put, the applicants have not provided a transfer agreement with an Illinois Hospital.

The Proposed Facility Does Not Meet Requirements of the Alternative Health Care Delivery Act

All indications point to this project being evaluated under the AHCDCA and there are additional concerns that should be noted. The Board has specific location requirements that the proposed facility **does not meet**. Pursuant to 77 Ill. Admin. Code Section 1110.275(b)(1), the number of licensed birth centers within the state is limited and there are three designated location **requirements**, which include:

- A total of 4 birth centers can be located in the combined Cook, DuPage, Kane, Lake, McHenry and Will counties;
- A total of 3 birth centers can be located in municipalities with a population of 50,000 or more not located in an area described above; and
- A total of 3 birth centers can be located in rural areas.

The proposed facility would be located in Roscoe, Illinois which is located in Winnebago County, and therefore **does not meet** the first location requirement. Further, the town of Roscoe, Illinois has a population of 11,000 and **does not meet** the location requirement that a birth center be located in a municipality with a population of 50,000 or more. Finally, the proposed facility will not be located in a rural area as defined by IDPH, and thus **does not meet** the requirement that 3 birth centers may in located in a rural area. Unable to meet any of the requirements established by the AHCDCA, the approval of this project would be improper.

Additionally, pursuant to 77 Ill. Admin. Section 1130.275(2)(B), if a birth center is located outside of a health professional shortage area, the facility must be located in a Health Planning Area with a demonstrated need for obstetrical service beds or, there shall be a reduction in the existing number of obstetrical services beds in the planning area so that the establishment of the birth center does not result in an increase in the total number of obstetrical services beds in the Health Planning Area. As evidenced by the enclosed map, the proposed facility is **not located** in a

¹ See Public Hearing Transcript Page 43, Lines 9-13.

health professional shortage area, and according to the Board's current bed inventory for obstetrical beds, there is an excess of 24 beds in the Health Planning Area.

The Proposed Facility Does Not Meet Requirements of the Birth Center Licensing Act

In addition to the lack of a referral agreement in place with an Illinois facility, the proposed facility does not meet other requirements of the Illinois Birth Center Licensing Act. Section 17 of the Birth Center Licensing Act states that "*a birth center in a medically underserved area, as determined by the U.S. Department of Health and Human Services, shall receive priority in obtaining a certificate of need under this section.*" As noted in the enclosed map, the proposed facility is ***not located*** in a medically underserved area, although admittedly it is located in Dental professional shortage area. Therefore, this application should be denied as it would not meaningfully increase access to care for this community.

The Proposed Facility Would Have a Negative Impact on Area Facilities and Unnecessarily Duplicates Services

We have already discussed that the location of the proposed facility is in an area with an excess of obstetrical beds and would clearly constitute a duplication of services, but we should also mention that Mercyhealth already has a birthing center located inside the Javon Bea Hospital as part of their comprehensive care offering for expectant mothers.

The negative impact on area facilities must be considered by the Board as they evaluate this project. We would also call on the Board to evaluate the fact that this Project would appear to be designed to divert Illinois patients in need of critical care outside of the State of Illinois, which is at odds with the intent of the Certificate of Need program. Mercyhealth is also concerned with the lack of communication regarding this proposal. Mercyhealth is the regional leader in neonatology, and located within a 15-minute drive time from the proposed facility and has the closest and most advanced perinatal NICU unit in the area. Yet there has been no outreach regarding how patients would be better served by Mercyhealth in the event a newborn requires transfer to a NICU.

The Mercyhealth 52-bed NICU is staffed by a multidisciplinary care team of board certified physicians and numerous neonatologists, maternal fetal medicine physicians and registered nurses, respiratory therapists, neonatal nurse practitioners, pediatric therapy services, and consulting physicians. All of these individuals have extensive training in the care of premature and ill infants. Mercyhealth also has as a unit within its NICU specifically dedicated to small babies, designed to improve long-term developmental outcomes among the regions' rare micro-preemie population. The unit also maintains a dedicated Neonatal Transport Team is equipped to handle the specialized needs of premature or critically ill newborns, whether traveling by ground or air. Finally, the Mercyhealth NICU is a member of Vermont Oxford Network, a collaborative of health care professionals dedicated to improving the quality and safety of medical care for newborn infants and their families and is comprised of over 950 hospitals around the world.

It is difficult to believe that a health system putting forth the interests of expectant mothers and their children would undertake such a project without coordinating with the nearby highest level of care, a Level III Regional Perinatal Center. This makes Mercyhealth wonder whether the

driving force of this project is the interests and safety of expectant families and their babies or whether it is advancing the interest of the system proposing the project.

At this time, it would be arbitrary and capricious for the Board to consider this application without any guidance or standards provided to the applicant, to the public, or to competitors as to how this facility will be evaluated. Furthermore, the application should be denied as the it does not meet the standards or requirements of either ACHDA or the Birth Center Licensing Act.

If you have any questions or need any additional information regarding the project, please feel free to contact my colleague, Juan Morado Jr., via phone at 312-212-4967 or via email at JMorado@beneschlaw.com. You can also contact me via phone at 312-212-4952 (or, while shelter in place remains, at (773) 318-4258) or via email at MSilberman@beneschlaw.com with any questions.

Best regards,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP



Mark J. Silberman

HFSRB Inventory of Obstetrical Beds in Hospital Planning Area B-01

INVENTORY OF HEALTH CARE FACILITIES AND SERVICES AND NEED DETERMINATIONS									
Illinois Health Facilities and Services Review Board Illinois Department of Public Health					OBSTETRIC Category of Service Hospital Planning Area: B-01			9/1/2019 Page B- 20	
Hospital		City				2017 Utilization			
				Beds	Admissions	Patient Days			
Javon Bea Hospital-Riverside Campus 11/17/2015 15-039		Rockford		20	0	0			
Permit to establish Riverside campus with 20 bed Obstetrics category of service.									
Saint Anthony Medical Center		Rockford		13	507	1,207			
SwedishAmerican Hospital		Rockford		34	1,745	4,518			
Planning Area Totals				67	2,252	5,725			
HPA Fertility Rate 2017	Projected 2022 Females Age 15-44	Projected Births 2022	Projected Hospital Births 2022	Length of Stay Factor	Projected Patient Days 2022	Days in Year 2022	Projected Average Daily Census	Target Occupancy Rate*	Maternity Bed Need
0.06446	74880	4,827	4,779	2.5	11,947	365	32.7	0.78	42
Gynecology Patient Days 2017	Estimated 2017 Females Age 15+	Gynecology Use Rate	Projected 2022 Females Age 15+	Projected Patient Days 2022	Days in Year 2022	Average Daily Census	Target Occupancy Rate	Gynecology Bed Need	
517	155040	0.00333	169260	564	365	1.5	0.9	2	
Obstetrics Patient Migration									
Out-Migration	In-Migration	Net Migration	Average Length of Stay	Obstetrics Patient Days Migration	Days in Year	Average Daily Migration	Adjustment Factor	Migration Adjustment	
307	424	-117	2.5	-293	365	-0.8	0.85	-1	
Maternity Bed Need	Gynecology Bed Need	Migration Bed Adjustment	Adjusted Bed Need for Obstetrics/Gynecology		Existing Obstetrics/Gynecology Beds			Excess Beds	
42	2	-1	43		67			24	

*Obstetrics Occupancy Target Rate is 78% (0.78) for Areas with projected Average Daily Census of 26 or more

Medically Underserved Area and Health Care Professional Shortage Maps

Standardized address
5605 E Rockton Rd, Roscoe, Illinois, 61073

HPSA Data as of 08/06/2021
MUA Data as of 08/06/2021

[\[-\] More about this address](#)

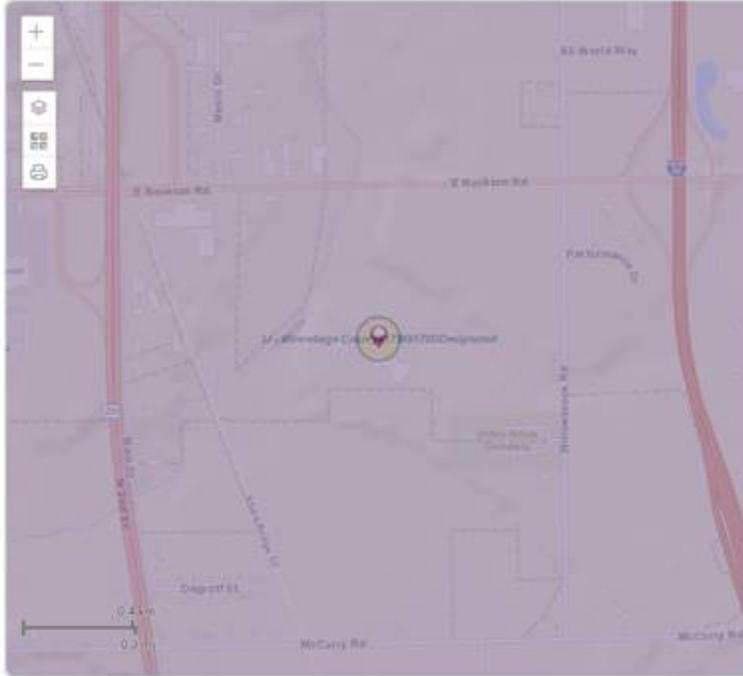
Post Office Name: Roscoe
FIPS Code(State + County + Tract number)
Census Tract: 17201004001
Census Tract Number: 004001
FIPS Code(State + County + County Subdivisions) County Subdivision: 1720165624
County Subdivision Name: Roscoe
County Name: Winnebago
Congressional District Name: Illinois District 16
Congressional District Representative Name: Adam Kinzinger
State Name: Illinois

In a Dental Health HPSA: **Yes**
HPSA Name: LI - Winnebago County
ID: 617999170D
Designation Type: HPSA Population
Status: Designated
Score: 17
Designation Date: 12/29/2017
Last Update Date: 07/02/2021

In a Mental Health HPSA: **No**

In a Primary Care HPSA: **No**

In a MUA/P: **No**



Note: The address you entered is geocoded and then compared against the HPSA and MUA/P data in data.HRSA.gov. Due to geoprocessing limitations, the designation cannot be guaranteed to be 100% accurate and does not constitute an official determination.

