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October 8, 2024

VIA EMAIL

Debra Savage
Chairwoman
Health Facilities and Services Review Board
Illinois Department of Public Health
535 West Jefferson Street, Second Floor
Springfield, Illinois 62761

Re: Concern Regarding NorthPointe Neighborhood Hospital, Project #24-018

Dear Chairwoman Savage:

I write today on behalf of Mercy Health Corporation ("Mercyhealth"), the parent corporation of Javon Bea Hospital in Rockford, Illinois, regarding the proposed NorthPointe Neighborhood Hospital ("NorthPointe") in Roscoe, Illinois, Project #24-018, which Beloit Health System ("BHS") is presenting as a remote location of its main hospital in Beloit, Wisconsin. Upon review of the information provided in its Application for Permit ("Application"), Mercyhealth has serious concerns about BHS's ability to comply with the strict Federal regulations related to operation as a remote location of a hospital as explained below.

CMS Requirements for Remote Locations

The Centers for Medicare and Medicaid Services ("CMS") has long-standing rules regarding what may be considered a "remote location of hospital" and what is required to be considered "provider based" to a main hospital.

A "remote location of a hospital" means:

> A facility or an organization that is either created by, or acquired by, a hospital that is a main provider for the purpose of furnishing inpatient hospital services **under the name**, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section…. The Medicare conditions of participation **do not apply to a remote location of a hospital as an independent entity**.[1]

For a remote location to be considered "provider-based" to the main hospital location, the remote location must be located **within the same state** as the main hospital location, or, if consistent with

[1] 42 CFR §413.65(a)(2) *emphasis added*.

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the laws of both states, the remote location can be in an adjacent state.[2] Remote locations are expected to meet CMS's provider-based rules.[3]

Benefits of a Provider-Based Remote Location

A remote location that is considered "provider-based" brings significant financial benefits for an entity. In the words of CMS:

> … our objective in issuing specific criteria for provider-based status is to ensure that higher levels of Medicare payment and increases in beneficiary liability for deductibles or coinsurance (which can all be associated with provider-based status) **are limited to situations where the facility or organization is clearly and unequivocally an integral and subordinate part of a provider**.[4]

Indeed, locations that meet the provider-based requirements can avail themselves of at least three significant benefits. First, the provider-based remote location can rely on the operations of the main provider, thus reducing overhead costs. Second, the facility can transport patients between the remote and main locations as intra-facility transports, thus avoiding ambulance fees otherwise required by the Medicare program. This serves to reduce patient cost and dissatisfaction while simultaneously ensuring that care of the patient, and reimbursement for such care, remain within the same hospital.[5]

Third, and more importantly since the passage of the Bipartisan Budget Act of 2015, any clinics that are located on a "remote location" of the main provider are considered "on-campus" and can receive higher reimbursement from Medicare by virtue of billing both a technical and professional fee (as opposed to just a professional fee at a free-standing clinic). [6] As a result of these benefits, CMS reviews with a critical eye when considering what facilities and locations qualify as "provider-based" and expects remote locations to meet its regulatory requirements.

BHS's Application and Mercyhealth's Concerns

In the narrative portion of its Application, BHS states that NorthPointe "will be enrolled with the Centers for Medicare and Medicaid Services as a remote location of the Applicant's Beloit hospital and will operate under the same Medicare CMS Certification Number."[7] Through this

[2] 42 CFR 413.65(a)(2) and (g)(vii)
[3] Id.; *see also* 67 Fed. Reg. 49982 at 50082 (Aug. 1, 2002) ("If a hospital comprises several sites… it will normally be necessary for the hospital to designate one site as its "main" campus for purposes of the provider-based rules. Each of the other sites (referred to in our regulations as "remote locations") would then be expected to meet the provider-based requirements with respect to the main campus.")
[4] 65 Fed. Reg. 18434 at 18506 (April 7, 2000) *emphasis added*.
[5] CMS does not consider the transfer of a patient from a remote location to the main hospital as a "transfer" for EMTALA purposes, either. (*See id*. at 18523).
[6] *See* Social Security Act §1833(t)(1) and (21)(B) including locations within the campus of a remote location as an off-campus outpatient department of a provider.
[7] Application page 4.

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characterization and operating model, BHS means to capitalize on the financial benefits identified above. If BHS is permitted to move forward with this project, and NorthPointe is considered a "remote location", BHS will transport patients from the emergency department at its Roscoe, Illinois, location to Beloit, Wisconsin, without charging patients additional ambulance transport fees, thus assuring itself the inpatient revenues associated with the patient's care when a patient requires higher acuity care than can be provided in Roscoe. BHS could also open new, or convert existing, outpatient clinics within 250 feet of the Roscoe facility and treat those locations as on-campus outpatient departments, meaning the cost of care to patients and Medicare would increase.

While there is nothing inherently wrong with a hospital seeking to operate in such a way as to maximize its financial benefit, in this instance, the Application does not indicate that BHS would be successful in its quest to characterize the location as a "remote location" under CMS rules.

First, the Application lists the facility's name as "NorthPointe Neighborhood Hospital". As noted, a remote location must be operated under the name of the main provider, thus already failing to meet the CMS requirement.

Secondly, and more problematically, the two locations are located in adjacent states. This means, as noted above, that NorthPointe could not be considered a remote location unless it complies with the laws of both Wisconsin and Illinois. Further, to be considered provider-based, the location must be "integral and subordinate" to the main BHS hospital in Beloit, Wisconsin. In other words, the policies and procedures guiding operations in Beloit would be dispositive of the operation of the NorthPointe facility in Roscoe, Illinois. NorthPointe would also have to operate under the same governing body as the campus in Wisconsin, and would be accountable to that same governing body, and it would have to operate under the medical staff bylaws and requirements of its Wisconsin main campus.

To operate a hospital in compliance with Illinois law, NorthPointe would have to obtain a license from the Illinois Department of Public Health.[8] We are aware of no laws within Illinois that would allow a hospital operating within Illinois to be to the control and oversight of an out-of-state hospital and, certainly, such an outcome would be counter to the purpose of the CON process. While the Application points to many of BHS's other licenses, it does not state how the location will meet the requirements of the Illinois Hospital Licensing Act or its implementing regulations while subject to the control of a Wisconsin main location. If NorthPointe is not licensed in Illinois, then it cannot operate as a remote location of the main BHS campus in Beloit, Wisconsin.[9]

During BHS's comments at the Public Hearing for the Application, held on August 13, 2024, BHS's Vice President of Support Services commented that the facility will comply with the Illinois Health and Hospital Association's ("IHA") criteria for small format hospitals. However, IHA **does not have criteria on small format hospitals**. Therefore, to claim that NorthPointe will comply

[8] 210 ILCS 85/4
[9] *See Freeman Oak-Hill Health System*, DAB Dec. No. CR4955 (2017).

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with these standards in a public setting is to mislead the public on the safety of the facility. Further, IHA has specifically recommended that no certificate of need applications be approved until Illinois adopts formal regulations that would apply to these types of facilities:

> … IHA believes that additional clarity is necessary in the Health Facilities Planning Act and the Board's rules to appropriately consider such a facility. **As such, we respectfully request that the Board defer any Certificate of Need (CON) application for a small format hospital until appropriate regulations are developed, with stakeholder input, that clearly delineate guidelines and criteria for such facilities**.[10]

Since that request from IHA, we are not aware that any such standards have been passed by the Department of Public Health, and hospital licenses are only available for general acute care hospitals, specialty or specialized hospitals, or rural emergency hospitals. "Micro hospitals" are not included for category of service review.[11] If the Illinois Department of Health denies BHS a hospital license for the proposed facility, then the location will not qualify as a remote location of BHS's Wisconsin hospital.

Conclusion

As proposed, the Application does not appear to meet the requirements of the CMS provider-based rules for operation as a remote location. As such, NorthPointe would need to operate as a wholly separate hospital, subject on its own to all CMS conditions of participation. Further, as a wholly separate hospital, NorthPointe will fail to meet the Illinois minimum bed requirements for a medical-surgical unit without addressing a true community need. Finally, approving NorthPointe as a wholly separate hospital – the only way to potentially approve the Application in light of NorthPointe's inability to meet the CMS requirements for a provider-based remote location – will increase the cost for patients since the facility would have to operate as a separately licensed hospital and, thus, patients would have to be charged for ambulance transports as well as having potentially two inpatient charges should they need to transfer to a higher level of care.

Thank you for the opportunity to comment on BHS's application. If I can provide any additional information, please feel free to contact me at mmoriarty@mhemail.org.

[10] Illinois Health and Hospital Association Letter in Opposition to Project 20-044 (*emphasis in original*) *available at* https://hfsrb.illinois.gov/content/dam/soi/en/web/hfsrb/projects/projectdocuments/2020/20-040/2022-03-31-221-044-letter-to-chariwoman-savage-from-blessing-hospital.pdf

[11] 77 Ill. Admin. Code §250.210(k); 77 Ill. Admin. Code §1110.200 et seq. *See also*, Blessing Health System Letter in Opposition to Project 20-044 *available at* https://hfsrb.illinois.gov/content/dam/soi/en/web/hfsrb/projects/projectdocuments/2020/20-040/2022-03-31-221-044-letter-to-chariwoman-savage-from-blessing-hospital.pdf (opposing a previous small format hospital project and noting the lack of guidelines or regulations for these facilities).

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Most Sincerely,

Meaghan Moriarty
Mercyhealth
Director, Head of Legal