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10/09



May 19, 2010

Dale Galassie, Chair  
Illinois Health Facilities and Services Review Board  
525 West Jefferson St., 2nd floor  
Springfield, IL 62761

By fax and mail

Re: Comments on the Vanguard Health Systems applications to acquire Westlake Hospital (10-013) and West Suburban Medical Center (10-014)

Dear Chairman Galassie:

AFSCME Council 31 urges the Illinois Health Facilities and Services Review Board to deny Vanguard Health Systems' applications for change of ownership for Westlake Hospital and West Suburban Medical Center until the issues noted below have been fully addressed. The applications do not conform to Board rules, fail to demonstrate the applicant's capacity or commitment to continue operation of the hospitals and do not address the regulatory problems at the two hospitals the applicant currently operates in Illinois.

Vanguard's applications to acquire West Suburban and Westlake hospitals raise a number of serious questions. On several key review criteria the applicants have failed to demonstrate that the proposed sale conforms to the regulations or the broader purpose of the law.

**The Planning Act rules require the board to consider the applicant's plans for discontinuing services and for ensuring access to care:**

The Illinois Health Facilities Planning Act rules require the Board to verify "that the applicant intends to maintain ownership and control of the facility for a minimum of three years." Yet Vanguard commits to continue operation of West Suburban and Westlake for only two years, failing to comply with the minimum specified in Board rules. In order to ensure compliance with the Illinois Health Facilities Planning Act objective of increasing accessibility of services to the medically underserved and indigent, Vanguard should be required to provide a long term commitment to operate both hospitals.

**American Federation of State, County and Municipal Employees, Council 31**

TEL (312) 641-6060 FAX (312) 861-0979 WEB www.afscme31.org 205 North Michigan Avenue, Suite 2100, Chicago, Illinois 60601

**The transaction would give the applicant a significant share of inpatient beds in the planning area, raising serious antitrust and cost containment issues.**

Vanguard's acquisition of West Suburban and Westlake hospitals could result in a significant increase in charges to consumers because it will give Vanguard dominance in the relevant geographic market, the Illinois Health Planning Area A-06. In addition to the Resurrection and Vanguard hospitals, there are only three other providers of General Acute Care Hospital (GACH) inpatient services in the relevant geographic market. If the change of ownership is approved, Vanguard will control more overall beds in its market than *any* competitor (47% of all GACH inpatient beds), the majority (53 %) of OB beds and 91% of Acute Mental Illness beds. The Federal Trade Commission is currently reviewing this transaction.

**The Board must consider the adverse action taken against the applicant for violations of the Medicare Conditions of Participation for Hospitals at its two other Illinois hospitals.**

State regulations require the Board to consider whether "adverse action has been taken against the applicant, or against any health care facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application." Vanguard's two Illinois hospitals are currently under state monitoring for serious violations of the Medicare Conditions of Participation for Hospitals. The hospitals were cited by public health authorities for failures related to nurse staffing, infection control and cleanliness -- violations clearly related to short staffing for nurses, nurses' aides and techs, and housekeepers.

**Regulations require the applicant to demonstrate that it has the "financial resources to adequately provide a proper standard of healthcare for the community."**

Vanguard's own disclosures to investors state "our high level of debt may adversely affect our operations." The low cushion ratio reported in the CON applications is further indication that the system is stretched thin and may not have the resources to invest in these struggling hospitals. Vanguard's plans to spend \$1.5 billion to acquire the Detroit Medical Center system and up to \$115 million to build a new hospital in Texas are likely to further strain its finances.

Given the failure to conform to Board rules and the other deficiencies noted above, we urge the Board to deny the Vanguard Health Systems applications.

In addition, the transactions raise issues regarding the protection of the charitable trust and antitrust/hospital competition. Both the Illinois Attorney General and the Federal Trade Commission are currently reviewing this proposed sale. The Board should not make a decision on the Vanguard applications until these reviews are complete and the Board and HFSRB staff have been advised of the findings.

**Issue regarding public participation**

We also wish to register our concern regarding the lack of adequate opportunity for public participation in this process. The sale of the hospitals could have a significant impact on tens of thousands of patients who rely on the hospitals' services and on the more than 2,000 employees of the hospitals. Yet the opportunities for citizens to provide input into the review process have been very limited. In denying our request for an evening hearing, the Board limited the participation of community residents and employees who had an interest in attending and in some cases providing testimony regarding the applications.

Finally, there were problems with the conduct of the hearings. With only one HFSRB staff, the hearing officer, present to handle logistical and procedural issues and with hundreds in attendance at both hearings, there was confusion and frustration. The applicants' staff appeared to be running the sign-in process, urging audience members to indicate support of the application on the attendance sign-in form. This caused concern among many community residents and intimidated some hospital employees.

Given these procedural problems, we urge the Board to allow one opponent of the Vanguard applications to address the Board prior to consideration of the applications. This option is allowed for in HFSRB rules and would allow Board members to consider the concerns of those likely to be affected by these transactions.

Thank you for your consideration of these comments.

Sincerely,



Henry Bayer  
Executive Director

HB/gv

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Suite 2100  
Chicago IL 60601  
312/641-6060

**AFSCME COUNCIL 31**

# Fax

<b>To:</b> Dale Galassie	<b>From:</b> Henry Bayer
<b>Fax:</b> (217) 785-4111	<b>Fax:</b> 312/861-0979
<b>Date:</b> May 19, 2010	<b>Pages:</b> 4 incl cover
<b>Re:</b>	

• **Comments:**

Please see the following 3 page letter.

Send via fax and USPS

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