

Constantino, Mike

From: Ourth, Joe [JOurth@arnstein.com]
Sent: Sunday, November 27, 2011 9:33 PM
To: Avery, Courtney; Urso, Frank; Constantino, Mike
Subject: Response to State Agency Report - Centegra Hospital Huntley (Project No. 10-090) [IWOV-ACTIVE.FID917959]
Attachments: Centegra10-090.pdf

Please accept the attached letter as the response to the State Agency Report for the the Centegra Hospital - Huntley project.

Thank you.

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HEALTH FACILITIES &
SERVICES REVIEW BOARD

From: Nancy Hopkins [mailto:nmhopkins1@comcast.net]
Sent: Sunday, November 27, 2011 8:46 PM
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Subject: Attached

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November 27, 2011

Via Electronic Mail

Mr. Dale Galassie
Chair
Illinois Health Facilities and
Services Review Board
525 W. Jefferson
Springfield, IL 62761

Re: Response to Supplemental State Agency Report ("SAR")
Centegra Hospital - Huntley Application (the "Application")
Project No. 10-090 (the "Project")

Dear Chairman Galassie:

Advocate Good Shepherd Hospital, Sherman Hospital and St. Alexius Medical Center (the "Concerned Hospitals") appreciate the staff's work on the State Agency Report and agree with the findings that the application does not meet several important review criteria and that existing hospitals are underutilized. We also welcome the opportunity to respond to the SAR and will limit this letter to our comments on the SAR.

1. Support and Opposition Comments (SAR Pages 7-9)

We appreciate the staff's difficult task of going through a large public record to find and select excerpts for inclusion in the SAR as a mechanism for summarizing the public comment. We would hope that all of this extensive public comment will be carefully considered by the Review Board in its deliberations.

There were important public comments submitted since the Board's Intent to Deny. We would hope that the Board and its staff carefully review those materials. While we understand that not every submission can be summarized in the SAR, we wish to note some additional comments that did not appear in that document, such as:

a. Summary of Arguments in Support of Intent to Deny. On behalf of the Concerned Hospitals, legal counsel filed a letter with the Board dated November 14, 2011 summarizing key arguments for the Board sustaining its earlier Intent to Deny. That letter sets out crucial issues requiring legal determination prior to Board action, such as the failure of Centegra to meet the "Rapid Population Growth" test upon which it based its application and the

consequence that physician referral letters are required. That letter and the associated report also include key analysis of population trends and the declining hospital use rates. Finally, it also includes analysis as to why the proposed hospital would have negative impact upon existing area hospitals and the Safety Net Services that they provide. As to the impact on other hospitals and Safety Net Services, we believe that Centegra's own testimony (relative to its opposition of the Mercy project) best expresses the impact its Centegra Huntley Hospital would have on the Concerned Hospitals, and to quote from that November 14 letter:

*"Centegra in its application simply states that its new hospital would have 'no impact' on existing hospitals. [However,] Centegra strenuously argued against approval of the Mercy project at the October 7 hearing it called on the Mercy modification. In his testimony, the Centegra Chief Financial Officer testified that even Mercy's smaller hospital would have a 'catastrophic impact' on the Centegra hospitals and went on to state 'regardless of its size, Mercy Crystal Lake is only viable at the expense of our existing hospitals.'"*¹

The Centegra CFO went on to say:

*"It is unacceptable to allow Mercy Crystal Lake Hospital to enter the market simply to cannibalize Centegra patients. And that is exactly what would happen. No amount of population growth or industry reform could possibly make up for the lost patient volumes at Centegra."*²

We fully agree with Centegra's CFO on the issue that it is unacceptable for a new hospital to "cannibalize" existing hospitals and that no amount of population growth can make up for this lost volume. His statements apply equally to the effect Centegra's Huntley hospital would have on the Concerned Hospitals. Because these comments by Centegra are so telling in assessing the impact of these projects, we believe it would have been beneficial for the SAR to highlight these comments for the Board as well.

b. Assessment of Utilization, Population Growth Report. Following the June 28 Review Board meeting, the Board requested additional information regarding the population forecast for the McHenry County area. The Concerned Hospitals subsequently submitted a detailed report entitled "Assessment of Utilization, Population Growth, and Applicant Arguments of Impact on Existing Providers – Proposed Centegra Hospital – Huntley (Project 10-090)" dated November 11, 2011 (the "November Krentz Report"). This report provided detailed analysis of the population forecasts and – just as important – analyzed the declining inpatient hospital use rates nationally and locally and the implications for further declines in bed need.

This detailed report gives the Board actual data and analysis in which to consider a project and not just conjecture. The report shows how on average inpatient hospital days in

¹ Summary of Arguments to Sustain Review Board's Intent-to-Deny, dated November 14, 2011, pages 4-5; Public Hearing testimony of Bob Rosenberg, Centegra Chief Financial Officer, October 7, 2011, page 1.

² Public Hearing testimony of Bob Rosenberg, Centegra Chief Financial Officer, October 7, 2011, page 1.

McHenry County have actually declined in 2010 (-10% for OB, -6% for med/surg and -3% for ICU). The report also documents significant recent decreases in hospital use rates nationally, in Illinois and in McHenry County, and that experts forecast continuing decline in use rates. In addition, that report documents that on average area hospitals have 347 empty licensed beds available each day. Importantly, and as discussed further below, this report shows clearly that the Centegra application does not meet the Board's test for "Rapid Population Growth."

c. Provena St. Joseph Opposition Letter. Provena St. Joseph filed another opposition letter referencing additional utilization data approved by the Review Board that shows declining utilization in McHenry County. That letter states:

"New bed need projections have been developed but these projections neither utilize this latest utilization data (or even the 2009 data for that matter) nor utilize the most recent decennial (2010) census data. Given the economy is in one of the most significant recessions in our history as evidenced by the massive downturn of the housing industry, the idea that there will be significant increase in population [is] not reasonable."³

d. Report of Impact of Proposed Centegra Hospital on Woodstock. Sherman Hospital filed a letter with the Board on November 16 that enclosed an Assessment of Likely Impact on Centegra Hospital-Woodstock report prepared by Krentz Consulting. In reference to such report, the letter states:

"Given the significant overlap in market share and downward utilization trends between the proposed Huntley hospital and Centegra's Woodstock hospital, it is clear that Centegra is not committed to the long term operation of the Woodstock hospital because the Huntley proposal will cannibalize the existing Woodstock facility."⁴

e. Independent Health Care Researcher and Planner. Joel Cowen, a noted health care researcher and former health planner, in a letter dated November 14 to the Board, expresses concern that the new bed need projections are based upon population forecasts that do not reflect the significant slowdown in population growth currently under way in McHenry County:

"Demographic and economic indicators are showing a considerable slowdown in the population growth of McHenry County, which, in turn, affects the need for hospital services...Projections based on the pre-2008 period are likely not valid for the consideration of hospital bed need now or into the planning period future."⁵

³ Opposition Letter filed on November 16, 2011, by Provena St. Joseph Hospital, page 1.

⁴ Opposition Letter filed on behalf of Sherman Hospital by Polsinelli Shugart, page 1.

⁵ Comments on Need Calculations filed on November 14 by Joel B. Cowen, pages 1, 3.

f. Need for Comprehensive Health Planner. Finally, it is important that the SAR reflect one additional submission. On June 7, 2011 legal counsel submitted a letter discussing the Comprehensive Planning function created by the recent rewrite of the Planning Act and requesting that the Board defer action on new hospital applications until that comprehensive planning function was fulfilled. We believe that letter raises important legislative issues that go to the heart of the Planning process and that request for deferral be referenced in the SAR.

2. Service Demand Review Criterion – Concern about Population/Need Projections and Failure to Provide Physician Referral Letters (SAR Pages 19-23)

The Board has detailed rules regarding how an applicant must document the need for additional beds. The Board's rules appear quite clear that for an application to establish a new hospital, an applicant must provide to the Review Board physician referral letters showing the number of patients to be referred and the hospital from where that physician would divert patients. While this argument was most recently addressed in legal counsel's submission to the Board dated November 14, 2011, is it possible that the Board was not left with sufficient time to include this argument in the SAR.

The Section 1110.530(b) rules referenced above make clear that *"if the applicant proposes to establish a new hospital, the applicant shall submit projected referrals."* Despite the clear mandatory language of the rules, the Applicant concluded that compliance was optional and provided no referral letter in the form required. They sought to justify the lack of physician referral letters based upon their claim to meet the "Rapid Population Growth" criteria. As has been discussed above, Centegra does not meet the Review Board's definition for "Rapid Population Growth" and the physician referral letters must be provided.

- 3) *Service Demand – Establishment of Bed Category of Service*
The number of beds proposed to establish a new category of service is necessary to accommodate the service demand experienced annually by the existing applicant facility over the latest two-year period, as evidenced by historical and projected referrals, or, if the applicant proposes to establish a new hospital, the applicant shall submit projected referrals. The applicant shall document subsection (b)(3)(A) and either subsection (b)(3)(B) or (C):

A) Historical Referrals

If the applicant is an existing facility, the applicant shall document the number of referrals to other facilities, for each proposed category of service, for each of the latest two years. Documentation of the referrals shall include: patient origin by zip code; name and specialty of referring physician; name and location of the recipient hospital.

B) Projected Referrals

An applicant proposing to establish a category of service or establish a new hospital shall submit the following:

- i) *Physician referral letters that attest to the physician's total number of patients (by zip code of residence) who have received care at existing facilities located in the area during the 12-month period prior to submission of the application;*
 - ii) *An estimated number of patients the physician will refer annually to the applicant's facility within a 24-month period after project completion. The anticipated number of referrals cannot exceed the physician's documented historical caseload;*
 - iii) *The physician's notarized signature, the typed or printed name of the physician, the physician's office address, and the physician's specialty; and*
 - iv) *Verification by the physician that the patient referrals have not been used to support another pending or approved CON application for the subject services.*
- C) *Project Service Demand – Based on Rapid Population Growth*
If a projected demand for service is based upon rapid population growth in the applicant facility's existing market area (as experienced annually within the latest 24-month period), the projected service demand shall be determined as follows:

* * *

Section 1100.220 of the Board's rules defines "Rapid Population Growth Rate" as "an average of the three most recent annual growth rates of a defined geographic area's population that has exceeded the average of three to seven immediately preceding annual growth rates by at least 100%." As documented by the November Krentz Report, the annual population growth in McHenry County and in Centegra's proposed service area has been *decelerating* since 2004, well before the economic downturn of 2008.⁶ The average of the three most recent annual growth rates for the total population in Centegra's proposed primary and secondary service area is 0.6%, and population change was negative in the most recent year. The average does not exceed the growth rates of preceding annual growth rates.⁷ The average of the three most recent annual growth rates in McHenry County was only 0.7%.⁸ Therefore, the recent growth rate of the proposed service area (0.6%) does not exceed the average growth rate for McHenry County (0.7%).

⁶ November Krentz Report, page iii, pages 8-10.

⁷ *Id.*, page 8.

⁸ *Id.*

While Centegra based its permit application on the "Rapid Population Growth" test, it fails to meet this test. Thus, the Board should require Centegra to submit physician referral letters, as discussed below.

We believe it important that the SAR specifically call attention to the fact that physician referral letters were not provided. To the extent there is legal ambiguity as to whether physician letters are required, we believe it appropriate the Review Board request its legal counsel to advise the Board on this matter. Had actual physician referral letters been provided, they would clearly show either that the proposed Centegra hospital cannot meet target utilization or can do so only through considerable negative impact to existing providers.

Centegra now does not contend that the Concerned Hospitals are wrong in arguing that physician referral letters are required⁹, rather, Centegra contends that the argument was raised too "late" in the process and such objection is now somehow "unfair." We first note the irony of Centegra objecting to the "unfairness" of the timing of the Concerned Hospitals' filing when on the same day, Centegra filed a 54-page objection to the Mercy Crystal Lake project.

More importantly, we note that this argument was raised 6 months ago. Centegra, in its November 16 letter of legal counsel, states that the Concerned Hospitals claimed "for the first time that Centegra should have submitted physician referral letters..." The objection that this argument was raised for the "first time" on November 14 is simply incorrect. The argument was raised, and presented to the Board, on June 8 and again on June 19.¹⁰ Centegra has had almost 6 months to provide the required physician referral letters. The fact remains that physician referral letters are absolutely required under the Review Board's regulations. Centegra failed to provide any physician referral letters. The Board should deny this application because it does not contain the referral letters required by the Section 1110.530(b) rules.

3. Safety Net Impact Statement (SAR Pages 11-12)

Pages 11 and 12 of the SAR make reference to a Safety Net Impact Statement. We believe that this section of the SAR should also specifically reference the "Safety Net Impact Statement Response" and the "Market Assessment and Impact Study of the Centegra Hospital" that were filed by Sherman Hospital, St. Alexius Medical Center and Good Shepherd Hospital and that the SAR should provide an analysis of both submissions.¹¹ The Planning Act requires that an applicant for a CON permit submit a Safety Net Impact Statement detailing the impact its project will have on Safety Net Services. Throughout the CON process, Centegra has simply stated, and has maintained, that a new hospital "will not impact other hospitals"¹² and that their

⁹ Response to Opponents Submissions, dated November 16, 2011.

¹⁰ Summary of Arguments in Opposition, dated June 8, 2011, pages 8-9; Response to State Agency Report for the Centegra Hospital-Huntley Project, dated June 19, 2011, page 3.

¹¹ Safety Net Impact Response, dated June 2, 2011; Krentz Consulting Market Assessment and Impact Study, dated May 24, 2011.

¹² Centegra Hospital-Huntley, Project 10-090, Application for Permit, Attachment 43.

project would benefit Safety Net Services. When it came time for Centegra to oppose the Mercy hospital project, Centegra's CEO, Michael Eesley, said:

"This proposal, again, cannibalizes hospitals by stealing patients and sends profits to Wisconsin, and would significantly impact the Safety Net provisions that are provided to our local communities."¹³

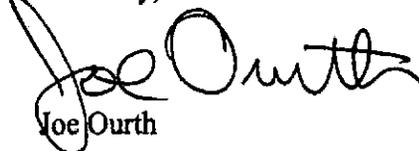
We believe Mr. Eesley is correct, and as we have stated previously to the Board, we believe and agree with Centegra on the point that any new hospital undercuts the ability of existing hospitals to provide Safety Net Services.¹⁴

4. Request for Written Decision

We concur with the SAR findings that the proposed project does not meet several of the Board's important review criteria, including "unnecessary duplication of services." Consequently we would request a written decision explaining the Board's decision in the event the application was approved.

We appreciate the opportunity to comment upon the State Agency Report.

Sincerely,



Joe Ourth

JRO/eka

cc: Courtney Avery
Mike Constantino
Frank Urso

¹³ Testimony of Mr. Michael Eesley, Chief Executive Officer Centegra Health System, Mercy Public Hearing, October 7, 2011, page 12.

¹⁴ Summary of Arguments to Sustain Review Board's Intent-to-Deny, dated November 14, 2011, pages 3, 5.