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July 13, 2012

VIA E-MAIL AND FEDEX (Saturday Delivery)

Mr. Michael Constantino
Illinois Health Facilities and Services
Review Board
525 W. Jefferson St. - 2nd Fl.
Springfield, IL 62761
ATTN: Mr. Dale Galassie

**Re: Comments in Response to State Agency Report for Project No. 12-039,
ManorCare Health Services of Crystal Lake**

Dear Mr. Galassie:

A second local facility, Crystal Pines Rehabilitation and Health Care Center ("Crystal Pines"), has asked us to submit comments in response to the State Agency Report ("SAR") for Project # 12-039, ManorCare Health Services of Crystal Lake's application to establish a new 130 bed facility (the "Project"). Crystal Pines appreciates the effort of the Illinois Health Facilities and Services Review Board ("HFSRB" or "Board") and its staff in preparing the SAR, but there is information that is not correctly reflected in the SAR or that is simply omitted from the SAR that the Board must have to properly assess this Project.

A review of the SAR confirms that this Project fails to establish a **need** for this Project. That is not to say that there is no need for additional beds or for expanded services, but there is no evidence that establishing a new 130 bed facility is the "orderly and economic" way to meet those needs or achieves the goal of avoiding "unnecessary duplication of facilities." The **need** aspect of the Certificate of Need ("CON") process is too often overlooked. It is important for the Board to consider that the Project fails to meet the criteria for:

- Service Demand (where are the residents to come from?)
- Service Accessibility (are these services already available in Health Service Area ("HSA") 8?)

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- Unnecessary Duplication/Maldistribution (is there existing capacity in HSA 8?)
- Impact On Other Area Providers (how will this Project impact existing facilities?)

The Board must consider the importance of this Project failing to meet these criteria. ManorCare provided no information to identify who will be referring the residents who will be occupying this facility. Presumably, these are the very same residents that existing facilities rely upon in their efforts to meet HFSRB utilization goals. The unquestionable likelihood is that the establishment of this new facility will yield even more facilities that are being underutilized. How can this Board approve a Project without this information when the immediate result could be the demise of an existing facility? This is particularly important when, as the SAR reflects, ManorCare has provided insufficient information about how the Project will impact other area providers.

Existing Providers In The Area Are Already Expanding To Meet These Needs

The SAR provides no information about expansion and renovation projects that are already underway at existing facilities.

Crystal Pines is also in the midst of its third renovation in recent years, having committed over \$500,000 to improving and expanding the therapy services that are being provided. Crystal Pines' project will upgrade its Medicare rehabilitation capacity and add a physical therapy gym, among other renovations.

Opposition comments¹ to the Project informed the Board that Fair Oaks Health Care Center, which is located less than two miles from the proposed Project site, is currently in the midst of a \$3.25 million renovation project that includes expanding its therapy services, and the construction of an addition which will add 16 private bedrooms and increase its licensed bed capacity. The Board should also be aware that just last month The Springs at Crystal Lake received regulatory approval from the City of Crystal Lake to engage in a major expansion project to increase its therapy services and gym, among other renovations and plans to expand its bed capacity.

¹ Despite having submitted eight pages of written opposition, the SAR only reflects a portion of one paragraph in the SAR and does not acknowledge that this is merely an excerpt from a document that presented additional concerns. Nor does the SAR acknowledge that all of the "public support" letters were form letters prepared by (or on behalf of) the Applicant.

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These projects provide additional evidence to undermine ManorCare's claims that these services are not available in the area or that additional competition is necessary to encourage existing facilities to expand. More importantly, these renovation projects should act as a reminder to the Board that **increased utilization of existing facilities is preferred to the creation of unneeded facilities.**

The Board must not ignore the fact that all three facilities closest to the proposed site of the Project, located within a ten minute drive, are already undertaking expansion and renovation projects to provide the very services that ManorCare claims are lacking. The HFSRB, as a health planning regulatory body, must affirmatively look into the capacity of existing facilities which can and do provide the services ManorCare claims only it can provide. That is one of the elemental principles justifying the CON process. The failure to do so would undermine the entire basis for the CON process – the assessment of **need**.²

Practical Concerns

Inexplicably, the SAR concluded that ManorCare's narrative of how it would meet the staffing needs of this new facility complied with the Board's standards. However, the Application reflects a total lack of acknowledgement that ManorCare will likely poach staff, particularly registered nurses who already are in short supply and high demand, from existing facilities. This is a very real concern and can impact existing facilities as substantially as the loss of resident referrals. States that have done away with the CON process can allow the free market to resolve these issues. However, in embracing the CON process, Illinois remains committed to a process that requires the HFSRB to make informed and reasoned decisions about how the establishment of new facilities will impact existing facilities.

More than anything, a quality facility needs two resources: dedicated staff and residents. The Project, without even having to acknowledge it, is designed to take both of these essential resources from existing facilities. It would be irresponsible for this Board to approve this Project without sufficiently exploring and resolving these issues.

² Those supporting the Project may highlight that the Project meets the Board's financial criteria. However, as a multi-billion-dollar business, ManorCare can finance this Project and operate the facility with cash on hand which makes it effectively exempt from meeting the Board's financial criteria. Given enough money – any project in any location can meet (or bypass) the Board's financial requirements. Such projects highlight the importance of the Board to properly assess the need for the Project and the impact the Board's decision will have on the community and the facilities already serving the community.

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Background/Compliance Issues

There are two concerns regarding the resources contained in the SAR regarding ManorCare's compliance history. First, the SAR incorrectly reflects the information ManorCare provided. ManorCare made no reference to any State violations or Type A violations. Rather, ManorCare admitted to the imposition of two immediate jeopardies (an immediate jeopardy is "a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment or death to a resident." 42 C.F.R. § 489.3) (emphasis ours). The second issue is that the information provided by ManorCare is incomplete.

Adverse actions are not limited to State violations, nor are they limited to federal deficiencies; nor are they limited to violations committed in the State of Illinois; nor are they limited to health care violations. Adverse actions include any "disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity...". See 77 Ill. Admin. Code 1130.140; see also 210 ILCS 45/1-129.

This is not an attack on ManorCare – but a national provider should be prepared to address the quality of care provided to all of its residents, not just at facilities in Illinois. Since ManorCare was willing to showcase its national successes in an attempt to influence this Board why the Project should be approved; ManorCare should be just as willing to acknowledge and explain any failures on a national level. Moreover, ManorCare has not provided a complete account of the compliance history for its 29 Illinois facilities. Even a simple reading of its account reveals that no information has been provided for over 20 of ManorCare's Illinois facilities. This information is necessary so the Board can be fully informed about the quality of care the Applicant provides.

Conclusion

HSA 8 has a number of well-established facilities that are already serving the community and which have undertaken renovation projects to expand services to the community. Before approving the establishment of a facility that will add 130 beds to an area in which 65% of the existing facilities do not meet the State's target utilization rate, this Board should fulfill its statutory obligations, by:

1. Considering the number of facilities that have capacity and provide the same services;
2. Exploring how many of these facilities are already taking steps to meet the needs that ManorCare claims it will meet;

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3. Considering the impact approving this Project will have on the utilization of existing facilities; and
4. Considering the impact this Project will have on the staffing and residents available for existing facilities.

We appreciate the time and effort to consider these matters and look forward to the Board, in its public consideration of this Project, making a record of how it addresses these issues.

Respectfully submitted,



Mark J. Silberman

MJS:me
cc: Mike Levitt