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**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

Via Electronic Mail and Overnight Carrier

Ms. Courtney Avery
Administrator
Illinois Health Facilities and Services
Review Board
525 W. Jefferson
Springfield, IL 62761

Re: Summary of Arguments in Opposition
Vista Medical Center - Lindenhurst CON Application (the "Application")
Project No. 12-081 (the "Project")

Dear Ms. Avery:

Over the course of the last several months considerable material has been submitted to the Illinois Health Facilities and Services Review Board ("Board" or "Review Board") to address why the Board should not approve the Vista Medical Center - Lindenhurst Project. As the Board and State Agency begins its review in earnest, on behalf of Advocate Condell Medical Center and Northwestern Lake Forest Hospital we would like to highlight some of the primary reasons the Board should deny application submitted by Community Health Systems, Inc. ("CHS") for Vista Medical Center - Lindenhurst.

Key Reasons the Application Should be Denied

1. A Prior Review Board Rejected this Project – Twice – and Time has Proven that Decision Correct. Vista Lindenhurst applied for a CON for essentially this same project in 2007. That Project received both an Intent-to-Deny and a Denial. Developments since that time have proven the Board's denial to have been correct.
2. New Suburban Hospitals are Inconsistent with Health Care Reform. Although there are many views on health care reform, almost all agree that building an additional 132-bed community hospital in an affluent suburban area already well-served by existing hospitals goes against where health care reform is heading or should go.
3. There is No Need for the Vista Lindenhurst Hospital. From any practical perspective as well as under the Review Board's own rules, there is no

“need” for this proposed hospital. The Board’s bed inventory shows an excess of 86 Medical Surgical bed and, 15 excess OB beds.

4. The Proposed Hospital will Significantly and Seriously Harm Existing Providers. Concerned hospitals have presented analyses regarding the impact a new hospital would have on existing hospitals and the patients they serve. This Project will clearly reduce utilization further below the Board’s standard for utilization.
5. CHS Has Made Signed Assurances of Utilization That it Cannot Reasonably Achieve. Clearly, CHS cannot achieve the utilization it assures at Lindenhurst, or if so it can do so only by cannibalizing existing hospitals, including its own. Both are likely.
6. Vista has not supplied the Physician Referral Letters that are Clearly Required by the Board’s Rules and No Need for New Hospitals. The Board’s rules specifically require that projects to establish a new hospital must provide projected referral letters from physicians. These letters would inform the Board as to whether CHS could fill a new hospital or not, and would quantify the number of patients moved from other hospitals. This Project should not be approved without the Board as long as Vista refuses to provide physician referral letters.
7. Vista Appears to have Discontinued Service Without a CON and has Held Beds that Should Have Been Removed From Inventory. CHS’s Application attempts to move unused beds from Waukegan to Lindenhurst. These beds are not Vista’s property to trade and should have been removed from the inventory.
8. Better Health Care Quality Outcomes generally Follow in an Environment where Higher Volumes are Performed. The reasons to avoid duplication of services go beyond bed need calculations. As discussed in other submissions and herein below, duplication of services can also negatively impact quality. A new hospital in the proposed area will dilute the number of cases already performed at existing hospitals and the clinical proficiency and expertise that correspond to that volume.
9. Cardiac Catheterization. Board rules require that all programs in the area must operate at 400 procedures before a new program be approved. The application fails this criterion.
10. The Application does not comply with other important Review Board rules. Board rules require that an Applicant document that the Project will

not reduce utilization of existing providers to below, or further below target utilization. Vista concedes that it is project will “quite obviously” not meet this criterion.

11. The Application Must Include Vista as a Co-Applicant. Vista Health System is not included as an applicant appears to be a “necessary party”.

1. Review Board Has Previously Rejected This Project and Need for a New Hospital Has Only Decreased

CHS previously applied to establish a new hospital in Lindenhurst in 2007. That proposed hospital is nearly identical to the project proposed now. At that time, the Review Board considered whether there was a need for a new hospital, concluded that the Vista Lindenhurst hospital was unnecessary and voted an intent-to-deny.¹ CHS then modified its application to downsize the hospital and, like present here, tried to move 108 beds from Waukegan to Lindenhurst. The Board voted to Deny the Project.² Nothing has changed that would justify the Board approving a new hospital. The facts show that there is actually less need now that when CHS applied the first time.

There has often been a presumption that because the demand for in-patient hospital services grew for so many years, that the trend still applies today. In fact, the utilization of in-patient hospital care has been declining for several years and is expected to decline into the future.³ As discussed further below, this is true both locally and nationally.⁴

In its 2007 CON application CHS spoke boldly of the dramatic future need it expected for hospitals in Lake County.⁵ In fact, the demand for in-patient hospital care has actually decreased in Lake County since the Board first denied the proposed new hospital.

IDPH Hospital profiles the actual number of in-patient days declined 4.8% from 2008 to 2011. Similarly, the average daily census of Lake County hospitals has fallen from 790 to 760. Actual Lake County Utilization shows that the need for a new hospital has actually decreased since the Board denied this Project previously.

¹ April 8-9, 2008 Review Board Meeting Vote Tally.

² September 17-18, 2008 Review Board Meeting Vote Tally.

³ See “Market Assessment and Impact Study – Proposed Vista Medical Center – Lindenhurst”, January 15, 2013, Kaufman Hall (hereinafter, “Kaufman Hall Report”) pp. [11-12].

⁴ Id.

⁵ Vista Medical Center – Lindenhurst, Application Permit, Project No. 07-045, pp. 200-205.

Even the arguments for convenience are weak in that the majority of the proposed services area population has closer access to existing facilities than the proposed Vista Lindenhurst hospital.⁶

2. Additional Suburban Hospitals are Counter to Health Care Reform

A key function of the Illinois Health Facilities Planning Act is to establish a mechanism for health care planning. Ground changing events in health care delivery are occurring at an accelerating pace not only as a result of federal and state governmental health care reform but also organically to achieve greater efficiency. By all accounts, the building of additional community hospitals in affluent suburban areas is counter to where health care reform is or should be heading. We encourage the Board to further review this health care reform trend generally before approving a new community hospital. We would also encourage the Review Board to await the work of the Center for Comprehensive Planning prior to approving a project of such large impact insight into future projects. Similarly, we believe that when the Board updates its bed inventory, it will show further decrease in Lake County bed need.

The Department of Healthcare and Family Services is currently implementing the Governor's Medicaid managed care programs to reduce cost and in-patient utilization across the state. Building a new hospital in a planning area that has excess capacity and is already well-served is counter to the state's health care reform efforts.

3. No Practical Need for Additional Hospital

The Applicants have set forth no compelling practical reason to build a new hospital. This is not an underserved area. Tellingly, the arguments presented by the Applicant focuses on convenience, not need. On average, there are almost 300 unused licensed med/surgical beds each day available in the area for residents.⁷ No one in the area is being denied hospital service for lack of an available bed.

4. Safety Net / Impact on Other Provider

When the General Assembly rewrote the Illinois Health Facilities Planning Act in 2009, one of the key features was to implement an analysis upon Safety Net Impact Services. Applicants are required to address the impact their project will have on the ability of other providers to cross-subsidize Safety Net Services. The Vista application barely addressed this issue, and when it did so merely stated that it didn't anticipate that it

⁶ Kaufman Hall Report p. 7.

⁷ Id. at page 14.

would negatively impact the ability of other providers to provide safety net services. Clearly, this is incorrect.

Vista has attempted to portray itself as the safety net provider for Lake County. A comparison of actual indigent care services show the facts.

Comparison of Safety Net Services
 Vista East, Condell and Lake Forest⁸

	Vista East	Advocate Condell	Northwestern Lake Forest
Charity Care \$	\$3.5 Million	\$9.5 Million	\$10.2 Million
Charity Care % Revenue	2.0%	3.0%	4.6%
Number of Charity Care Patients (Inpatient)	261	560	284
Number of Charity Care Patients (Outpatient)	997	5,334	2,596
Medicaid Patients (Inpatient & Outpatient)	41,662	43,147	19,084
Licensed Beds	336	273	205

5. CHS Cannot Achieve the Promised Target Utilization, or Can Only Do So by Cannibalizing Existing Hospitals.

As part of its Application, Vista provides notarized “assurances” that its new hospital will meet and maintain the Review Board’s utilization standards for its new hospital for both in-patient and ancillary services.⁹ These standards include required 85% occupancy for med/surg beds and 75% occupancy for obstetrics beds within two years of beginning operations. While we understand that this assurance is a standard part of every application, relying on this assurance is particularly troublesome under the facts:

1. CHS gives assurance that it will operate at 85% occupancy would mean that it would have the highest utilization in the state. For 2011 it appears that virtually no hospital in Illinois operated at 85% med/surg utilization.

⁸ Source – Illinois Department of Public Annual Health Questionnaire (AHQ) CY2011

⁹ Vista Lindenhurst Application, p. 99.

2. Vista East operates its med/surg beds at only 39.0%.
3. CHS states it will operate its Lindenhurst obstetrics beds at 75% utilization, even though its Waukegan OB beds operate at only 27.7%.
4. All of Lake County presently operates at only 47.8% occupancy for OB, yet CHA assures the Board that it will operate at 75%.

The importance of reconsidering new hospitals is also evident in the Adventist Hospital-Bolingbrook situation. Bolingbrook Hospital, which opened in 2007 and is the only new hospital in the State to open in the last thirty (30) years, has been challenged to build volume and reach reasonable occupancy. According to the 2011 Annual Hospital Profiles published by IDPH, Adventist Hospital-Bolingbrook is only operating at 44% occupancy in its fourth year of operation. This low occupancy highlights the challenge of a new hospital to redirect patients and physicians from previous hospital relationships. Similarly, information available from Comp Data shows that the occupancy at Bolingbrook came at the expense of existing hospitals.

6. No Need for New Hospitals/Physician Referral Letters Not Supplied by Vista

One of the most important issues for any Certificate of Need application, obviously, is whether the proposed project is “needed”. The Board develops detailed rules for evaluating whether a project fulfills a health care “need” or whether a project is just a “want”. There are various tests for whether a project is needed, including:

A. Criterion 1110.530(b) – Planning Area Need – Review Criterion

The Criterion states:

- b) *Planning Area Need – Review Criterion*
The applicant shall document that the number of beds to be established or added is necessary to serve the planning area's population, based on the following:
 - 1) *77 Ill. Adm. Code 1100 (formula calculation)*
 - A) *The number of beds to be established for each category of service is in conformance with the projected bed deficit specified in 77 Ill. Adm. Code 1100, as reflected in the latest updates to the Inventory.*
 - B) *The number of beds proposed shall not exceed the number of the projected deficit, to meet the health care needs of the population*

served, in compliance with the occupancy standard specified in 77 Ill. Adm. Code 1100.

The Review Board has compiled an inventory for beds in the Planning Area and made a calculation of beds needed, the bed and inventory shows that there are 86 excess medical/surgical beds and 15 excess OB beds. The simple fact is that there is no calculated need for the proposed hospital Applicant is proposing more beds than needed and does not comply with the Board's rules.

B. Service Demand – Establishment of Bed Category of Service

The Board's rules specify that if an Applicant wants to establish a new hospital it must provide physician referral letters. 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.**¹⁰ The rule further provides that an applicant for a new hospital shall submit physician referral letters.¹¹

Despite the clear mandatory language of the rules, the Applicant unilaterally concluded that compliance was optional and provided no referral letter in the form required. These projected referral letters are important because the physician letters must show from where those referrals were taken. That is, if a physician will refer 200 patients to a new hospital, he or she must show where those patients previously received care. By providing referral letters, the Board gets real information about the impact on existing facilities. Most importantly, it would unequivocally show that the new hospital would not meet occupancy standards, or that it would do so only by reducing utilization at existing hospitals.

The Applicant argues that this service area is experiencing "rapid population growth" The definition of "Rapid Population Growth" is a technical defined calculation. This area does not meet the definition of Rapid Population Growth. criterion.¹²

By separate letter dated January 10, 2013, we discussed in detail the legal requirements for an applicant for a new hospital to submit referral letters. We reaffirm our request that the Board not approve this application until the Applicant provides the Board with referral letters.

¹⁰ The Board's Rules, 77 Ill. Admin. Code, Section 1110.530 (emphasis added) provides:

"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;"

¹¹ *Id.*

¹² Kaufman Hall Report, p. 6.

7. Vista East Appears to Have Discontinued Service without a CON and Held Bed Inventory it Should have Removed

In previous correspondence to the Board on January 15, 2013, we noted that Hospital Profiles at Vista East report a Pediatric category of service consisting of 35 pediatric CON authorized beds¹³. These same AHQs, however, show that Vista East has not recently admitted even one pediatric patient. Vista East's utilization of the Pediatric category of service has been, and remains, at 0%.¹⁴ We also note that Vista has reported "0" Pediatric beds as set up or staffed.

Several years ago, the Review Board realized that many healthcare facilities were maintaining many beds as a part of its CON authorized beds that were not actually available (often referred to as "phantom beds") and instituted new rules which, in part, provided that if the beds were not available for use, they needed to be removed from the hospital CON authorized beds.

We again request that the Review Board investigate whether Vista East improperly discontinued its Pediatric category of service without Review Board approval. We further request these 35 Pediatric beds that are not staffed or set up be removed from the Bed Inventory before consideration of the Vista Lindenhurst Project.

8. Higher Volumes Can Contribute to Better Health Care Outcomes

The Review Board's rules regarding duplication of services relate not only to health care costs, but also to quality. The proposed Vista – Lindenhurst hospital, if built, will reduce volume at existing hospitals.¹⁵ In fact, this is one of the driving reasons that planning rules have minimum volume criteria. See for example, the Public Hearing Testimony of Dr. William Maloney. Also see the discussion of Dr. Kummever relative to cardiac procedures in his January 14, 2013 letter.

9. Vista Application Does not meet Cardiac Catheterization Category of Service.

Review Board rules state that "*No additional Cardiac Catheterization Services shall be started unless each facility in the planning area offering Cardiac Catheterization Services operate at a level of 400 procedures annually.*"¹⁶ The Application fails this criterion.

¹³ See attached AHQs for years 2006 - 2011.

¹⁴ *Id.*

¹⁵ Kaufman Hall Report.

¹⁶ 77 Ill. Admin Code Section 1100.620(c)

Page 107 of the Vista Lindenhurst application lists a number of hospitals providing Cardiac Catheterization Services in the area. Interestingly, the list omitted Lake Forest Hospital which is not yet operating at levels over 400 annually. Lake Forest Hospital submitted a January 10, 2013 letter confirming its 2011 utilization. The Applicant clearly fails to satisfy this review criterion.

A new cardiac program will also impact the volumes of existing providers in other ways. In an January 14, 2013 letter submitted by Advocate Condell, Dr. Robert Kummever, Director of Open Heart Surgery, discusses how medical advances have resulted in a decrease in the number of cardiac procedures and that this decrease is expected to continue. He also discusses how a decrease in volumes can result in decreases in an important quality rating from the Society of Thoracic Surgeons.

10. The Vista Application Does Not Meet Other Important Board Rules

In addition to the Applicant's failure to demonstrate "need", the Applicant fails to comply with other Board Rules including "Unnecessary Duplication and Maldistribution of Services" and "Alternatives".

A. Criterion 1110.530(c) - Unnecessary Duplication/Maldistribution – Review Criterion

This criterion provides that the applicant shall document that "the project will not result in an unnecessary duplication". Maldistribution exists when the area has an excess supply of facilities, beds and services¹⁷. Maldistribution is characterized by historical utilization for existing facilities that is below the Board's occupancy standards.

¹⁷ The Board's Rules, 77 Ill. Admin. Code, Section 1110.530(c) (emphases added) provides:

- "1) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information:
- A) *A list of all zip code areas (in total or in part) that are located within 30 minutes normal travel time of the project's site;*
 - B) *The total population of the identified zip code areas (based upon the most recent population numbers available for the State of Illinois population); and*
 - C) *The names and locations of all existing or approved health care facilities located within 30 minutes normal travel time from the project site that provide categories of bed services proposed by the project.*
- 2) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the identified area (within the planning area) has an excess supply of facilities, beds and services characterized by such factors as, but not limited to:
- A) *A ratio of beds to population that exceeds one and one-half times the State average;*

2011 Medical/Surgical CON Occupancy Rate for Planning Area A-09

Hospital	City	2011 CON Authorized Beds	2011 Average Daily Census	2011 CON Occupancy Rate
Advocate Condell Medical Center	Libertyville	214	156.9	73.3
Advocate Good Shepherd Hospital	Barrington	113	89.7	79.4
Highland Park Hospital	Highland Park	93	76.5	82.2
Midwestern Regional Medical Center	Zion	69	34.6	50.1
Northwestern Lake Forest Hospital	Lake Forest	74	59.6	80.5
Vista Medical Center-East	Waukegan	249	97.0	39.0
Vista Medical Center-West	Waukegan	---	---	---
Total		812	514.3	63.3

B) Historical utilization (for the latest 12-month period prior to submission of the application) for existing facilities and services that is below the occupancy standard established pursuant to 77 Ill. Adm. Code 1100; or

C) Insufficient population to provide the volume or caseload necessary to utilize the services proposed by the project at or above occupancy standards."

The OB occupancy rates show an even starker utilization percentage. Lake County OB occupancy range from only 27.7 to 66.6%, with a county-wide average of only 47.8%. Most importantly, Vista East operates at only 27.7% occupancy for OB.

The proposed Project clearly and unequivocally creates a maldistribution of services under the Board's rules. As the Table above shows, no hospitals in the Lake County area meet the historical utilization standard for new medical/surgical beds. Indeed, on average there are almost 300 unoccupied medical/surgical beds in area hospitals.

B. Criterion 1110.530(c)(3) – Impact of Project on Other Area Providers

- 3) *The applicant shall document that, within 24 months after project completion, the proposed project:*
- A) *Will not lower the utilization of other GSA providers below the utilization standards specified in 77 111. Adm. Code 1100; and*
 - B) *Will not lower, to a further extent, the utilization of other area hospitals that are currently (during the latest 12-month period) operating below the utilization standards.*

We do not need to go into detailed analysis of this issue - - Vista addressed it itself when it states "This review criterion, quite obviously cannot be met." Vista is correct on this point. The Board nevertheless, deserves to at least have the Applicant attempt to quantify the impact and address the criterion.

Section 3(A)(B) of the above rule requires that the applicant document that the Project will not lower utilization of existing providers below the utilization standard (or further below the utilization standard). As shown on the table above, every area hospital, including both Vista hospitals operate below utilization targets.

The Applicants have characterized discussion of this impact on existing providers as an attempt to maintain market share and pay or mix and that this is an inappropriate function for the Review Board. Instead, the issue of unnecessary duplication of services is at the very core of the Board's mission and planning process. The Board's rule on duplication of services is clear and the effect is clear – this Project duplicates services and creates a maldistribution. The Application at hand did not even attempt to address this issue or the details of the Board's rules in its application (See Attachment to the Application at p. 94).

The Board's rule requiring an applicant to document effect on utilization applies not only to competing facilities within the Planning Area, but to other nearby facilities outside the Planning Area as well to the Applicant's own facilities. Vista East had utilization of only 36.1%, well below the Review Board's standard.

C. Surgery Utilization and Section 3030 Clinical Services

Establishment of a new hospital involves more than new beds. A new hospital adds considerable surgical capacity, imaging services, and other clinical services. As with the hospital beds, there is also excess of surgery capacity and other clinical services in Lake County. Again, the facility with the most excess capacity is the facility wanting to build more. Vista East has the lowest surgical utilization of any hospital in Lake County (38.89%) and surgical utilization at its Lindenhurst ASTC of only 16.5%¹⁸

Similarly, when it comes to clinical services covered by Section 3030 of the Board rules, an analysis shows that Vista East does not meet the standard for a single service¹⁹. Moreover, Vista provides no documentation as to how it will achieve the required targeted occupancy for Section 3030 services. CHS merely presumes that the hospital will operate at target capacity and thus meet clinical utilization. No physician referral letters are provided to justify this assumption. Vista cannot comply with Section 3030 review criterion.

D. Criterion 1110.230(c) - Alternatives

The Alternatives Criterion states:

"The applicant must document that the proposed project is the most effective or least costly alternative.... Alternatives must include, but are not limited to: purchase of equipment, leasing or utilization (by contract or agreement) of other facilities, development of freestanding settings for service and alternate settings within the facility."

The only alternatives the Applicants set forward essentially relate to size and services of a new hospital. It did not even address one of the required alternatives - - for patients to utilize existing providers.

The best alternative here is also the simplest and lowest cost. The best alternative is that patients continue to use existing facilities that presently have excess capacity. Facilities in the area have excess capacity, including Vista's own hospitals. Building a

¹⁸ Kaufman Hall Report, p. 14.

¹⁹ Id. At p. 15.

new facility is more expensive, duplicates services, and is not needed. The Applicants did not even raise as an alternative using other facilities in the area.

11. The Application Must Include Vista as a Co-Applicant

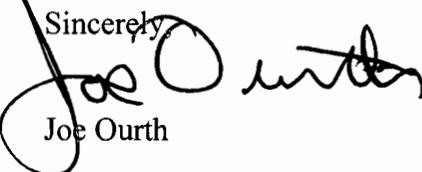
Vista was not included as an applicant in the Vista-Lindenhurst CON application. Vista is officially known as “Waukegan Illinois Hospital Company, LLC” but operates under various d/b/a’s, including Vista Medical Center East. Applicants are listed only as “Lindenhurst Illinois Hospital Company, LLC” which is shown as the wholly owned subsidiary of Waukegan Hospital Corp, and Community Health Systems, Inc., the parent of Vista.

At least by including CHS as an applicant, Vista’s characterization of itself as a two-hospital system is undercut.²⁰ As stated in its 10-K filing with the Securities and Exchange Commission, CHS describes itself as are of the largest publicly traded hospital companies in the United States. CHS owns over 130 hospitals, generates operating revenues of \$13.6 billion, profit of \$1.1 billion and a profit margin of 8.3%.²¹ To describe Vista’s ownership’s structure as a 2-hospital system is perhaps too modest. Even then, two-hospital Vista system chose not to be an applicant on this project.

On January 10, 2013, we submitted correspondence to the Board detailing the Board’s rules in connection with this matter and Vista’s significant involvement with the Project and asked that the State Agency request a modification to include all necessary parties, including Vista, and a comprehensive organizational chart of the Applicants.

Conclusion

There is no need for this Project under the Board’s rules and the Project unnecessarily duplicates existing services. This Application fails to meet the Review Boards requirements and should be denied.

Sincerely,

Joe Ourth

JRO/eka

²⁰ Public Hearing Testimony, B. Martin, November 15, 2012 “Let’s compare Vista, a two-hospital, with another system...”

²¹ Kaufman Hall Report, p. 3.