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OCT 31 2014

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

October 30, 2014

VIA OVERNIGHT FEDERAL EXPRESS DELIVERY

Ms. Courtney Avery
Administrator
Illinois Health Facilities and
Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, IL 62761

**Re: NorthPointe Health and Wellness Campus Free-Standing Emergency Center,
Roscoe, Illinois Project No. 14-040**

Comment on State Board Staff Report

Dear Ms. Avery:

I represent SwedishAmerican Hospital and, pursuant to Section 6(c)(5) of the Illinois Health Facilities Planning Act ("Planning Act"), submit this written comment to the State Board Staff Report ("Report") for Project No. 10-040 published on the Review Board's website on October 28, 2014.

This comment relates to the following findings and facts in the Report: (1) findings relating to the licensing criterion addressed on pages 12 and 13 of the Report, and (2) facts relating to the applicant's prior capital expenditure of \$35,000,000 on its self-described "satellite" facility in Roscoe, Illinois, referenced on page 8 of the Report.

I. The Applicant does not Comply with the Licensing Criterion

As noted in my attached letter dated October 21, 2014 submitted during the written comment period, we respectfully submit that the applicant Beloit Memorial Hospital, which is not a licensed Illinois hospital, is not an appropriate applicant for a free-standing emergency center (FEC) in Illinois. Section 32.5(a)(1) of the EMS Act requires an FEC to be owned and controlled by a "hospital," and the EMS Act further provides that the term "hospital" has the meaning "ascribed to that term in the Hospital Licensing Act." 2010 ILCS 50/3.5. The term "hospital" as used in the Licensing Act *always* refers to a hospital licensed in Illinois by the Illinois Department of Public Health (IDPH) and *never* refers to a hospital that is not licensed in Illinois. For example, Section 4 of the Licensing Act states, "No person shall establish a *hospital* without first obtaining a permit from the Department and no person shall open, conduct, operate or maintain a *hospital* without first obtaining a license from the Department." 20 ILCS 85/4.

The term “hospital” is obviously used here to mean an Illinois hospital, and not a hospital located and licensed outside of Illinois.

It has come to my attention that, after the close of the written comment period, the applicant’s Indiana counsel sent a written response to my October 21, 2014 letter claiming, in essence, that an applicant for an FEC need only be an Associate or Resource Hospital but does not need to be licensed as a hospital in the State of Illinois. The gist of this response is that neither the definitions of “Associate Hospital” or “Resource Hospital” in the EMS Act, nor the definition of “hospital” in the Licensing Act *expressly* requires that the hospital be licensed in Illinois. The response fails, however, to address the fact that licensure in Illinois is *necessarily implied* by the fact that, under the Licensing Act, the term “hospital” is always used with reference to a hospital located and licensed in Illinois and is never used with respect to a hospital that is located and licensed outside of Illinois.

It would be absurd to construe the term “hospital” in the Licensing Act to include hospitals located and licensed outside of Illinois. As noted above, Section 4 of the Licensing Act states that no person shall “operate or maintain a hospital without first obtaining a license from the Department [of Public Health].” 210 ILCS 85/4. If the term “hospital,” as used in the Licensing Act, includes hospitals located and licensed outside of Illinois, as the applicant’s counsel now contends, then the applicant Beloit Memorial Hospital would have to obtain a license from IDPH. Again, that is an absurd reading of the Licensing Act.

Numerous other provisions of the Licensing Act would lead to similarly absurd results if the term “hospital” is read to include facilities located and licensed outside of Illinois. For example, IDPH prescribes standards “for *hospitals* to meet in order to assure proper identification of newborn infants” and further prescribes regulations requiring “the availability and proper use of hypothermic thermometers or electronic thermometers capable of aiding in the diagnosis of hypothermia and adequate quantity in *hospitals*.” 210 ILCS 85/6.06 and 6.07 (Emphasis added). These IDPH standards and regulations would necessarily apply to the applicant Beloit Memorial Hospital in Wisconsin if, as its counsel contends, the term “hospital” in the Licensing Act applies to hospitals located and licensed outside of Illinois.

Under Illinois law, Illinois statutes are construed to avoid absurd interpretations. *Illinois Nat. Bank v. Chegin*, 35 Ill.2d 375, 378 (1966) (“Statutes should be so construed as to give them a reasonable meaning, and should not be so interpreted as to lead to absurd consequences.”) The applicant’s interpretations of the Illinois EMS Act and Licensing Act are absurd, and should therefore be rejected.

In addition, the Licensing Act itself frequently clarifies that the term “hospital” refers to a hospital “licensed under this Act.” See, e.g., 210 ILCS 85/6.01: “A *hospital licensed under this Act* must comply with the standards relating to domestic violence established by the Department”; 210 ILCS 85/6.10: “The Department shall adopt rules requiring *hospitals licensed under this Act* to offer testing for infection with human immunodeficiency virus...”; 210 ILCS 85/6.13: “Any *hospital licensed under this Act* may provide a program or service for the temporary custodial care of mildly ill children...” (Emphasis added). Under no usage of the

term “hospital” under the Licensing Act would the statute make sense if the term “hospital” included hospitals that were not located and licensed in Illinois.

Moreover, when the Illinois legislature intends to confer rights or impose obligations upon hospitals licensed outside of the State, it utilizes clear language to that effect. For example, the Planning Act provides for the issuance of permits to an “out-of-state facility” for the performance of outpatient surgical procedures, and expressly defines the term “out-of-state facility” to include a facility “licensed as a hospital ... under the laws of another state...” 20 ILCS 3960/3(6). By contrast, neither the Planning Act nor the EMS Act expressly allow out-of-state facilities (such as Beloit Memorial Hospital) to own and operate FECs in Illinois.

Finally, as noted in my written comment of October 21, 2014, every existing FEC in the State of Illinois is owned and operated by an Illinois hospital that is subject to regulatory oversight by IDPH. Attached is a listing from IDPH’s website of the five existing FECs in Illinois, all of which are owned and operated by hospitals licensed in Illinois. The proposed project would be the first and only FEC in the State whose owner and operator is not licensed by IDPH and regulated by IDPH.

II. Prior Capital Expenditure by Beloit Memorial Hospital in Excess of the Capital Expenditure Minimum

Page 8 of the State Board Staff Report states:

“In December 2007, the hospital opened a \$35 million new health and wellness campus in Roscoe, Illinois called NorthPointe. NorthPointe includes an Assisted Living Center (NorthPointe Terrace), Fitness Center, Immediate Care, Spa, Physician Clinic, Laboratory and Imaging Services are also provided at NorthPointe.”

The Report does not indicate whether Beloit Memorial Hospital obtained a Certificate of Need for this \$35,000,000 capital expenditure on its own behalf. (The applicant itself frequently describes the facilities in Roscoe as a “satellite” and “division” of Beloit Memorial Hospital, and as operating “under the auspices” of Beloit Memorial Hospital. *See* CON Application at pages 6, 58, 61, 78, 87.) If a CON were found to be required for this capital expenditure, no new CON application of the applicant should be processed until resolution of the matter as required by Section 1130.790(e) of the Review Board’s rules. 77 Ill. Adm. Code 1130.790(e).

Perhaps the applicant obtained a CON, or has previously explained why a CON was not required for the large capital expenditure in Roscoe, Illinois. Indeed, Beloit Memorial Hospital might have claimed that it was not required to obtain a CON because it was not a “hospital” within the meaning of the Planning Act given that it is not licensed as a hospital under the Licensing Act. In any event, whether or not Beloit Memorial Hospital obtained, or was required to obtain, a CON for the prior capital expenditure, it remains the case that Beloit Memorial

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Hospital is not entitled to apply for an FEC in Illinois because it is not licensed as a hospital in Illinois.

To conclude, SwedishAmerican Hospital respectfully submits that the application in Project No. 14-040 is not properly before the Review Board and should not be acted upon by the Review Board for the reason that the proposed FEC will not be owned and operated by a hospital licensed in the State of Illinois. If the Review Board were to act on the application, SwedishAmerican respectfully submits that it should be denied as non-compliant with the State Board's regulations as set forth in the State Board Staff Report.

Sincerely,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read "Daniel J. Lawler", with a long horizontal flourish extending to the right.

Daniel J. Lawler

DL:dp

Attachments



Visit Our Microsites



Health Data



Rockford



Champaign



Belleville



SSMMA



IDPH Free Standing Emerg...
Current as of October, 2014



	Freestanding Emergency Center	Address	City	Zip	County
1	Copley Memorial Hospital-Freestanding Emergency Center	1122 W. Veterans Parkway	Yorkville	60560	Kendall
2	Edward Plainfield Emergency Center	24600 W. 127th Street	Plainfield	60585	Will
3	Lake Forest Hospital (FEC)	1475 E. Belvedere Road, suite 211	Grayslake	60030	Lake
4	Lindenhurst Freestanding Emergency Center	1050 Red Oak Lane	Lindenhurst	60046	Lake
5	Silver Cross Emergicare Center	12701 West 143rd Street	Homer Glen	60491	Will

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Springfield, IL 62761

**Re: NorthPointe Health and Wellness Campus Free-Standing Emergency Center,
Roscoe, Illinois; Project No. 14-040**

Statutory Impediment to FEC Application

Dear Ms. Avery:

I represent SwedishAmerican Hospital which is the licensee for two Illinois hospitals whose patients reside in the areas to be served by the proposed NorthPointe Health and Wellness Campus Free-Standing Emergency Center ("FEC"), Project No. 14-040. We believe there is a legal impediment to the applicants owning and operating an FEC in Illinois under the Illinois Emergency Medical Services System Act (EMS Act) and the Illinois Hospital Licensing Act (Licensing Act). Specifically, those two Acts when read together indicate that an FEC must be owned and operated by a hospital that is licensed as a hospital in Illinois and subject to the licensing requirements of the Illinois Department of Public Health (IDPH). The proposed FEC will not be owned or operated by an Illinois hospital. The proposed ownership of the FEC by an entity that is not an Illinois licensed hospital is contrary to the intent of the EMS and Licensing Acts and contravenes public policy.

Section 32.5(a)(1) of the EMS Act states that an FEC must be located "within 50 miles of the hospital that owns or controls the FEC...." 210 ILCS 50/32.5(a)(1), Emphasis added. The EMS Act further provides that the term "hospital" has the meaning "ascribed to that term in the Hospital Licensing Act." 210 ILCS 50/3.5. The Licensing Act clearly uses the term "hospital" to mean a hospital licensed in Illinois and subject to regulation by IDPH. Section 4 of the Licensing Act states, "No person shall establish a hospital without first obtaining a permit from the Department and no person shall open, conduct, operate or maintain a hospital without first obtaining a license from the Department." 210 ILCS 85/4. None of the applicants for Project No. 14-040 are a "hospital" within the meaning of the EMS and Licensing Acts because none is licensed as a hospital by IDPH.

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There are sound public policy reasons for the requiring that the owner and operator of emergency medical services in Illinois be itself licensed and subject to regulatory oversight by IDPH. Every other FEC in Illinois is owned and operated by an Illinois hospital that is subject to regulatory oversight by IDPH. The proposed project would be the first FEC in the State whose owner and operator is not licensed by IDPH and regulated by IDPH.

For the above reasons, we respectfully submit that the application in Project No. 14-040 is not properly before the Review Board and should not be acted upon by the Review Board for the reason that the proposed FEC will not be owned and operated by a hospital licensed in the State of Illinois.

Respectfully submitted,

BARNES & THORNBURG LLP

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DJL:dp