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HEALTH FACILITIES & SERVICES REVIEW BOARD

October 26, 2015

**VIA EMAIL AND FEDERAL EXPRESS**
Kathryn Olson
Chair
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, Second Floor
Springfield, Illinois 62761
Attention: Chairperson Olson

**Re: Opposition to Project 15-044**
**Transformative Health of McHenry**

Dear Chairperson Olson:

Please accept this letter as a statement of ManorCare Health Services, LLC, HCR Healthcare, LLC, HCR ManorCare, Inc. (collectively "ManorCare"), ManorCare Health Services - Elgin IL, LLC, and ManorCare Health Services – Libertyville LLC, (collectively with ManorCare, the "ManorCare Parties") opposition to the proposed establishment of a new 98 bed freestanding skilled nursing facility to be located on the campus of Centegra Hospital – McHenry located in McHenry County, Illinois by MS McHenry, LLC and TCO JV, LLC d/b/a Transformative Health Network (collectively, "Mainstreet/Symphony"). As noted in the Mainstreet/Symphony application, the applicants are related to Mainstreet Property Group, LLC, a national real estate development company, and Symphony Post Acute Network, which currently lists 24 Illinois nursing homes as its facilities on its website.

ManorCare respectfully requests that the Illinois Health Facilities and Services Review Board ("IHFSRB") deny the Mainstreet/Symphony application as it does not comply with the IHFSRB's rules or, in the alternative, that the Mainstreet/Symphony application be deferred until such time as ManorCare's application (Project #12-039), which is still pending, is finally adjudicated as described below.

**ManorCare's Pending Application (Project #12-039)**

ManorCare's application to construct a new, 130 bed long term care facility in Crystal Lake, Illinois (Project #12-039) is still pending. ManorCare's proposed facility is to be located on a 8.9 acre parcel at the intersection of Route 176 and Terra Cotta Road. The proposed facility will have 50 private and 40 semi-private rooms, be funded with cash and have a total cost of $16,990,690. ManorCare's application was denied by the IHFSRB on December 17, 2012, (even though there was a 469 bed need at the time) with the only reason for such denial being that other facilities within the service area were not at target occupancy. Thus, the IHFSRB found

that ManorCare did not satisfy the three current utilization criteria (Service Accessibility, Duplication of Services/Maldistribution and Impact of Project on other Area Providers). ManorCare appealed the denial to an Administrative Law Judge ("ALJ") and on August 27, 2014, the IHFSRB adopted the ALJ's recommended decision to deny ManorCare's application as the IHFSRB final decision. On October 2, 2014, in response to the IHFSRB's final order and denial of its application, ManorCare appealed to the Circuit Court of McHenry County (Case 14 MR 569). The Judge in the case issued an order on October 20, 2015 stating that the Court will issue its decision in the case on November 19, 2015.

ManorCare's application for a new, 130 bed long term care facility in Crystal Lake, Illinois (Project #12-039) is still pending because ManorCare has not exhausted all of its available remedies at this time. The IHFSRB bed need inventory dated August 3, 2015 shows a need for 127 long term care beds in McHenry County. ManorCare's application was filed 3.5 years in advance of Mainstreet/Symphony's current application and if the IHFSRB's decision is overturned by the McHenry County Court, ManorCare's project will proceed, thereby eliminating the need for any additional beds in McHenry County. Accordingly, ManorCare respectfully requests that the IHFSRB defer Mainstreet/Symphony's application until ManorCare's application has been finally adjudicated or deny the application based on the deficiencies in the application as described below.

**Defective Referral Letters**

The Mainstreet/Symphony application does not comply with the IHFSRB's rules. Section 1125.540(d) of the IHFSRB's rules requires applicants to submit letters from referral sources attesting to the following: (i) the total number of prospective residents (by zip code of residence) who have received care at existing LTC facilities located in the area during the 12 month period prior to submission of the application, with verification of their projections and methodology used; and (ii) an estimated number of prospective residents whom the referral sources will refer annually to the applicants' facility within a 24 month period after project completion. The IHFSRB's rules further require that each referral letter contain the referral source's Chief Executive Officer's notarized signature and a verification by the referral source that the prospective resident referrals have not been used to support another pending CON application.

Mainstreet/Symphony submitted letters from Centegra Hospital – Woodstock and Centegra Hospital – McHenry (pages 122-123 of Mainstreet/Symphony's application) that do not meet the requirements set forth above. In addition, Mainstreet/Symphony submitted 9 additional letters from physicians (pages 124-132 of the Mainstreet/Symphony application). Six of the letters are on Centegra Health System's letterhead, which Mainstreet/Symphony acknowledges in its application means that these referrals are duplicative of the letters submitted by the Centegra hospitals. **None** of the referral letters commit to make any referrals to the proposed Mainstreet/Symphony facility. Instead, the letters simply provide historical data regarding the number of referrals the hospitals and physicians have made to other LTC facilities for the period

from July 1, 2014 through June 30, 2015, without committing to make any referrals to Mainstreet/Symphony. Additionally, **none** of the referral letters specify whether such referrals were made to LTC facilities in the area or elsewhere. Furthermore, the letters from Centegra Hospital – Woodstock and Centegra Hospital – McHenry are not signed by the Chief Executive Officer of the applicable hospital, as required by the IHFSRB's rules.

Please note that the Chief Executive Officer of Centegra Health System (which includes both Centegra Hospital – Woodstock and Centegra Hospital – McHenry) submitted a referral letter for ManorCare's application, which as described above, is currently pending. Accordingly, the letters from Centegra Hospital – Woodstock and Centegra Hospital – McHenry are not accurate in stating that the referrals have not been used to support another pending project in the service area.

Requiring applicants to submit referral letters in accordance with Section 1125.540 allows the IHFSRB to assess whether there is a reasonable expectation that the new proposed facility will operate at a target utilization level and to quantify the impact of the proposed new facility on existing providers in the area.

Given the lack of commitment by anyone in the community to make **any** referrals to Mainstreet/Symphony's proposed new facility and the other non-compliance with the requirements of Section 1125.540 noted above, Mainstreet/Symphony cannot demonstrate to the IHFSRB that their proposed new facility has a reasonable expectation of operating at target utilization. Further, they cannot demonstrate that such proposed facility will not have an impact on existing providers in the area.

**Related Entities**

As noted above, the Symphony Post Acute Network currently lists 24 Illinois nursing homes as its facilities on its website. However, on Attachment 12A to the Mainstreet/Symphony application, Mainstreet/Symphony only lists 7 skilled nursing facilities as being related to Mainstreet/Symphony. According to Section 1125.520 of the IHRSRB rules, Mainstreet/Symphony is required to provide a certified listing of any adverse action taken against any facility owned and/or operated by the applicant. The certification provided by Mainstreet/Symphony in the application (Attachment 12 and Attachment 12C) states that there is no adverse action taken against any of the 7 related facilities. Since the Symphony Post Acute Network holds itself out to the public as operating 24 facilities in Illinois, the IHRSRB should inquire as to why the Mainstreet/Symphony application only lists 7 of the Illinois facilities and whether there have been any adverse actions taken against the other 17 facilities that were omitted from the Mainstreet/Symphony application.

**Adverse Effect**

The ManorCare Parties would be adversely affected by a decision of IHFSRB to grant Mainstreet/Symphony's application for a new 98 bed skilled nursing facility. The ManorCare Parties would be adversely affected because judicial approval of the ManorCare application would allow ManorCare to operate a facility which will eliminate the bed need in McHenry County. ManorCare Elgin and ManorCare Libertyville are both located in Health Service Area 8 and would be adversely affected as competitors of Mainstreet/Symphony, as these facilities are located within a 32 and 35 minute drive time respectively of the Mainstreet/Symphony proposed facility and draw prospective patients from overlapping zip codes with the proposed new facility (See Section 1125.570(a)(5) indicating that a 45 minute drive time is relevant in determining whether facilities are competitors).

Based on the foregoing, the ManorCare Parties respectfully request the IHFSRB to deny the Mainstreet/Symphony application or alternatively, defer such application until the ManorCare application (Project #12-039) is finally adjudicated.

Very truly yours,

By: _____

Don Reppy
Director, Health Planning
ManorCare Health Services, LLC
HCR Healthcare, LLC
HCR ManorCare, Inc.
ManorCare Health Services - Elgin IL, LLC
ManorCare Health Services – Libertyville LLC

By: _____

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