

Constantino, Mike

From: Ourth, Joe [JOurth@arnstein.com]
Sent: Tuesday, June 07, 2011 10:01 AM
To: Constantino, Mike
Subject: Centegra / Mercy - letter to Dale Galassie (IHFSRB) [IWOV-ACTIVE.FID917959]
Attachments: 110607 083140.PDF

Mike,

Attached please find a letter that we would like to file in connection with opposition to the Mercy Crystal Lake Hospital Project (~~10-089~~). By separate e-mail we will also file an identical letter regarding Centegra Hospital - Huntley (10-090).

Thank you.

Joe Ourth

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June 7, 2011

Via Electronic Mail and Federal Express

Mr. Dale Galassie
Chair
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761

**Re: Request that the Review Board Defer Consideration of New Hospital
Projects until the Comprehensive Planning Function of PA 96-0031 is
Fulfilled**

Mercy Crystal Lake Hospital and Medical Center (Project No. 10-089)

Centegra Hospital – Huntley (Project No. 10-090)

Dear Chairman Galassie:

On behalf of Sherman Hospital, St. Alexius Medical Center and Advocate Good Shepherd Hospital, we respectfully request that the Illinois Health Facilities and Services Review Board (the "Review Board") defer approval of applications for permits to establish new hospital projects until the Comprehensive Health Planning function created by the recent Planning Act rewrite has been fulfilled.

2009 Planning Act Rewrite and Key Provisions

In 2009, the Illinois General Assembly undertook a comprehensive rewrite of the Illinois Health Facilities Planning Act¹ and the resulting legislation Public Act 96-0031 was the culmination of an intensive year-long Task Force study. This legislative rewrite arose as a direct response to two cases of corruption involving a previous Review Board. Both corruption cases involved applications for new hospitals: one case related to a new hospital in the far southwest suburbs, but the other grew directly from one of the same hospital projects currently before the Board.

The Task Force, and resulting New Act, had two key provisions: (i) to reconstitute the Board and create ethical safeguards to prevent future corruption; and (ii) to create an independent

¹ Public Act 96-0031

and professional planning function embodied in the Center for Comprehensive Health Planning under the direction of a Comprehensive Health Planner.

Legislative history by chief legislative sponsors made clear that both provisions were of key importance to the new Act. For example, in Senator Susan Garrett's introductory remarks of Senate Bill 1905 on the Senate floor, she emphasizes the primary importance of the Comprehensive Planning function:

Senator Garrett: "Yes, thank you Mr. President. Floor Amendment No. 1 becomes the bill. This is the Health Facilities Planning Board reform. What we did last year is set up a task force of 19 members. 12 of these members supported the concept that I am going to be talking about today, and we had 1 dissenter. Basically, what we did is we set up a Center for Comprehensive Health Planning. If you think of the wording "Health Facilities Planning Board", what we learned is that there was no direct and immediate planning in place, and so we included this. We also established a Health Facilities and Service Review Board and we gave the board members more responsibility. We also expanded members from 5 to 9..."²

Similarly, one of the House chief co-sponsors and a member of the Task Force, Rep. Lou Lang, stated the following on the House Floor in discussing the bill:

"And now, when this Bill passes and the Governor signs it, we'll have a body and a separate planning board that actually help us decide where we need medical facilities in Illinois and where we have too many medical facilities in Illinois. This will be, in the long-term, the best possible thing for our consumers, the best possible idea for improving health care in our state. I want to applaud the chairs, Representative Dugan and Senator Garrett, who did a really excellent job and I also want to commend staff who really helped put the report and the final Bill together. This is a Bill we definitely should pass."³

Public Act 96-0031 also specifies that the Center for Comprehensive Health Planning is to create a Comprehensive Health Plan and update it every 2 years, and that the components of the plan include:

"(c) Comprehensive for Health Plan.

(1) The Plan shall be developed with a 5 to 10 year range, and updated every 2 years, or annually, if needed.

² Senate Audio Transcript, SB 1905, April 1, 2009. (emphasis added)

³ House of Representatives, Transcription Debate, SB 1905, 27, 2009 (emphasis added)

(2) Components of the Plan shall include:

(A) an inventory to map the State for growth, population shifts, and utilization of available healthcare resources, using both State-level and regionally defined areas;

(B) an evaluation of health service needs, addressing gaps in service, over-supply, and continuity of care, including an assessment of existing safety net services;

(C) an inventory of health care facility infrastructure, including regulated facilities and services, and unregulated facilities and services, as determined by the Center;

(D) recommendations on ensuring access to care, especially for safety net services, including rural and medically underserved communities; and

(E) an integration between health planning for clinical services, facilities and workforce under the Illinois Health Facilities Planning Act and other health planning laws and activities of the State."⁴

Application to Projects Pending Before the Board

Applications for new hospital projects are among the biggest decisions the Review Board encounters. In the past 30 years, the Board has only once approved a new general purpose hospital that was not subsequently overturned on appeal. Clearly, the decision to approve a new hospital is, and should be, undertaken by the Board only after the Board has available to it the most comprehensive data and professional guidance available.

The Review Board has before it pending applications for permits to establish new hospitals, including Mercy Crystal Lake Hospital and Medical Center, Crystal Lake (Project No. 10-089) and Centegra Hospital – Huntley (Project 10-090). The key issues in the new Hospital applications go to the core of what the Comprehensive Planning function is intended to address: (i) whether population growth has truly occurred; (ii) the utilization of other healthcare providers; and (iii) the regional implications (not just State planning area numbers) of approving the pending projects. For example, one of the primary arguments the new hospital applicants make is that population growth will justify the need for a new 128 bed hospital—a factual issue much in dispute. The question of projected population growth is exactly the type information that would assist Review Board members in their deliberations.

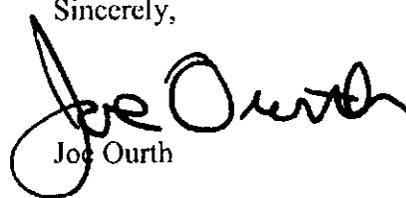
⁴ 20 ILCS 2310-217(c) (Emphasis added)

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We recognize that it is not the responsibility of the Review Board to create the Center for Comprehensive Planning. We similarly recognize that the Review Board must continue to function for most projects without the Center for Comprehensive Planning. The Planning Act itself, and the legislative intent of the General Assembly, make clear the importance of comprehensive planning.

The Review Board best honors its own governing act, and the desire of the legislature, by deferring consideration of the new hospital applications until the Comprehensive Planning function of the Planning Act is fulfilled.

Sincerely,



Joe Ourth

JRO:fm
Enclosure (excerpt of Public Act 96-031)

cc: Ms. Courtney Avery, Administrator
Mr. Frank Urso, Legal Counsel

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Open Meetings Act is amended by changing Section 1.02 as follows:

(5 ILCS 120/1.02) (from Ch. 102, par. 41.02)

Sec. 1.02. For the purposes of this Act:

"Meeting" means any gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business.

Accordingly, for a 5-member public body, 3 members of the body constitute a quorum and the affirmative vote of 3 members is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required.

"Public body" includes all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school

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members, while serving on business of the Board, shall receive actual necessary travel and subsistence expenses while so serving away from their places of residence.

(Source: P.A. 93-975, eff. 1-1-05.)

Section 15. The Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois is amended by adding Section 2310-217 as follows:

(20 ILCS 2310/2310-217 new)

Sec. 2310-217. Center for Comprehensive Health Planning.

(a) The Center for Comprehensive Health Planning ("Center") is hereby created to promote the distribution of health care services and improve the healthcare delivery system in Illinois by establishing a statewide Comprehensive Health Plan and ensuring a predictable, transparent, and efficient Certificate of Need process under the Illinois Health Facilities Planning Act. The objectives of the Comprehensive Health Plan include: to assess existing community resources and determine health care needs; to support safety net services for uninsured and underinsured residents; to promote adequate financing for health care services; and to recognize and respond to changes in community health care needs, including public health emergencies and natural disasters. The Center shall comprehensively assess health and mental health services; assess health needs with a special focus on the

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identification of health disparities; identify State-level and regional needs; and make findings that identify the impact of market forces on the access to high quality services for uninsured and underinsured residents. The Center shall conduct a biennial comprehensive assessment of health resources and service needs, including, but not limited to, facilities, clinical services, and workforce; conduct needs assessments using key indicators of population health status and determinations of potential benefits that could occur with certain changes in the health care delivery system; collect and analyze relevant, objective, and accurate data, including health care utilization data; identify issues related to health care financing such as revenue streams, federal opportunities, better utilization of existing resources, development of resources, and incentives for new resource development; evaluate findings by the needs assessments; and annually report to the General Assembly and the public.

The Illinois Department of Public Health shall establish a Center for Comprehensive Health Planning to develop a long-range Comprehensive Health Plan, which Plan shall guide the development of clinical services, facilities, and workforce that meet the health and mental health care needs of this State.

(b) Center for Comprehensive Health Planning.

(1) Responsibilities and duties of the Center include:

(A) providing technical assistance to the Health

Facilities and Services Review Board to permit that Board to apply relevant components of the Comprehensive Health Plan in its deliberations;

(B) attempting to identify unmet health needs and assist in any inter-agency State planning for health resource development;

(C) considering health plans and other related publications that have been developed in Illinois and nationally;

(D) establishing priorities and recommend methods for meeting identified health service, facilities, and workforce needs. Plan recommendations shall be short-term, mid-term, and long-range;

(E) conducting an analysis regarding the availability of long-term care resources throughout the State, using data and plans developed under the Illinois Older Adult Services Act, to adjust existing bed need criteria and standards under the Health Facilities Planning Act for changes in utilization of institutional and non-institutional care options, with special consideration of the availability of the least-restrictive options in accordance with the needs and preferences of persons requiring long-term care; and

(F) considering and recognizing health resource development projects or information on methods by

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which a community may receive benefit, that are consistent with health resource needs identified through the comprehensive health planning process.

(2) A Comprehensive Health Planner shall be appointed by the Governor, with the advice and consent of the Senate, to supervise the Center and its staff for a paid 3-year term, subject to review and re-approval every 3 years. The Planner shall receive an annual salary of \$120,000, or an amount set by the Compensation Review Board, whichever is greater. The Planner shall prepare a budget for review and approval by the Illinois General Assembly, which shall become part of the annual report available on the Department website.

(c) Comprehensive Health Plan.

(1) The Plan shall be developed with a 5 to 10 year range, and updated every 2 years, or annually, if needed.

(2) Components of the Plan shall include:

(A) an inventory to map the State for growth, population shifts, and utilization of available healthcare resources, using both State-level and regionally defined areas;

(B) an evaluation of health service needs, addressing gaps in service, over-supply, and continuity of care, including an assessment of existing safety net services;

(C) an inventory of health care facility

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infrastructure, including regulated facilities and services, and unregulated facilities and services, as determined by the Center;

(D) recommendations on ensuring access to care, especially for safety net services, including rural and medically underserved communities; and

(E) an integration between health planning for clinical services, facilities and workforce under the Illinois Health Facilities Planning Act and other health planning laws and activities of the State.

(3) Components of the Plan may include recommendations that will be integrated into any relevant certificate of need review criteria, standards, and procedures.

(d) Within 60 days of receiving the Comprehensive Health Plan, the State Board of Health shall review and comment upon the Plan and any policy change recommendations. The first Plan shall be submitted to the State Board of Health within one year after hiring the Comprehensive Health Planner. The Plan shall be submitted to the General Assembly by the following March 1. The Center and State Board shall hold public hearings on the Plan and its updates. The Center shall permit the public to request the Plan to be updated more frequently to address emerging population and demographic trends.

(e) Current comprehensive health planning data and information about Center funding shall be available to the public on the Department website.

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(f) The Department shall submit to a performance audit of the Center by the Auditor General in order to assess whether progress is being made to develop a Comprehensive Health Plan and whether resources are sufficient to meet the goals of the Center for Comprehensive Health Planning.

Section 20. The Illinois Health Facilities Planning Act is amended by changing Sections 2, 3, 4, 4.2, 5, 6, 8.5, 12, 12.2, 12.3, 15.1, 19.5, and 19.6 and by adding Section 5.4 as follows:

(20 ILCS 3960/2) (from Ch. 111 1/2, par. 1152)

(Section scheduled to be repealed on July 1, 2009)

Sec. 2. Purpose of the Act. ~~The purpose of this Act is to establish a procedure designed to reverse the trends of increasing costs of health care resulting from unnecessary construction or modification of health care facilities. Such procedure shall represent an attempt by the State of Illinois to improve the financial ability of the public to obtain necessary health services, and to establish an orderly and comprehensive health care delivery system which will guarantee the availability of quality health care to the general public.~~ This Act shall establish a procedure (1) which requires a person establishing, constructing or modifying a health care facility, as herein defined, to have the qualifications, background, character and financial resources to adequately

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provide a proper service for the community; (2) that promotes, through the process of comprehensive health planning ~~recognized local and areawide health facilities planning~~, the orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of such facilities; (3) that promotes planning for and development of health care facilities needed for comprehensive health care especially in areas where the health planning process has identified unmet needs; and (4) that carries out these purposes in coordination with the Center for Comprehensive Health Planning Agency and the Comprehensive Health Plan ~~comprehensive State health plan~~ developed by that Center Agency.

The changes made to this Act by this amendatory Act of the 96th General Assembly are intended to accomplish the following objectives: to improve the financial ability of the public to obtain necessary health services; to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and indigent; to assure that the reduction and closure of health care services or facilities is performed in an orderly and timely manner, and that these actions are deemed to be in the best interests of the public; and to assess the financial burden to patients caused by

unnecessary health care construction and modification. The Health Facilities and Services Review Board must apply the findings from the Comprehensive Health Plan to update review standards and criteria, as well as better identify needs and evaluate applications, and establish mechanisms to support adequate financing of the health care delivery system in Illinois, for the development and preservation of safety net services. The Board must provide written and consistent decisions that are based on the findings from the Comprehensive Health Plan, as well as other issue or subject specific plans, recommended by the Center for Comprehensive Health Planning. Policies and procedures must include criteria and standards for plan variations and deviations that must be updated. Evidence-based assessments, projections and decisions will be applied regarding capacity, quality, value and equity in the delivery of health care services in Illinois. The integrity of the Certificate of Need process is ensured through revised ethics and communications procedures. Cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process.

(Source: P.A. 80-941.)

(20 ILCS 3960/3) (from Ch. 111 1/2, par. 1153)

(Section scheduled to be repealed on July 1, 2009)

Sec. 3. Definitions. As used in this Act:

"Health care facilities" means and includes the following