

Constantino, Mike

From: Ourth, Joe [JOurth@arnstein.com]
Sent: Monday, March 18, 2013 8:36 AM
To: Avery, Courtney; Constantino, Mike; Urso, Frank; Kendrick, Alexis
Cc: McAfee, Thomas; Dominica M Tallarico
Subject: RE: Response to State Agency Report - Project 12-081 Vista Medical Center - Lindenhurst [IWOV-ACTIVE.FID438765]
Attachments: image001.jpg; image002.jpg; 0919_001.pdf

Please accept the attached letter as our response to the State Agency Report for Project No. 12-081.

Joe Ourth

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March 18, 2013

Via Electronic Mail

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

Re: Response to State Agency Report
Vista Medical Center - Lindenhurst CON Application (the "Application")
Project No. 12-081 (the "Project")

Dear Ms. Avery:

We appreciate the opportunity to review and respond to the State Agency Report for the Lindenhurst Project referenced above. We concur with many of the findings in the SAR that the Project does not meet various review criteria. There are additional facts, however, that we believe should also be provided to the Board in its consideration of this Project.

Almost immediately prior to the release of the March SAR, Community Health Systems (the "Applicant" or "CHS") filed voluminous information in response to public comment concerns. Similarly, immediately prior to release of the February SAR, CHS also filed voluminous information in response to the requirement for projected referrals and physician referral letters. In both cases these late filings gave little opportunity for the staff and the public to review and comment on this new material. In both instances we believe CHS's late filings contained troubling information that warrants further review and analysis.

In its most recent filing, CHS submitted nearly 80 pages of material in reference to the Board's request to address "serious concerns" about the Applicants' compliance with Board regulations at its Waukegan hospitals. Interestingly, although it claimed to "welcome the opportunity to set the record straight," CHS requested that important parts of this information be withheld from the public record. The SAR acknowledges that the information was received and provided to the Board, but that the SAR did not analyze this information. We believe analysis of

this information is very important to the Board and would confirm that the Lindenhurst Project should be denied.

1. Vista's Proposed Transfer of Phantom Beds out of Waukegan should not be Allowed.

CHS's primary argument for this Project is that Vista East will close 108 beds (without a permit), essentially transferring these licensed beds from Waukegan to Vista Lindenhurst. CHS acknowledges that "HFSRB rules do not allow hospital beds to be relocated or transferred," but nevertheless persists in its argument. Public comment has pointed out that the beds appear to be Phantom Beds that Vista East should have discontinued long ago. We had asked that the Board investigate whether Vista had violated Board rules in not previously discontinuing or surrendering these beds. (Vista has 336 authorized beds but only 209 beds set up and only an average daily census of 131). Vista's response was that compliance problems at Vista East are "irrelevant" because it is a completely different hospital. Their second response was to submit documents attempting to substantiate compliance; we will explain below why this attempt has not succeeded.

a. Any Vista Phantom Bed Non-Compliance is Relevant to Lindenhurst. Vista's March 1 response claims that any Phantom Bed non-compliance at Vista East should not be considered at Lindenhurst because they are separate hospitals. Lindenhurst nevertheless wants to take advantage of an attempt to transfer Vista East's phantom beds. If Vista East's phantom beds are "irrelevant" Vista Lindenhurst should be precluded from arguing for the transfer of any beds. Further, if they are truly separate, why would one hospital give up beds for another?

b. Need for Investigation of Bed Reporting Continues. In a detailed letter dated January 15, 2013, we had pointed out what we believe was incorrect reporting of phantom beds at Vista East and asked that the Board investigate the legitimacy of these beds. CHS's March 1 submission provides no evidence to dismiss the issue we addressed. Their letter openly admits that it has held beds in order to trade them for Lindenhurst. We had pointed out that Vista East reported to the Board that it had 76 "Non-CON Transitional Beds." CHS's response was that beds can be put in use within 48-hours. Even if correct, this answer is non-responsive to the issue of Transitional Beds. The Board's rules define what constitutes a Transitional Bed and Vista East has provided no documentation to the Board that it is complying with the reporting for transitional beds. Review Board Compliance Staff should continue their investigation of this issue and the Board should not consider this Application until it knows the results of this investigation.

2. Vista East Discontinuation of Pediatrics Category of Service Without Board Approval.

In our January 15, 2013 letter we had similarly noted that Vista's AHQs show it has a 35-bed Pediatrics unit at Vista East. These same AHQs report, however, that there are no beds set up and staffed, no patients and that there has not been a single admission into the Pediatric unit in over 5 years. We asked that the Board further investigate whether Vista East had discontinued its Pediatric Category of Service. If so, those 35 beds should have been removed from the inventory long ago.

In response to the Board's inquiry, Vista East responded that they had incorrectly reported to the Board, that they did in fact have admissions for patients aged 0-14 years, and that they sought to amend their AHQ. Again, this new information provides no evidence that Vista East did not discontinue its Pediatrics Category of Service without a permit.

There is no question that general hospitals can treat patients age 0-14 years in licensed medical surgical beds, but that is not the question. When, however, a hospital seeks to establish a Pediatrics Category of Service, it must obtain a permit from the Review Board (see Project No. 10-082). Similarly, when a hospital seeks to discontinue a pediatrics category of service, it must seek Board approval for discontinuation (see Project No. 12-100). Board rules define Pediatrics as a category of service and distinguish between "Designated Pediatric Beds" not part of a dedicated unit, and "Distinct Pediatric Unit" See Board rules §1100.220. It is the understanding within the hospital community that Vista no longer maintains a "Distinct Pediatric Unit". The Board should further investigate this apparent non-compliance and if true, take appropriate action including removing these 35 pediatric beds from inventory.

3. The Lindenhurst Application Must Include Additional Co-Applicants.

We have repeatedly raised the issue that the Vista East corporate entity must be a co-applicant. Our January 10 letter sets this out in detail. Although this seems a technical point, CHS's arguments show why it is important. CHS has sought to claim all of the benefit of an affiliation with Vista East – such as "satellite hospital", shared services at Lindenhurst, charity care and the transfer of beds from one hospital to another. Vista now argues that Vista East compliance problems are irrelevant to Lindenhurst because they are separate hospitals. CHS's March 1 letter also argues that Lindenhurst and Vista East have different corporate parents. In fact, the parent of both is CHS. We again encourage the Board to investigate further so that all necessary applicants be included in the Application.

4. Lake County Board Chairman Comment.

The SAR contains excerpts from public comments. One of those statements included comments from the former Chairman of the Lake County Board in his personal capacity. We believe it is important for the SAR to now reflect the comments of Mr.

Aaron Lawlor, the current Lake County Board Chairman. His letter is excerpted below and attached in part.

Dear Mr. Galassie:

I appreciate you and colleague's diligent work on the Illinois Health Facilities and Services Review Board. I truly value the board's service and commitment to health care.

As you know, the Lake County Board supported Vista Medical Center's previous applications for expansion. This fall you also heard testimony from some Lake County Board members. I respect their individual opinions and share their concern for improving access to quality health care in all areas of the county. However, it is important for you to know that the County Board has not taken a position on Project #12-081.

I urge the Illinois Health Facilities and Services Review to take a data-driven and analytical approach in evaluating the proposal, current health care market, number of available hospital beds and how recently constructed health care facilities like freestanding emergency centers impact the overall health care system.

I ask that the Board clearly evaluate market conditions, ensure that commitments that have been made are kept and render a decision that is in the best interest of the entire county's health care system.

5. Physician Referral Letters.

The SAR mentions that the Applicants filed letters from physicians, and correctly notes that these letters do not meet the requirements for physician referral letters because the letters do not include historical data. Because the letters were submitted very late in the review period process, there was little opportunity for the SAR to analyze the volume implications. A January 28, 2013 letter submitted to the Board analyzed this issue in great detail. We would encourage the Board to review that analysis, but can briefly summarize the impact as follows:

- a. Physician Letters show only about 1/3 of the referrals necessary for the Lindenhurst hospital to achieve target utilization.
- b. With only one obstetrician providing a referral letter, these referrals justify only 1 of the 20 beds requested.

- c. Moving all Vista FEC patients to Lindenhurst will cut Vista East average daily census by approximately 12%, from 96 to only 84.
 - d. Referrals to Lindenhurst merely shift patients from existing hospitals.
6. Vista's Submission Appears To Prove It Did Not Comply With Its \$66,000,000 Capital Commitment.

Lake County United wrote to the Board on January 15, 2013 requesting that the Board look into whether Vista had complied with its commitment to invest the amounts it had promised in Waukegan within five years after CHS acquired the Waukegan Hospitals. Although CHS originally promised a \$66 million commitment as part of its acquisition, it subsequently promised the community and the Review Board that it would make \$70 million in capital improves to its Waukegan facilities.

A review of CHS's response appears to show that Lake County United's concerns have merit. CHS reported that as part of its acquisition of Vista in 2006 it committed to expend \$66 Million over 5 years for capital improvements. A brief review of the information provided appears to provide documentation that Vista did not comply with this commitment:

- a. The commitment was to make certain expenditures over a 5-year period. The document lists 7 years of expenditures and is clear that the commitment was not satisfied in the 5-years as required.
- b. The spread sheet appears to count \$2,000,000 as spent when it has not yet been spent.
- c. Many of the items listed as capital expenditures are not "capital expenditures" as defined by the Review Board's rules, such as operating leases.
- d. Over \$4,000,000 of the expenditures listed are for Lindenhurst capital expenditures. Even if these expenses meet Vista's self-defined capital expenditures, the Board should review whether these expenditures complies with the commitments made to the Waukegan Community and to the Board in CHS's application.

The Board should continue to work with Lake County United and the community generally to ensure that all commitments made by the Applicants for one hospital have been satisfied before approving a new application for a new hospital.

CHS's argument that this issue relates only to Vista East and not Lindenhurst is unusual at most. CHS is an applicant on both projects. CHS is the entity

ARNSTEIN & LEHR LLP

Ms. Courtney Avery

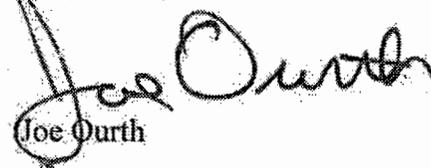
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that made the contractual commitment as part of the earlier change of ownership and CHS is a co-applicant for Lindenhurst.

Conclusion. This Project was delayed from the February Board meeting out of a request for the Applicant to address "serious concerns." These concerns have not been adequately addressed by the Applicant. The Applicants potential non-compliance with the Board's rules is very relevant to the consideration of the Vista-Lindenhurst Project. It is hard to imagine a project that more flagrantly defies the purpose of the Review Board. This project defies Board rules on calculated bed need, seeks to transfer beds from an underserved location to thriving suburban location, takes utilization away from existing hospitals that are not meeting board utilization targets and threatens the safety net delivery services in the areas. This Project fails to meet important Board rules and purposes and should be denied.

Very truly yours,



Joe Ourth

JRO:eka

Enclosures

cc: Frank Urso

Mike Constantino

Alexis Kendrick

Tom McAfee, President Northwestern Lake Forest Hospital

Dominica Tallarico, President Advocate Condell Medical Center

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Vista Health System
CHS Capital Investment

Major Capital Projects

Cath Lab - rebuild and renovation	(CER: 186-09-503)	- completed April 2010; total spend:	\$1,045,695.58
GI Suite - addition of the GI Suite	(CER: 186-09-040 & 186-10-507)	- completed September 2010; total spend:	\$1,331,489.36
ICU - renovation and expansion	(CER: 186-07-201 & 186-08-800)	- completed November 2009; total spend:	\$7,261,426.92
Life Safety	(CER: 186-09-504)	- completed February 2011; total spend:	1,824,335.35
Lindenhurst ED	(CER 186-07-200 & 186-10-508)	- completed April 2011; total spend:	3,349,621.23
Lindenhurst MOB/Oncology Center	(CER: 186-12-506)	- completed November 2012; total spend to date:	5807,462.65
Maternal Child Renovation to a brand new boutique unit	(CER: 186-10-515)	- In process December 2012; total spend to date:	\$8,264,400.85
PCU Unit - renovation and expansion	(CER: 186-10-513)	- Additional capital requirements	\$2,000,000.00
Same Day Surgery renovation	186-10-503 & 186-10-514	- completed June 2011; total spend:	\$4,907,819.24
		- completed October 2011; total spend:	\$2,692,407.17
		Total Major Capital Projects	\$33,484,658.35

Routine capital including Medical Equipment, Software and Hardware, Systems, Leasehold Improvement, Physician Practice acquisitions and build outs

Year ended December 31, 2012	\$ 1,726,953
Year ended December 31, 2011	\$ 6,508,573
Year ended December 31, 2010	\$ 4,675,589
Year ended December 31, 2009	\$ 3,715,411
Year ended December 31, 2008	\$ 3,737,526
Year ended December 31, 2007	\$ 3,261,329
Year ended December 31, 2006	\$ 1,714,641
Total routine capital as described above	\$ 25,340,022

7 years

Operating Leases	\$ 8,715,000
Total Capital Investment	\$67,539,680.06



March 6, 2013

Aaron Lawlor
County Board Chair

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MAR 06 2013

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

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

Re: Letter of Concern, Project #12-081, Vista Medical Center – Lindenhurst

Dear Mr. Galassie:

I appreciate you and colleague's diligent work on the Illinois Health Facilities and Services Review Board. I truly value the board's service and commitment to health care.

As you know, the Lake County Board supported Vista Medical Center's previous applications for expansion. This fall you also heard testimony from some Lake County Board members. I respect their individual opinions and share their concern for improving access to quality health care in all areas of the county. However, it is important for you to know that the County Board has not taken a position on Project #12-081.

I urge the Illinois Health Facilities and Services Review to take a data-driven and analytical approach in evaluating the proposal, current health care market, number of available hospital beds and how recently constructed health care facilities like freestanding emergency centers impact the overall health care system.

It is also important that we keep our commitment our six existing full-service hospitals in the county and, more importantly, that they keep their commitment to us. Lake County has a diverse population with wide-ranging needs and an increased demand for charitable care. Each hospital, including Vista, plays a critical role in our county by maintaining quality facilities, providing services that meet residents' health care needs and investing in our communities. We must measure all of our hospitals' performance against the commitments that they have made to us.

Finally, the existing area hospitals are some of the biggest employers and economic engines in Lake County. These strong community partners supply thousands of primary and secondary jobs, not to mention their significant economic impact on the surrounding areas and generous contributions to the fabric of life here. We need to keep these major employers strong for our communities.

I ask that the Board clearly evaluate market conditions, ensure that commitments that have been made are kept and render a decision that is in the best interest of the entire county's health care system.

Sincerely,


Aaron Lawlor
Lake County Board Chairman