

**MINUTES**  
**STATE HEALTH FACILITIES COUNCIL**  
**DECEMBER 9, 2004**  
**LUCAS STATE OFFICE BUILDING**  
**321 EAST 12<sup>TH</sup> STREET, FIFTH FLOOR, ROOMS 517-518**  
**DES MOINES, IOWA**

**I. 8:30 AM ROLL CALL**

**MEMBERS PRESENT:** Ed Nichols, Chairperson, Gary Butz, Cynthia Beauman, and Sid Scott.

**STAFF PRESENT:** Barb Nervig; Heather Adams, Counsel for the State.

**II. PROJECT REVIEW**

1. [On With Life at Ankeny, Ankeny, Polk County](#): Add 3 Nursing Facility Beds – \$544,970.

Staff report by Barb Nervig. The applicant was represented by Suzie Berregaard, Gerry Fehn, John Nuam and Cyn Eward. The applicant answered questions posed by the Council.

No affected parties appeared at the hearing.

A motion by Scott, seconded by Butz, to Grant a Certificate of Need carried 4-0.

2. [Mercy Medical Center—Des Moines, Des Moines, Polk County](#): Acquire Cyberknife (Stereotactic Radiosurgery System) -- \$4.7 M.

Staff report by Barb Nervig. The applicant was represented by Joe LeValley, Jacke Frost-Kummen, Richard Deming, M.D., Tom Carlstrom, M.D. and Mike Starmer (of Accuray). The applicant made a presentation and answered questions posed by the Council.

David Stark, representing Iowa Methodist Medical Center, an affected party, answered questions posed by the Council.

A motion by Butz, seconded by Scott, to Grant a Certificate of Need carried 3-1. Beauman voted no.

**III. EXTENSIONS OF PREVIOUSLY APPROVED PROJECTS:**

1. The Club at Cottage Grove Place, Cedar Rapids, Linn County: Add 36 Nursing Facility Beds - \$4,775,000.

This project is complete, no extension is necessary.

2. [ManorCare Health Services—WDM, West Des Moines, Polk](#): Build 99-Bed Nursing Facility -- \$8,927,193.

Staff report by Barb Nervig. Robert Baudino, Jr. represented the applicant. A motion by Scott, seconded by Beuman to Grant a one year extension carried 4-0.

#### **IV. DETERMINATION OF NON-REVIEWABILITY**

1. Genesis Medical Center, Davenport, Scott County: Extend Hospital-based Outpatient Surgery to an Off-campus Site – Less than \$1.5M

Staff report by Barb Nervig. A motion by Beuman, seconded by Scott to support the Department's determination carried 4-0

2. Advanced Surgery Center, Cedar Rapids, Linn County: Change Ownership and Designation of Type of Institutional Health Facility of Existing Outpatient Surgery Site with no Change in Services Offered. -- \$81,000.

Staff report by Barb Nervig. Due to a change in circumstances that occurred in the last 48 hours, the Department has now determined this project is reviewable. The Council needs not to take action today. The project will appear on the next agenda for review.

3. Mercy Medical Center—Dubuque, Dubuque, Dubuque County: Establish the Dyersville campus as a separately licensed hospital at no cost.

Staff report by Barb Nervig. A motion by Scott, seconded by Beuman to support the Department's determination carried 4-0

#### **V. REVIEW AND APPROVE ADMINISTRATIVE RULES FOR NOTICE OF INTENDED ACTION, IAC641—202**

Robert Baudino expressed opposition to the proposed rule. Shannon Strickler with the Iowa Hospital Association explained why the IHA requested this action. She spoke of hospitals on the cusp who would like to achieve Critical Access Hospital (CAH) status for the improved reimbursement, but want to be able to add beds back without the burden of CON if things with the community or CAH program should change. Some Council members also expressed concern about these proposed rules, but ultimately agreed to proceed with Notice of Intended Action to allow for public comment on the issue.

A motion by Scott, seconded by Butz recommending that the Department proceed with the rulemaking carried 4-0.

#### **VI. APPROVE MINUTES OF PREVIOUS MEETINGS (SEPTEMBER 23 & NOVEMBER 1, 2004)**

A motion by Beuman, seconded by Scott to approve the minutes as written was passed by voice vote.

The next meeting of the Council will be Wednesday, January 19 at 9:00 a.m.

The meeting was adjourned at 11:50 a.m.

**IOWA DEPARTMENT OF PUBLIC HEALTH  
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE APPLICATION OF )  
 )  
ON WITH LIFE AT ANKENY )  
 )  
ANKENY, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for hearing on Thursday, December 9, 2004.

The application proposes the addition of three nursing facility beds at an estimated cost of \$544,970.

On With Life at Ankeny applied through the Iowa Department of Public Health for a Certificate of Need.

The record includes the application prepared by the project sponsor and written analysis prepared by Iowa Department of Public Health staff and all the testimony and exhibits presented at the hearing. Representing the applicant were Suzie Berregaard, Gerry Fehn, John Nuam and Cyn Eward. Barb Nervig of the Iowa Department of Public Health summarized the project in relation to review criteria. The applicant made a presentation and answered questions.

No affected parties appeared at the hearing.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 4-0 to grant a Certificate of Need. As a basis for their decision the Council, considering all the criteria set forth pursuant to Iowa Code Section 135.64 (1 and 2) (2003) made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. On With Life at Ankeny is a post-acute inpatient brain injury and neurological rehabilitation program. The facility is licensed as a skilled nursing facility. The proposed project is to increase the licensed beds from 23 to 26 by adding a five-room addition on to the east wing of the current nursing unit.
2. The project will increase the number of private rooms by seven. The facility currently has 15 private rooms and four double rooms. After the construction of five private rooms, the configuration will be 19 private rooms, 3 private suites and 2 double rooms.
3. On With Life is open to meeting the needs of all individuals with brain injuries. The existing beds are all Medicaid certified. The proposed beds will also be certified to accept Medicaid.

4. Over the past five years, Medicaid has covered approximately 43% of the persons served at On With Life and 18% have been covered by Medicare.
5. The applicant states that 95% (351 of 370) of their referrals the past three years were from within Iowa. Prior to On With Life at Ankeny, Iowans with brain injury had to leave the State to receive the intense post-acute therapy they needed.
6. The applicant states that there are no post-acute facilities in Iowa offering the same intensity of brain injury and neurological rehabilitation services or expertise that On With Life at Ankeny provides.
7. A person at On With Life receives an average of three or more hours of therapy and seven hours of skilled rehabilitation nursing a day. The main difference between On With Life and acute rehabilitation is that the person at On With Life does not require daily visits by a physician and must be medically stable.
8. In the last three fiscal years, On With Life has received 370 referrals for placement at the Ankeny facility with 269 of these referrals meeting admission criteria. The difference between the number of referrals who met admission criteria and the number actually admitted was 73. Of that number, 36 were not admitted because no bed was available. The percentage who met admission criteria, but were not admitted due to bed unavailability has increased from 23% in 2002 to 36% in 2003 and 72% in 2004.
9. The applicant states they have seen a steady increase in the acuity levels of individuals being referred and a decline in the length of time these individuals are actually hospitalized. It is not unusual for an individual to be referred from the hospital to On With Life within two to four weeks of their initial injury.
10. The applicant states that from fiscal years 2001 to 2003, 63% of persons served in the regular rehabilitation program and 43% of persons served in the program for individuals in a coma/minimally conscious state were discharged home. The average length of stay for regular rehabilitation is 90 days and for the coma program the average length of stay is 180 days.
11. The applicant states that the proposal to increase the number of licensed beds by three and the introduction of the Cooperative Rehabilitation model will help the program lower its per bed operating costs.
12. The applicant's current private per diem rates will not change as a result of the proposal. The applicant has several negotiated third part payer contracts that offer a discount off the current rates of \$850 for regular rehabilitation and \$901 for coma/minimally conscious rehabilitation.
13. Recognizing that it is seldom the case that On With Life actually collects 100% of its published or billed per diems, the per diem used to forecast revenues for the three fiscal years following the completion of the expansion is based on a historical average of actual per diems received.

14. On With Life works with many providers in Iowa and surrounding states. The program has a strong referral relationship with many in state and out-of-state providers.
15. In the last three years, On With Life has had an average occupancy rate of 89%.
16. The bed need formula calculation for Polk County is 2,647 nursing beds. There are currently 2,219 licensed beds and another 149 beds approved but not licensed yet. This leaves a need for an additional 279 beds in Polk County. The services offered by On With Life are unique. This facility does not serve the typical nursing home resident nor does it serve residents long term.
17. Affected party notices were sent to 61 nursing facilities in Polk and contiguous counties. One facility sent in a statement of opposition as directed by its corporate office.
18. The applicant estimates that the proposed bed increase will require the program to add 2.2 FTEs. The number of Certified Nursing Assistant FTEs will increase by 0.7, the number of speech-language pathologist FTEs will increase by 1.0 and the number of physical therapy assistant FTEs will increase by 0.5.
19. The applicant states they have a low employee turnover rate and a high rate of employee satisfaction. The applicant recognizes that the biggest recruiting challenge will be to find a full-time speech-language pathologist.
20. The applicant states they have approximately \$45,000 cash on hand for the proposed project. It is their intention to borrow \$500,000. The application includes a letter from Dougherty & Company regarding financing recently completed for the applicant. The City of Ankeny sold two series of tax-exempt bonds on behalf of On With Life. The proceeds from the Series A bonds were used to refinance a 1994 tax-exempt bond issue and the proceeds from the Series B bonds will be used to finance various improvements to the Ankeny campus, including the proposed bed addition.
21. The proposal calls for the construction of 2,463 square feet of new space, to include five one-bed rooms and a living/dining room. The total project cost is \$544,970, which includes \$37,000 of site work; \$25,000 for new sidewalks and landscaping; \$29,000 for movable equipment; \$25,970 in financing costs and \$428,000 in facility costs. The applicant anticipates that the project will help lower the per-bed operating costs.

#### CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considers the eighteen criteria listed in Iowa Code § 135.64(1)(a)-(r). In addition, the legislature has provided that the Council may grant a certificate of need only if it finds the following four factors exist:

- a. Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;

- b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
- c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
- d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

1. The Council concludes that less costly, more efficient or more appropriate alternatives to the proposed health service are not available and the development of such alternatives is not practicable. The Council concludes that the construction of five additional rooms that leads to an increase in the number of private rooms by seven while increasing the licensed beds by only three, is an efficient approach to address the growing number of patients that are being denied admission. In addition, the Council concludes that there are no other facilities in Iowa providing the type of intensive rehabilitation care offered by the applicant, and that there are therefore no other existing appropriate alternatives in this state. Iowa Code Sections 135.64(1) and 135.64(2)a.

2. The Council concludes that existing facilities providing health services similar to those proposed will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council concludes that there are no other facilities in Iowa that provide a similar service to the population served by the applicant and hence that other existing facilities will not be negatively impacted by this project. The Council concludes that the occupancy rate at On With Life remains consistently high and the number of individuals turned away because of a lack of bed is on the rise. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project involves the construction of 2,463 square feet which includes 5 new patient rooms. The Council concludes that sharing arrangements are not practicable due to the nature of the services provided and the specialized patients that are admitted. Iowa Code Sections 135.64(1) and 135.4(2)c.

4. The Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed changed health service, in the absence of that proposed service. The Council concludes that at least 36 patients in the past 3 years experienced problems in obtaining appropriate care as there was not a bed available at On With Life. The Council further notes that the percentage who met admission criteria, but were not admitted due to bed unavailability has increased from 23% in 2002 to 36% in 2003 and 72% in 2004. The Council concludes that some patients are going to traditional nursing homes and not receiving the intense rehabilitation service available at On With Life. Iowa Code Sections 135.64(1) and 135.64(2)d.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2003), led the Council to find that a Certificate of Need should be awarded.

The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2003).

It is required in accordance with Iowa Administrative Code 641- 202.12 that a progress report shall be submitted to the Iowa Department of Public Health six (6) months after approval. This report shall fully identify the project in descriptive terms. The report shall also reflect an amended project schedule if necessary.

The Certificate of Need is valid for a twelve (12) month period from the date of these findings. This is subject to the meeting of all requirements of the Iowa Department of Public Health. Requests for extension of a Certificate of Need must be filed in writing to the Iowa Department of Public Health from the applicant no later than forty-five (45) days prior to the expiration of the Certificate. These requests shall fully identify the project and indicate the current status of the project in descriptive terms.

**No changes that vary from or alter the terms of the approved application including a change in the approved dollar cost shall be made unless requested in writing to the department and approved. Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73 (Iowa Administrative Code [641]202.14).**

Dated this \_\_\_\_\_ day of December 2004

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Edward C. Nichols, Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

cc: State Health Facilities Council  
Iowa Department of Inspections and Appeals:  
Health Facilities Division



3. The applicant has affiliation relationships with 13 rural hospitals, seven of which are in areas designated as medically underserved. The applicant coordinates with these hospitals and rural physicians to assure tertiary and specialty care is coordinated and accessible.

4. The applicant is projecting the treatment of 150 patients the first year and increasing to 173 patients by the third year. The applicant states that the need for the project can be described in two ways: improvement in technology, patient care and outcomes and the increase in need for cancer care.

5. There are three existing stereotactic radiosurgery systems in Iowa. Genesis Medical Center in Davenport has an Elektra Instrument Gamma Knife system, the UIHC has a Precision 2000 (also called the Linac Scalpel system that involves equipment add-ons to a standard linear accelerator) and Iowa Methodist Medical Center also has an upgraded linear accelerator. Each of these systems has advantages and disadvantages in comparison to other existing SRS systems and the Cyberknife. The disadvantages of the Gamma Knife compared to the Cyberknife are that the Gamma Knife requires placement of a fixed head frame to immobilize the patient and that the Gamma Knife design limits its use to treatment of tumors in the brain. The modified linear accelerators can be used to treat conditions outside the brain, but they also generally require that a fixed frame be attached to the patient's head when being used to treat brain tumors. The Cyberknife system does not require that the patient be immobilized with a fixed head frame, rather a plastic formative device is used. In addition, the Cyberknife can treat tumors outside the head with more accuracy than the modified linear accelerator. The Cyberknife does require that fiducial seed markers be placed inside tumors outside the head, which requires performance of a minimally invasive procedure.

6. The Cyberknife system located closest to the Des Moines area is at St. Joseph's Hospital in St. Paul, Minnesota. The FDA approved the Cyberknife system in 2001 and it is now utilized at 70 sites world-wide and at 22 sites in the United States.

7. Both the University of Iowa Hospitals and Iowa Methodist Medical Center chose to provide stereotactic radiosurgery by upgrading existing linear accelerators. This is a less costly alternative to the Cyberknife. The applicant stated that due to its existing volumes, it could not modify an existing linear accelerator without seeking approval to add a new accelerator.

8. The applicant states that Cyberknife SRS is used primarily as a substitute for and is more cost-effective than traditional open neurosurgical procedures for treatment of benign and malignant tumors, vascular malformations and other disorders of the brain, although it was stated the equipment is increasingly being used for treating tumors in other parts of the body as well.

9. The applicant states that the average per patient reimbursement for the proposed service will be \$19,000 as opposed to the average reimbursement of \$45,000 for Mercy patients undergoing inpatient neurosurgery.

10. The applicant states that a single Cyberknife system can accommodate approximately 250-300 patients per year and projects that by year three 173 patients will be served by their proposed system. The applicant projects that these patients will come from its existing patient base and from patients who are now seeking this treatment out of state. Iowa Methodist Medical Center

stated at hearing that to project need for its newly adopted equipment it calculated that it would also primarily draw from its existing patient base as well as from patients who are currently receiving these services out of town.

11. The applicant states that one FTE nurse coordinator and one FTE medical physicist will be added to current staffing to support the Cyberknife system. Recruitment for the medical physicist has been completed and a physicist with SRS experience will start on February 1, 2005.

12. The Cyberknife system, if purchased, will cost \$3.3M. The applicant is doing additional analysis regarding the financial benefits of an equipment lease arrangement. There is a \$1.2M cost related to construction of the vault to house the unit. The applicant states they have the total \$4.7M available, cash in hand, for the project.

### CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considers the eighteen criteria listed in Iowa Code § 135.64(1)(a)-(r). In addition, the legislature has provided that the Council may grant a certificate of need only if it finds the following four factors exist:

- a. Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;
- b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
- c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
- d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

1. The Council concludes that less costly, more efficient or more appropriate alternatives to the proposed health service are not available and the development of such alternatives is not practicable. The Council first concludes that the Cyberknife system is less costly than traditional invasive surgeries designed to treat the same tumors and conditions. The Council further concludes that although there are less costly stereotactic radiosurgery systems, the Cyberknife offers an alternative to patients that is not currently available in Iowa. The Council concludes that the Cyberknife can treat extra cranial tumors that other SRS systems either cannot treat at all, or treat less accurately than the Cyberknife. In addition, the Cyberknife may be a more appropriate alternative for some patients with brain tumors who desire the SRS treatment without the rigid, fixed head frames required by other systems. Iowa Code Sections 135.64(1) and 135.64(2)a.

2. The Council concludes that existing facilities providing health services similar to those proposed will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council concludes that the other SRS systems in Iowa will continue to be used in an efficient manner. The Council concludes that the proposed Cyberknife will be used to provide service to the applicant's existing patients who now go out of state for this specific service or are treated through another means, such as surgery, which is more costly. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project involves the construction of a vault to house the equipment. This construction is estimated at \$1.2M and the Council concludes that there is no option for sharing as this is new technology and no adequate space exists to house it. Iowa Code Sections 135.64(1) and 135.4(2)c.

4. The Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed changed health service, in the absence of that proposed service. The Council concludes that patients are now being referred, as often as once a week, out of state to receive treatment with a Cyberknife. These patients obviously cannot currently obtain this type of treatment in Iowa, and in the absence of this project would have to continue to seek care from out-of-state providers and facilities. Iowa Code Sections 135.64(1) and 135.64(2)d.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2003), led the Council to find that a Certificate of Need should be awarded.

The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2003).

It is required in accordance with Iowa Administrative Code 641- 202.12 that a progress report shall be submitted to the Iowa Department of Public Health six (6) months after approval. This report shall fully identify the project in descriptive terms. The report shall also reflect an amended project schedule if necessary.

The Certificate of Need is valid for a twelve (12) month period from the date of these findings. This is subject to the meeting of all requirements of the Iowa Department of Public Health. Requests for extension of a Certificate of Need must be filed in writing to the Iowa Department of Public Health from the applicant no later than forty-five (45) days prior to the expiration of the Certificate. These requests shall fully identify the project and indicate the current status of the project in descriptive terms.

**No changes that vary from or alter the terms of the approved application including a change in the approved dollar cost shall be made unless requested in writing to the department and approved. Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73 (Iowa Administrative Code [641]202.14).**

Dated this \_\_\_\_\_ day of December 2004

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Edward C. Nichols, Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

cc: State Health Facilities Council  
Iowa Department of Inspections and Appeals:  
Health Facilities Division

**IOWA DEPARTMENT OF PUBLIC HEALTH  
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE )  
CERTIFICATE OF NEED EXTENSION FOR )  
MANORCARE HEALTH SERVICES -- WDM )  
WEST DES MOINES, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for hearing on Thursday, December 9, 2004.

The project, the construction of a 99-bed nursing facility, was originally approved on November 6, 2003 at an estimated cost of \$8,927,193.

The Council, after reading the extension request and hearing comments by staff and Bob Baudino, representative of the applicant, voted 4-0 to Grant an Extension of Certificate of Need per Iowa Administrative Code 641—202.13. The decision is based upon the finding that adequate progress is being made.

The extension is valid for one year from the date of these findings.

Dated this \_\_\_\_\_ day of December, 2004

\_\_\_\_\_  
Edward C. Nichols, Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

cc: Health Facilities Council  
Department of Inspections & Appeals, Health Facilities Division

