

MINUTES
STATE HEALTH FACILITIES COUNCIL
OCTOBER 14, 2008
STATE CAPITOL BUILDING
SUPREME COURT ROOM 103, 1ST FLOOR
DES MOINES, IA

I. 8:30 AM ROLL CALL,

MEMBERS PRESENT: Sid Scott, Chairperson, Chuck Follett, Suki Cell and Marc Elcock

MEMBER ABSENT: Karen Hope

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

II. PROJECT REVIEW

1. Wesley Heritage House, Atlantic, Cass County: Convert 15 Residential Care Facility Beds to 15 Nursing Facility Beds- \$50,000.

Staff report by Barb Nervig. The applicant was represented by Ed McIntosh of Dorsey and Whitney, James Robinson, Kim Podhajsky and Patsy Wood. The applicant made a presentation and answered questions posed by the Council.

No affected parties appeared at the hearing.

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

2. Good Neighbor Home, Manchester, Delaware County: Add 20 Nursing Facility Beds for CCDI Unit – \$2,333,000.

Staff report by Barb Nervig. The applicant was represented by Ed McIntosh of Dorsey & Whitney, Leann Miller, Denise Bishop, and Kara Winkowitsch. The applicant made a presentation and answered questions posed by the Council.

No affected parties appeared at the hearing.

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

3. Fox Eye Surgery, LLC, Cedar Rapids, Linn County: Establish an Ambulatory Surgery Center – No cost.

Staff report by Barb Nervig. The applicant was represented by David Adelman of Brick Gentry, Lee Birchansky, M.D., Dr. Richard Noyes, Senator Wally Horn, Representative Kraig Paulsen, Representative Art Staed, Dr. Franklin Dexter and Dr. Clifford Hendricks. The applicant made a presentation and answered questions posed by the Council.

Affected parties speaking in opposition of the proposal were Michael Patterson, Shana Staab, John P. Herring, M.D., Thomas Peffer and Linda Williams of Surgery Center Cedar Rapids; Doug Gross of Brown, Winick, Graves on behalf of St. Luke's and John Sheehan, COO of St.

Luke's Hospital; Tim Charles, CEO of Mercy Medical Center, Penny Glanz, RN and Ed McIntosh of Dorsey & Whitney on behalf of Mercy.

A motion by Follett, seconded by Cell, to Deny a Certificate of Need carried 4-0.

III. EXTENSION OF PREVIOUSLY APPROVED PROJECTS:

1. St. Luke's Jones Regional Medical Center, Anamosa, Jones County: Replace critical access hospital while adding a new service - \$12,853,000.

Staff reviewed the progress on this project. A motion by Elcock, seconded by Follett to Grant a one year extension carried 4-0.

2. Story County Hospital d/b/a Story County Medical Center, Nevada, Story County: Replace acute care portion of existing critical access hospital - \$13,969,972

Staff reviewed the progress on this project. A motion by Elcock, seconded by Follett to Grant a one year extension carried 4-0

3. West Hospital (formerly Michael R. Myers Hospital), West Des Moines, Dallas County: Build a new 95-bed hospital - \$118,500,000.

Staff reviewed the progress on this project. A motion by Cell, seconded by Elcock to Grant a one year extension carried 4-0

IV. REQUESTS FOR DETERMINATIONS OF NON-REVIEWABILITY AND THE DEPARTMENT'S RESPONSES

1. Crawford County Memorial Hospital, Denison, Crawford County: Build replacement hospital.

Staff report by Heather Adams. A motion by Follett, seconded by Elcock to support the Department's determination carried 4-0.

2. Hamilton County Public Hospital, Webster City, Hamilton County: Build replacement hospital.

Staff report by Heather Adams. A motion by Cell, seconded by Follett, to support the Department's determination carried 4-0.

V. APPROVE MINUTES OF PREVIOUS MEETING (JUNE 17, 2008)

A motion by Follett, seconded by Elcock, to approve the minutes of the June 17, 2008 meeting as written passed by voice vote.

4. The average age of all the residents (including the care facility) is 84 years. The average age of the residents in the RCF unit is 93 years.
5. Currently, 31 of the 46 licensed nursing beds are occupied by people who moved over from the independent and assisted living apartments at Heritage.
6. Nine of the fourteen current residents living in the RCF could qualify for NF level of care. Current RCF residents who do not qualify for NF level of care would remain in their existing units and continue to pay the existing RCF rate.
7. The applicant has had to apply for a waiver to its NF license to accommodate its own independent and assisted living residents from the hospital. The applicant maintains a waiting list for admission to the NF unit and estimates it has turned away approximately 80 persons per year.
8. The calculated bed need formula indicates a current underbuild in two of the eight counties surrounding the facility. The eight-county region, as calculated by the bed need formula, is overbuilt by 151 beds. The total overbuild for Cass County is 16 beds. See the following table for additional bed information:

Nursing Facility Beds by County
Number Needed by CON Formula/Number Licensed/Difference

County	Projected 2014 Population Age 65+	# of NF Beds needed per bed need formula	# of licensed NF Beds as of 08/06/08	Difference – Formula vs. Licensed & Approved*
Cass	3,040	212	228	+16
Adair	1,741	121	173	+52
Adams	963	66	54	-12
Audubon	1,359	94	141	+47
Guthrie	2,200	155	155	0
Montgomery	2,176	153	263	+110
Pottawattamie	13,131	760	658	-102
Shelby	2,581	180	220	+40
Totals	27,191	1,741	1,892	+151

*A positive (+) number means the county is overbuilt and a negative (-) indicates an underbuild

9. Over the span of the last three years the total number of beds in the eight-county area has decreased by 152 beds. See the following table for additional detail:

Nursing Facility Beds by County
Difference in Number Between August 2, 2005 and August 6, 2008

County	# of NF Beds (facilities) as of 08/02/05	# of NF Beds (facilities) as of 08/06/08	Difference in # of NF Beds
Cass	261(5)	228(4)	-33
Adair	177(3)	173(3)	-4
Adams	57(1)	54(1)	-3
Audubon	141(2)	141(2)	0

Guthrie	264(4)	155(2)	-109
Montgomery	266(4)	263(4)	-3
Pottawattamie	658(7)	658(7)	0
Shelby	220(3)	220(3)	0
Totals	2044(29)	1892(26)	-152

10. There are currently 1,892 licensed nursing facility beds in the eight counties, 176 beds (9% of all beds) in dedicated CCDI units.

Number of CCDI Beds by County

County	# of CCDI Beds (facilities)
Cass	24(1)
Adair	12(1)
Adams	0
Audubon	39(2)
Guthrie	0
Montgomery	28(2)
Pottawattamie	37(2)
Shelby	36(2)
Totals	176(10)

11. Department staff conducted a phone survey of all NF facilities in the eight-county area. The results indicated Cass County to have the highest occupancy percentage at 93.9%. The results by facility for Cass County and the results by county are in the following tables:

Phone Survey of Nursing Facilities Conducted October 8-10, 2008

By Facility in Cass County	Licensed Beds	Empty Beds	Percent Occupied	# of Medicaid Recipients
HERITAGE HOUSE	46	0	100%	8
ATLANTIC NURSING & REHAB CTR	90	4	95.5%	51
COLONIAL MANOR OF ANITA	50	2	96.0%	22
GRISWOLD CARE CENTER INC	42	8	80.9%	2
CASS COUNTY MEMORIAL HOSP.	10	NA	NA	NA
TOTALS	238	14	93.9%	83

By County	Licensed Beds	Empty Beds	Percent Occupied	# of Medicaid Recipients
ADAIR COUNTY TOTALS	173	43	75.1%	62
ADAMS COUNTY TOTALS	54	16	70.3%	23
AUDUBON COUNTY TOTALS	195	23	88.2%	56
CASS COUNTY TOTALS	238	14	93.9%	83
GUTHRIE COUNTY TOTALS	155	42	72.9%	56
MONTGOMERY COUNTY TOTALS	263	57	78.3%	73
POTTAWATTAMIE COUNTY TOTALS	658	78	88.1%	290
SHELBY COUNTY TOTALS	220	27	87.7%	94
TOTALS	1956	300	84.7%	737

12. The proposed project was identified as part of a first priority in a four year master plan for Heritage House. The other part of the first priority is development of a Medicare skilled unit.

The remaining three priorities focused on independent living, including the development of town homes.

13. The primary service area is the town of Atlantic and Cass County. From January 2005 through mid-July 2007, 85% of the nursing facility's residents were from Atlantic and 905 were from Cass County.
14. The percentage of Medicaid recipients served in the last three years averaged 26%. The applicant projects that number to drop to 17% when the proposed conversion takes place. All of the proposed beds will be certified for Medicaid.

15. The following table displays other levels of service available in the eight-county area

County	RCF Beds (Facilities)	Home Health Agencies	Adult Day Services	Assisted Living Units (Facilities)	ALP/D
Cass	58(2)	2	0	116(3)	0
Adair	0	1	0	40(1)	0
Adams	51(1)	1	0	0	0
Audubon	0	0	0	0	0
Guthrie	41(1)	1	0	53(3)	128(1)
Montgomery	0	3	0	48(1)	0
Pottawattamie	76(2)	1	0	442(6)	26(1)
Shelby	15(1)	1	1	64(1)	0
TOTALS	241(7)	10	1	763(15)	154(2)

Data source: DIA web site

16. There are three additional freestanding nursing facilities in Cass County and the hospital in Atlantic also has nursing care beds. Two of the freestanding facilities, one in Atlantic and one in Griswold (16 miles from Atlantic) submitted letters of opposition to the proposed conversion citing available beds at existing facilities. Both of these facilities have reduced the number of licensed beds at their facility due to low census.
17. A third facility in Exira (Audubon County) located 18 miles from Atlantic, also submitted a letter of opposition.
18. Seven letters of support were submitted: one from a social worker at Jennie Edmundson Hospital in Council Bluffs; one from the chairperson of the Heritage House resident advocate committee; three letters from health care providers (two from physicians and one from a dentist); one from the Mayor of Atlantic and one from the director of the Atlantic Chamber of Commerce
19. The Heritage House Health Center was built in 1997 with three pods; Pod A is licensed as CCDI; Pod B is licensed as NF; and Pod C is licensed primarily as RCF, but also houses two NF beds. The proposed renovations are being made to this 11-year old building and are limited to the nurses' station area. A small nurses' station will be removed to create a more home like dining area.

20. The renovation costs are estimated at \$5,000. New furniture for the rooms will be purchased at an approximate cost of \$45,000.
21. The applicant states that there is available cash on hand to fund the capital need of the conversion.
22. The applicant has existing debt at a face value of \$4,779,000 with a payment period to 2033 and an interest rate of 4.4%. Additional debt is not necessary for the proposed conversion.
23. The proposed conversion will result in a need to increase staff by 0.5 FTE CNA and 1.0 FTE LPN.
24. The rate for nursing (NF) level of care in a private room will increase from \$145.30/day to \$152.27/day and in a semi-private room from \$126.70/day to \$133.04/day.

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 converting existing space is less costly than building new square footage. The Council concludes that with an average age of 93 years, several of the current RCF residents may need health care services soon. The Council further concludes that home and community based services are the real choice of people who previously sought RCF level of care. The Council concludes that the proposal is a more effective alternative to accommodate admissions than continuing to request waivers to admit over the licensed bed capacity. 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. Although the bed need formula indicates an excess of 16 beds in Cass County, the recent phone survey conducted by Department staff indicates high occupancies at existing facilities in the county and the Council gives significant weight to these current high occupancy rates. The Council concludes that the proposal is designed to meet the current and future needs of the individuals residing in the various levels of care at Heritage House and that other facilities will therefore not be adversely affected by the project. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project involves minor renovations to an 11-year old building. 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 takes note of 46 requests for placement in the last three months that the applicant was not able to accommodate in addition to the 213 days last year that a waiver to exceed licensed capacity was obtained in concluding that patients have experienced problems in obtaining nursing level of care. The Council notes the average age of the residents in independent living (84 years) and those in residential care (93 years) in concluding that the problems in obtaining nursing care will continue and that residents who wish to remain in the continuing care retirement community will have difficulty doing so in the absence of the project. 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) (2007), 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 (2007).

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 November 2008

Sidney W. Scott, 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 APPLICATION OF)
)
GOOD NEIGHBOR HOME)
)
MANCHESTER, IOWA)

DECISION

This matter came before the State Health Facilities Council for hearing on Tuesday, October 14, 2008.

The application proposes the addition of 20 nursing facility beds at an estimated cost of \$2,333,000.

Good Neighbor Home 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. Barb Nervig of the Iowa Department of Public Health summarized the project in relation to review criteria. Ed McIntosh of Dorsey & Whitney, Leann Miller, Denise Bishop, and Kara Winkowitsch were present representing the applicant. 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) (2007) made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Good Neighbor Home is part of the Good Neighbor Society which is comprised of two buildings; a 32 unit assisted living complex known as The Meadows and the 113-bed nursing facility.
2. The Good Neighbor Home has a 45-year history of providing nursing and rehabilitative care. The facility was established and built by the Good Neighbor Society, a non-profit corporation comprised of 13 local churches.
3. The Good Neighbor Home established a 16-bed CCDI unit in 1998 which currently has a waiting list ranging from 5 to 15 names. The existing unit is physically limiting to the level

of services now requested so this proposal would construct a 20-bed addition that would serve as the facility's CCDI unit.

4. The existing 16-bed CCDI unit will be utilized for hospice care (four beds) and dementia care for individuals who cannot benefit from a special therapeutic environment; those in the latter stages of dementia.
5. The calculated bed need formula indicates a current overbuild in only two of the seven counties surrounding the facility. The seven-county region, as calculated by the bed need formula, is underbuilt by 689 beds. The total underbuild for Delaware County is 48 beds. See the following table for additional bed information.

**Nursing Facility Beds by County
Number Needed by CON Formula/Number Licensed/Difference**

County	Projected 2014 Population Age 65+	# of NF Beds needed per bed need formula	# of licensed NF Beds as of 08/06/08	Difference – Formula vs. Licensed & Approved*
Delaware	3,071	219	171	-48
Buchanan	3,458	248	137	-111
Clayton	3,397	239	246	+7
Dubuque	15,582	886	899	+13
Fayette	4,150	292	285	-7
Jones	3,464	247	191	-56
Linn	30,606	1,776	1,289	-487
Totals	63,728	3,907	3,218	-689

*A positive (+) number means the county is overbuilt and a negative (-) indicates an underbuild

6. Over the span of the last three years the total number of beds in the seven-county area has decreased by 91 beds. See the following table for additional detail.

**Nursing Facility Beds by County
Difference in Number Between
August 2, 2005 and August 6, 2008**

County	# of NF Beds (facilities) as of 08/02/05	# of NF Beds (facilities) as of 08/06/08	Difference in # of NF Beds
Delaware	180(2)	171(2)	-9
Buchanan	152(2)	137(2)	-15
Clayton	271(4)	246(4)	-25
Dubuque	912(9)	899(9)	-13
Fayette	285(4)	285(4)	0
Jones	209(2)	191(2)	-18
Linn	1,300(14)	1,289(14)	-11
Totals	3,309(37)	3,218(37)	-91

7. There are currently 3,218 licensed nursing facility beds in the seven counties, 202 beds (6% of all beds) in dedicated CCDI units.

Number of CCDI Beds by County

County	# of CCDI Beds (facilities)
Delaware	16(1)
Buchanan	0
Clayton	16(1)
Dubuque	28(2)
Fayette	24(2)
Jones	24(1)
Linn	94(4)
Totals	202(11)

Data Sources: Department of Inspections & Appeals – Summary of Long Term Care Facilities

8. The Good Neighbor Society Board of Directors has developed a 15 year vision which will expand services on campus to allow for aging in place and life-long care giving. The proposed 20 bed addition is Phase I, the remaining eight proposed phases will occur over the next 10 years. The applicant’s intentions are to offer the full realm of services from independent living to skilled care to Hospice care.
9. Based upon results of a community survey, the final recommendations of the Long Term Planning Committee will physically alter current spaces to provide home-like environments, private rooms, and individualized services.
10. The applicant anticipates that most of the residents currently residing in the 16 bed unit will transfer to the new 20 bed addition. Over three fourths of the CCDI residents are from Delaware County. The facility as a whole has occupancies near capacity, approximately 98% in 2006 and 97% in 2007.
11. The percentage of Medicaid recipients served in the last three years averaged 35%. The applicant projects that number to drop to 29.5% in 2010 when the proposed addition opens. All of the proposed beds will be certified for Medicaid.

12. The following table displays other levels of service available in the seven-county area.

County	RCF Beds (Facilities)	Home Health Agencies	Adult Day Services	Assisted Living Units (Facilities)	ALP/D
Delaware	60(1)	1	25(1)	118(2)	
Buchanan		0	20(1)	20(1)	84(1)
Clayton	44(1)	1		43(3)	38(1)
Dubuque	170(3)	2	36(2)	502(4)	144(1)
Fayette	90(1)	2		142(3)	80(1)
Jones	95(2)	2	10(1)	80(2)	
Linn	463(6)	8	115(2)	246(5)	654(7)
TOTALS	922(14)	16	206(7)	1151(20)	1000(11)

13. There is one other nursing facility in Delaware County, Edgewood Convalescent Home in Edgewood, approximately 16 miles from the Good Neighbor Home. Edgewood Convalescent Home is currently licensed for 58 beds after downsizing from 67 beds in 2007. Edgewood reports in a letter of support for this proposal that their occupancy went from 83.6% in 2006 to 89.7% in 2007 and averages 88% in 2008.
14. Additional letters of support for this proposal were received from the CEO of the hospital in Manchester, a physician in Manchester, a physician in Edgewood and the director of the Manchester Area Chamber of Commerce.
15. No letters of opposition to the proposal were received.
16. The applicant indicates that the proposal will result in the need for an additional 9.0 FTEs; 2.0 FTEs registered nurses, 3.0 FTEs licensed practical nurses, 3.0 FTEs certified nursing assistants, and 1.0 FTE in the activities department.
17. Good Neighbor Home recruitment initiatives include “word of mouth” reputation from current employees and family members; reimbursement programs for current employees to continue career ladders and serving as a training site for nursing students.
18. The applicant states their retention rate for FTEs in 82% and that the Good Neighbor Society is one of the top ten employers in Delaware County.
19. The proposal calls for the construction of 14,750 square feet to house a 20 bed CCDI unit connected to the existing 113 bed nursing facility. The land is already owned by the applicant and no site costs were listed.
20. The total facility costs are \$2,140,000 with an additional \$193,000 for movable equipment for a total of \$2,333,000. That is a turn key cost of \$116,650.
21. The applicant states that they have a long history of community support and of financial steadfastness. It is therefore anticipated that all funds necessary for the proposed project will be raised through the applicant’s social ministry organizations or supplied by local lenders through loans or by utilizing the liquid assets of the applicant.
22. The applicant states that the sources of funds include \$500,000 cash on hand, \$500,000 through gifts and contributions and \$1,330,000 to be borrowed. The applicant states a bridge loan from the local bank will be used for purposes of start-up costs.
23. The applicant states they are currently debt free.
24. The average room rate for both NF and CCDI rooms is projected to increase by \$5 a day.

<u>Level of care</u>	<u>Present rate</u>	<u>Proposed rate</u>
NF	\$130.00	\$135.00
CCDI	\$140.00	\$145.00

25. The applicant projects that revenues will exceed expenses the first year the proposed addition opens by \$120,000 increasing to \$130,000 by the third year. No assumptions were included with this forecast.

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 applicant has a strong support base in the community and that the proposal is part of a 15 year plan to better meet the needs of the community as identified by the Board of Directors based on the results of a community survey. 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 finds that the bed need formula indicates a need for additional beds in the area. The Council finds that the applicant has the only CCDI unit in the County. The Council concludes that the only other nursing facility in the county submitted a letter of support for this proposal indicating that facility does not anticipate an adverse impact as a result of this project. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project involves the construction of a 20-bed unit designed to provide therapeutic specialized care for residents with chronic confusing and dementing illnesses. The Council concludes that the facility's existing CCDI unit is not designed to provide therapeutic care that is requested by those in the early and middle stages of the illness. 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 the current 16-bed CCDI unit, the only one in the Delaware County, does not provide the therapeutic environment that benefits patients. The Council further concludes that the constant waiting list of 5-15 individuals for the unit demonstrates problems in obtaining this type of care in this geographic area. 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) (2007), 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 (2007).

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 November 2008

Sidney W. Scott, 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. Fox Eye Laser Vision & Cosmetic Institute, P.C. (Fox Eye) accounted for approximately 80% of the surgeries at this site over that time period. Fox Eye is an ophthalmology group which employs Dr. Birchansky and Dr. Richard Stangler, two Cedar Rapids ophthalmologists whose medical office building is adjacent to the surgical suites previously leased by the hospital. Two podiatrists, Dr. Nassif and Dr. Maikon accounted for approximately 12.5% of the surgeries previously performed at this location.
4. The applicant was denied a CON in January 2005 to establish an outpatient surgery center (Advanced Surgery Center) at the same site to provide these same services. This denial was appealed and ultimately upheld by the Iowa Supreme Court on August 10, 2007. The Court held the Council acted reasonably when it denied Advanced Surgery Center's CON application due its conclusion that sufficient operating room capacity existed in the Cedar Rapids area.
5. The applicant submitted a third proposal, which was heard by the Council in January 2008 and called for a single specialty surgery center, although there is no regulatory restriction to the addition of other specialty procedures at this site. The applicant felt strongly that a single specialty surgery center specifically designed for ophthalmologic procedures would meet what he sees as an existing unmet need in the community. The applicant provided several articles in support of his position that an ASC is the most cost effective and appropriate location for cataract surgery. Affected parties argued that operating room capacity currently exists to meet the needs of the population. The January 2008 proposal was denied by the Council on a vote of 4-1.
6. Following the January 2008 denial, a rehearing was not requested by the applicant and an appeal to the District Court by the applicant was subsequently withdrawn. The appeal had been served past the deadline established by law.
7. The current proposal is the applicant's fourth attempt to receive a CON for a freestanding surgery center.
8. The applicant states this application is different from previous applications in a number of ways. First, the applicant feels they are proposing a "new" service that was not introduced in the previous application. The applicant describes this "new" service as care at one facility providing surgery in the morning during a single visit on a date chosen by the patient.
9. The Council's January 2008 decision stated: "The applicant argues that the desired medical service is cataract surgery in the morning, during the same visit and at the same location as the examination, and on a date chosen by the patient. The applicant also indicates that the proposed facility would allow for the post surgical exam to occur the same day as surgery." Therefore, this proposal is not different from the service proposed in the previous application.
10. Further, the applicant provides as part of the current application the letter from Dr. Franklin Dexter that was distributed at the January hearing in support of oral testimony provided by Dr. Dexter. The letter and testimony were certainly part of the record of the previous application; again this proposal is not different from that contained in the previous application.

11. In addition, the definition of the health service proposed in the application – “surgery at one facility in the morning during a single visit on a date chosen by the patient” – is not consistent with the statutory definition of health service nor the manner in which this phrase has been interpreted and applied by the Council. (See Iowa Code § 135.61(12)). The “health service” at issue in this application is surgery -- *not* surgery at one facility in the morning during a single visit on a date chosen by the patient. Defining the service at issue in the manner proposed by the applicant creates an artificial need for the service and is inconsistent with the statutory language and the Council’s consistent interpretation of this term.
12. Further, affected parties testified that this “all in one day” approach to cataract surgery is discouraged by the professional association and malpractice insurance providers discourage same-day decisions regarding surgery by patients.
13. The sole material difference between this application and the prior applications is that this application requests a one-room ASC, stating the second operating room at the site will be used for equipment storage. For a number of years the applicant has maintained the need for two operating rooms for efficiency. The number of cataract procedures the applicant projects for the proposed one room ASC is slightly higher than the number previously projected for two rooms.
14. The proposed ASC would be equipped with emergency equipment necessary for intubations, cardiac care and any other emergency that should arise. The ASC would establish policies for emergency situations to stabilize the patient and call emergency medical services, if necessary, to transport the patients to nearby emergency rooms. A transfer agreement has been signed with Area Ambulance Service, Inc. to respond and provide services in the event of an emergency.
15. The majority of the surgical patients previously accessing surgical services at this location when it was operated under the license of St. Luke’s Hospital were from Linn County. The facility also attracted some patients from the western portions of Jones County and the eastern portions of Benton County.
16. The proposed facility will serve a large percentage of elderly individuals on Medicare who come to Fox Eye for eye surgeries. The applicant further states that Fox Eye Surgery along with Fox Eye will offer free cataract surgery to all underserved patients referred by the local free community health clinic, the Lions Club, or other non-profit organization. The application heard in January 2008 contained a limit, not to exceed two indigent cataract surgeries per week; this application has no limit on the number of free surgeries.
17. There are currently three providers of outpatient surgery in Linn County, Mercy Medical Center, St. Luke’s Hospital and the Surgery Center of Cedar Rapids (SCCR), a joint venture between physicians and St. Luke’s Hospital.
18. According to the Department of Inspections & Appeals, outpatient surgery began at the location of the SCCR as an extension of the outpatient surgery services of St. Luke’s Hospital in July 2003. On October 1, 2003 this location was converted from a hospital-based service to an ambulatory surgery center. No CON was required for either the extension of the hospital services or the conversion to an ASC.

19. Affected parties testified that the operating room capacity at the two Cedar Rapids hospitals along with the five operating rooms at SCCR can accommodate the procedures that are proposed to be performed at the Fox Eye Surgery location. Dr. Birchansky has admitting and active staff privileges at both St. Luke’s Hospital and Mercy Medical Center.
20. The applicant states that the surgery time he desires is not available at the two hospitals or SCCR. However, SCCR submitted copies of letters sent to the applicant offering the surgery time he desired. About three months after the offer, Dr. Birchansky requested three days be scheduled; he only used two of those days.
21. According to SCCR representatives, since January 2008, Dr. Birchansky has performed surgery on 8 separate occasions, completing 99 cases, at SCCR. SCCR is located just over one mile from the proposed ASC.
22. The vast majority of Fox Eye’s cataract patients are currently having outpatient surgery at Marengo Memorial Hospital, approximately 38 miles from Cedar Rapids. Marengo Memorial Hospital is a Critical Access Hospital and as such receives a higher reimbursement from Medicare, which in turn means a higher copay for the patient.
23. The applicant provided the following historical and expected utilization data for the **two** room ASC in a previous application:

Historical Surgical Utilization

<u>Year</u>	<u>Cataract/ Lens Implant</u>	<u>Ophthalmic/ Plastic Surgeries</u>	<u>Total Surgeries</u>
04/01/01-03/31/02	784	200	984
04/01/02-03/31/03	932	208	1140
04/01/03-03/31/04	1008	268	1276

Projected Surgical Utilization

<u>Year</u>	<u>Cataract</u>	<u>Corneal Transplants</u>	<u>Emergencies</u>	<u>Total Surgeries</u>
2008	752	5	12	769
2009	790	5	13	808
2010	830	5	14	849

24. The applicant provided the following expected utilization data for the **one** room ASC proposed in the current application:

Projected Surgical Utilization

<u>Year</u>	<u>Cataract</u>	<u>Corneal Transplants</u>	<u>Emergencies</u>	<u>Total Surgeries</u>
Year 1	800	5	12	817
Year 2	840	5	13	858
Year 3	882	5	14	901

The projected number of procedures per year is slightly higher for the proposed one room ASC than for the previously proposed two room facility.

25. There are five operating rooms at SCCR. Utilization data provided by SCCR follows:

<u>Year</u>	<u>Total # Surgeries</u>	<u>Total # Eye Surgeries</u>
2005	4748	1017
2006	6096	1236
2007	6464	1322
2008 (7 months)	4217	775

26. St. Luke's provided information stating that they have 14 operating rooms available for inpatient and outpatient surgery on its main campus and maintains expertise in inter-ocular surgery. Currently, St. Luke's is not utilized for outpatient eye surgery.

27. St. Luke's performed 16,725 surgical procedures in its operating rooms in 2005; 15,672 in 2006; 14,931 in 2007 and 9,738 the first seven months of 2008.

28. Mercy Medical Center has 16 operating rooms, including two rooms that are specialty ophthalmology surgical suites. Following the floods of this summer, these rooms are being remodeled and will be available by the first of November. They will remain specialty ophthalmology surgical suites.

29. Utilization data provided by Mercy follows:

<u>Year</u>	<u>Total # Surgeries</u>	<u>Total # Eye Surgeries</u>
2005	12,914	1,734
2006	12,297	1,559
2007	12,292	1,352

30. The applicant specifies that 5.0 FTEs, including one nurse manager, three RNs and one secretary/medical billing clerk will be needed to staff the ASC. The applicant states they already have employment commitments from six qualified licensed registered nurses and that it will not be necessary to hire nurses already employed at local facilities. Dr. Birchansky will serve as the medical director. Dr. John Dooley, of Davenport, is listed as director of anesthesia.

31. The applicant states there are no capital costs since the facility is in existence and is fully equipped. The building cost was paid by Birchansky Real Estate L.C. and the equipment costs were paid by Dr. Birchansky's shareholder contribution of beginning capital.

32. The applicant provided a pro forma which indicates the proposal to be financially feasible. The pro forma assumes 805 surgeries the first year of operation growing to 887 by year three. Net profit before taxes the first year is \$62,181 growing to \$88,516 by year three.

33. The applicant states that as an ASC the charges will be lower than charges as a hospital-based unit and the facility's costs will also be less than a hospital based unit. Patients will benefit in that their co-pays will be based on the lower Medicare and insurance fee schedules.

34. The applicant states that the facility charge for cataract with lens implant surgery shall be \$1,500.00. The facility charge does not include anesthesiologist and surgeon fees, or

preoperative and postoperative medications. The applicant states that this \$1,500 rate shall remain for five years.

35. The applicant states that if revenue does not meet expectations as shown in projected revenues and expenses, the medical director fees (listed as \$18,000 per year) can be cut.
36. There are five letters of opposition to the proposal, three of these from the current providers of outpatient surgery in Cedar Rapids and the other two from local physicians. In addition, correspondence from attorney Thomas Peffer was received which included an affidavit from Dr. Fabiano and a letter to Dr. Birchansky requesting that paragraphs 5 and 6 of the application be amended.

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 available and the development of such alternatives is practicable. The Council concludes that Cedar Rapids has underutilized capacity for cataract surgery with two operating rooms devoted exclusively to eye surgery at Mercy Medical Center and two fully equipped eye operating rooms available every day at SCCR, indicating significant excess capacity in Cedar Rapids for the surgeries performed by the applicant and that adequate alternatives to the establishment of a new surgery center exist. The Council concludes that the establishment of a new institutional health facility with one operating room to be utilized for approximately three hours of surgery per week is not the most efficient or appropriate use of resources. 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 are currently underutilized and could easily accommodate the number of cataract surgeries projected to be performed at the proposed facility. The Council questions the efficiency of operating one surgery suite for approximately three hours per week. The Council concludes

that there have been no changes in utilization rates since the 2005 CON denial which was affirmed by the Supreme Court. The Council further concludes that this application is not significantly different than the application denied in January 2008. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project does not involve new construction. Iowa Code Sections 135.64(1) and 135.4(2)c.

4. The Council concludes that patients will not 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 outpatient surgery rooms designed and built exclusively for eye surgery at Mercy Hospital have regular times open that could accommodate Dr. Birchansky's patients on a weekly basis. If Dr. Birchansky's patients wish to obtain surgical services from an outpatient surgery center they could also be easily accommodated at SCCR. Given the significant existing operating room capacity in Cedar Rapids the Council cannot conclude that patients will experience any problems in obtaining this type of care in this metro area in the absence of this proposal. 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) (2007), led the Council to find that a Certificate of Need should be denied.

The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2007).

Dated this _____ day of November 2008

Sidney W. Scott, 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)
ST. LUKE'S JONES REGIONAL MEDICAL CENTER)
ANAMOSA, IOWA)

DECISION

This matter came before the State Health Facilities Council for review on Tuesday, October 14, 2008.

The project, the replacement of a critical access hospital while adding a new service, was originally approved on October 24, 2007 at an estimated cost of \$12,853,000.

The Council, after reading the extension request and hearing comments by staff, 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 November 2008

Sidney W. Scott, Vice-Chairperson
State Health Facilities Council
Iowa Department of Public Health

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

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

IN THE MATTER OF THE)
CERTIFICATE OF NEED EXTENSION FOR)

STORY COUNTY MEDICAL CENTER)

NEVADA, IOWA)

DECISION

This matter came before the State Health Facilities Council for review on Tuesday, October 14, 2008.

The project, the replacement of the acute care services of a critical access hospital, was originally approved on October 24, 2007 at an estimated cost of \$13,969,972.

The Council, after reading the extension request and hearing comments by staff, 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 November 2008

Sidney W. Scott, Vice-Chairperson
State Health Facilities Council
Iowa Department of Public Health

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

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

IN THE MATTER OF THE)
CERTIFICATE OF NEED EXTENSION FOR)

WEST HOSPITAL (FORMERLY KNOWN AS)
MICHAEL R. MYERS HOSPITAL))

WEST DES MOINES, IOWA)

DECISION

This matter came before the State Health Facilities Council for review on Tuesday, October 14, 2008.

The project, the construction of a new 95-bed hospital, was originally approved on October 25, 2007 at an estimated cost of \$118,500,000.

The Council, after reading the extension request and hearing comments by staff, 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 November 2008

Sidney W. Scott, Vice-Chairperson
State Health Facilities Council
Iowa Department of Public Health

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