

**MINUTES**  
**STATE HEALTH FACILITIES COUNCIL**  
**WEDNESDAY, JULY 19, 2017**  
**IOWA LABORATORY FACILITY, CONFERENCE CENTER, ROOM 208**  
**DMACC CAMPUS, ANKENY**

**9:00 AM: ROLL CALL**

**MEMBERS PRESENT:** H.W. Miller, M.D., Chairperson; Roberta Chambers; Brenda Perrin; Connie Schmett; and Roger Thomas

**STAFF PRESENT:** Becky Swift and Heather Adams, Counsel for the State

**I. APPROVAL OF MINUTES OF PREVIOUS MEETINGS**

A motion by Perrin, seconded by Chambers to approve the minutes of April 19, 2017, and April 28, 2017, carried unanimously by voice vote.

**II. REQUEST FOR DETERMINATION OF NON-REVIEWABILITY AND THE DEPARTMENT'S RESPONSE**

1. Mississippi Valley Surgery Center, Davenport, Scott County – Modernization of surgery center

Staff report by Becky Swift. A motion by Chambers, seconded by Perrin, to affirm the Department's decision carried unanimously by voice vote.

2. Siouxland Cancer Center d/b/a June E. Nysten Cancer Center, Sioux City, Woodbury County – Replacement of a linear accelerator

Staff report by Becky Swift. A motion by Schmett, seconded by Chambers to affirm the Department's decision carried unanimously by voice vote.

3. University of Iowa Hospitals and Clinics, Iowa City, Johnson County – Modernization of an existing building

Staff report by Becky Swift. A motion by Perrin, seconded by Chambers to affirm the Department's decision carried 4-1. Thomas voted no.

4. Southern Iowa Mental Health Center, Ottumwa, Wapello County – Relocation of Mental Health Center

Staff report by Becky Swift. A motion by Schmett, seconded by Thomas to affirm the Department's decision carried unanimously by voice vote.

**III. PROJECT REVIEW (Cost Over-run)**

1. Oskaloosa Care Center, Oskaloosa, Mahaska County: Re-review of project approved 2/23/2015 to build a 14 private bed skilled nursing facility addition at a cost of \$1,580,000. Cost over-run of \$370,000 (23% of the approved \$1,580,000).

Staff report by Becky Swift. The applicant was represented by Ken Carlson, Oskaloosa Care Center. A motion by Chambers, seconded by Perrin to approve the cost overrun carried unanimously by voice vote.

#### **IV. EXTENSION OF PREVIOUSLY APPROVED PROJECTS**

1. Oskaloosa Care Center, Oskaloosa, Mahaska County: 14 private bed skilled nursing facility addition – \$1,580,000 (*approved 2/23/2015; third extension request*)

Staff report by Becky Swift. The applicant was represented by Ken Carlson, Oskaloosa Care Center. A motion by Perrin, seconded by Chambers, to grant a six-month extension carried unanimously by voice vote.

2. CCRC of West Des Moines, Dallas County: Build a 40-bed nursing facility – \$4,923,000 (*approved 2/25/2016; third extension request*)

Staff report by Becky Swift. The applicant was represented by Gib Wood, Scenic Development and Doug Gross of Brown Winick Law. A motion by Thomas, seconded by Perrin, to grant a 12 month extension carried unanimously by voice vote.

3. United Presbyterian Home, Washington, Washington County: addition of seven skilled nursing beds by building a 17 bed private resident wing and conversion of an existing wing to a CCDI unit - \$4,836,772 (*Approved 10/29/2015; Second Extension Request*)

Staff Report by Becky Swift. A motion by Schmett to grant a six month extension was amended by Schmett to a nine-month extension. The amended motion was seconded by Chambers and carried unanimously by voice vote.

4. SunnyBrook Living Care Center, LC, Fairfield, Jefferson County – Convert 8 RCF beds to NF beds- \$0 (*approved 10/29/15; Second Extension Request*)

Staff report by Becky Swift. The applicant was represented by Tom Elston of SunnyBrook Living Care Center. A motion by Thomas, seconded by Schmett, to grant a six month extension carried 4-1. Chambers voted no.

#### **V. PROJECT REVIEW**

1. Hills and Dales Child Development Center, Dubuque, Dubuque County: Addition of 10 ICF/ID beds  
\$0

Staff report by Becky Swift. The applicant was represented by Marilyn Althoff, Carrie Kirschbaum, Kathy Billmeyer, Lisa Bernhard and Sri Surapaneni, Hills and Dales Child Development Center. The applicant made a presentation and answered questions posed by the Council. A motion by Thomas, seconded by Chambers, to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

No affected parties appeared at the hearing.

A motion by Thomas, seconded by Chambers to Grant a Certificate of Need carried 5-0.

2. Tanager Place, Cedar Rapids, Linn County: Addition of 10 ICF/ID beds  
\$0

Staff report by Becky Swift. The applicant was represented by Andy Manternach and Kim Venner, Tanager Place. The applicant made a presentation and answered questions posed by the Council. A motion by Chambers, seconded by Perrin, to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

No affected parties appeared at the hearing.

A motion by Schmett, seconded by Thomas, to Grant a Certificate of Need carried 5-0.

3. Iowa Plastic Surgery Center, Davenport, Scott County: Conversion from office based surgery to Medicare certified ASC  
\$0

Staff report by Becky Swift. The applicant was represented by Dr. Benjamin Van Raalte. The applicant made a presentation and answered questions posed by the Council. A motion by Perrin, seconded by Chambers, to enter to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

Affected party in support of the application John Vander Zee, M.D. appeared at the hearing.

Affected parties in opposition included Doug Gross, Brown Winick Law representing Trinity Bettendorf and Mississippi Valley Surgery Center and Michael Patterson, Mississippi Valley Surgery Center. The opposition made a presentation and answered questions posed by the Council. A motion by Thomas, seconded by Schmett, to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

The applicant, represented by Dr. Benjamin Van Raalte, provided rebuttal and closing remarks.

A motion by Thomas, seconded by Miller to Grant a Certificate of Need Failed 3-2. Thomas and Miller voted in favor of the motion. Chambers, Perrin and Schmett voted no.

4. Fox Eye Surgery, LLC, Cedar Rapids, Linn County: Establish an outpatient surgical facility  
\$10,000

Staff Report by Becky Swift. The applicant was represented by Dr. Lee Birchansky, Fox Eye Surgery, and Douglas Fulton, Brick Gentry representing Fox Eye Surgery. The applicant made a presentation and answered questions posed by the Council. A motion by Thomas, seconded by Schmett, to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

Affected parties in support of the application included John Vander Zee, M.D. and Larry Stewart.

Affected parties in opposition included Ed McIntosh, Dorsey and Whitney; Molly Newhouse, Mercy Medical Center; Nathan Van Gendersen, Mercy Medical Center; Michael Hall, Iowa Eye Center; Scott Kallemeyer, Surgery Center of Cedar Rapids; Doug Gross, Brown Winick Law representing St. Lukes and Surgery Center of Cedar Rapids; and Michelle Niermann, St.

Luke's Hospital. Affected parties in opposition made a presentation and answered questions posed by the Council. A motion by Thomas, seconded by Chambers to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote. A motion by Perrin, seconded by Chambers, to enter additional exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

The applicant, represented by Doug Fulton, Brick Gentry; and Dr. Lee Birchansky, Fox Eye Surgery, provided rebuttal and closing remarks.

A motion by Thomas, seconded by Chambers, to Grant a Certificate of Need carried 3-2. Perrin and Schmett voted no.

## **VI. ELECTION OF A VICE-CHAIRPERSON**

A motion by Schmett, seconded by Thomas, to elect Chambers as the Vice-Chair, carried unanimously by voice vote.

A motion by Chambers, seconded by Perrin, to adjourn carried unanimously by voice vote.

The meeting adjourned at 7:00 p.m.

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

IN THE MATTER OF THE )  
CERTIFICATE OF NEED EXTENSION FOR )  
  
CCRC of WEST DES MOINES, LLC )  
  
WAUKEE, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for review on Wednesday, July 19, 2017. The applicant was represented by Doug Gross of Brown Winick Law and Gib Wood of Scenic Development.

The project, construction of a 40 bed nursing facility as part of a Continuing Care Retirement Community, was originally approved on February 25, 2016, at an estimated cost of \$4,923,000. The original completion date for the project was June 2018. Due to issues with the parcel of land on which the facility was to be built and the need to build a public road to the site, the location for the project has changed. In July 2017, the applicant entered into a Purchase and Sale agreement for the purchase of land that is approximately one mile from the original site in Dallas County, but is within the Waukee City limits. The commitment letter from Green Belt Bank and Trust, which was dated March 17, 2017, extends to the new site location. The new completion date for the project is April 2019. To date \$38,948 has been spent on the project.

The Council, after reading the extension request and hearing comments by staff and the applicant, voted 5-0 to Grant an Extension of Certificate of Need per 641 Iowa Administrative Code 202.13. The decision is based upon a finding that sufficient progress has been made in developing the project.

The extension is valid for 12 months.

Dated this 24 day of August 2017



H.W. Miller, M.D., 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 APPLICATION OF                    )  
  )  
FOX EYE SURGERY, LLC   )       **DECISION**  
  )  
CEDAR RAPIDS, IOWA    )

This matter came before the State Health Facilities Council for hearing on Wednesday, July 19, 2017.

The applicant Fox Eye Surgery, LLC applied through the Iowa Department of Public Health for a Certificate of Need to establish an outpatient surgical facility at an estimated cost of \$10,000

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. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. Doug Fulton, Brick Gentry and Dr. Lee Birchansky were present representing the applicant.

Affected parties in support of the application included John Vander Zee, M.D., and Larry Stewart, C.R.N.A.

Affected parties in opposition including Ed McIntosh, Dorsey and Whitney; Molly Newhouse, Mercy Medical Center; Nathan Van Gendersen, Mercy Medical Center; Michael Hall, Iowa Eye Center; Scott Kallemeyer, Surgery Center of Cedar Rapids; Doug Gross, Brown Winick Law representing St. Lukes and Surgery Center of Cedar Rapids; and Michelle Niermann, St. Luke’s Hospital appeared at the hearing.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 3-2 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) (2017) made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Fox Eye Surgery is owned by Dr. Lee Birchansky, its medical director.
  
2. Fox Eye Surgery is proposing re-opening an abandoned ambulatory surgery center (“ASC”), which is adjacent to and within the same building as the applicant’s ophthalmological practice, Fox Eye Laser and Cosmetic Institute (FELCI). The applicant states that the dormant ASC is fully equipped and ready to perform laser cataract surgery. The proposal calls for one operating room.

3. The proposed facility fee of \$1,950, which, according to the applicant, is a much lower charge that will open access to many patients who have been postponing cataract surgery due to costs.
4. The proposed facility will help provide additional access to those uninsured and indigent Iowans who can't afford the charges of alternate facilities. Financially struggling persons and persons without medical insurance will receive care at a reduced charge or free.
5. The applicant states that most cataract patients are elderly and many are disabled and that the facility is unique as it is the only single story, ADA compliant facility that was specifically designed to cater to elderly cataract patients many of whom are handicapped, ambulate with difficulty and have poor hearing and eyesight.
6. Fox Eye Surgery will accept patients of all ages, economic status, race, creed, color and national origins.
7. The breakdown of patient pay by source will be 6.8% private pay, 69.8% Medicare, 4.7% Medicaid, 13.9% Wellmark, and 4.8% other private insurance.
8. Fox Eye Surgery's uninsured and indigent cataract patients reside in 14 counties and Dr. Birchansky has clinics in three rural towns and provides surgery in the rural towns of Manchester, DeWitt, Anamosa, Maquoketa and Marengo. Dr. Birchansky will continue to regularly see patients and perform surgeries at these rural hospitals helping those patients who live in or nearby these rural communities.
9. Fox Eye was denied a CON in May 1996 to construct an ASC at a cost of \$1,173,000. Dr. Birchansky, through his limited liability company, Birchansky Real Estate L.C., constructed the surgery center in 1998 and leased it to St. Luke's Hospital. From 1998 until December 7, 2004, there were two operating suites in use at the proposed location. Fox Eye Laser & Cosmetic Institute, P.C. (FELCI) accounted for approximately 10,000 of the surgeries at this site over that time period.
10. FELCI 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. In addition, FELCI employs optometrist Dr. Brandon Stalzer.
11. The applicant applied for a CON three additional times. These applications were denied at meetings held in January 2005, January 2008 and October 2008. In August 2007, the Iowa Supreme Court issued a decision affirming the denial of the second application. In the fall of 2008, Dr. Birchansky filed an appeal of the Council's decision to deny the fourth application. The Council's denial was upheld by the Iowa Court of Appeals in August of 2010.
12. This is the applicant's fifth attempt to attempt to receive a certificate of need for a freestanding outpatient surgical facility.

13. Fox Eye Surgery will offer safe, convenient, comfortable, non-intimidating, less costly and more efficient eye surgery in the most appropriate environment for its patients. The proposed facility will offer patients the most desirable and flexible daily scheduling times including Saturday mornings. The applicant notes that Dr. Birchansky can use his own equipment, own staff and will be in his own environment at Fox Eye, which makes him proficient at what he does.
14. Fox Eye noted in testimony provided at the hearing that 90% of cataract surgeries performed today are being done at office-based ASC's, which have a lower rate of infections and complications.
15. Fox Eye Surgery considers the service area to be Cedar Rapids, Iowa. Many of FELCI's cataract patients live in Cedar Rapids, Linn County. The applicant notes that other cataract patients come from Benton, Blackhawk, Bremer, Buchanan, Cedar, Clayton, Clinton, Delaware, Dubuque, Iowa, Jackson, Jones, and Muscatine Counties.
16. Affected parties in opposition to the proposal state that the operating room capacity at the two hospitals along with the seven operating rooms at the Surgery Center Cedar Rapids (SCCR), an ambulatory surgery center, can accommodate the procedures that are proposed to be performed at the Fox Eye location.
17. Fox Eye Surgery notes that the surgery times (mornings and Saturdays) which are most beneficial to its patients are not available at the hospitals or the SCCR.
18. Fox Eye Surgery has not reached out to the Department of Inspections and Appeals to discuss compliance with current life safety codes and the costs associated with retrofitting the current space to meet these codes. Fox Eye Surgery noted that upon CON approval, it will have the life and safety inspection performed by an accreditation agency with Medicare deemed status. If modifications are indicated then the surgery center will be brought into compliance and compliance will be verified before opening to the public.
19. The applicant provided a pro forma which indicates the proposal to be financially feasible. The pro forma assumes 645 surgeries the first year of operation growing to 711 by year three. Net profit before taxes the first year is \$131,228 growing to \$161,239 by year three.
20. Projected data includes the assumption that utilization will grow by 5 percent yearly as baby boomers turn 65 and older. Fox Eye Surgery expects that one third of its patients will choose to have their surgeries at SCCR and that two-thirds will choose to have their surgeries at the Fox Eye Surgery facility.

Projected Surgical Utilization

<u>Year</u>	<u>Utilization</u>
1	645
2	677
3	711



21. There are two hospitals, Mercy Medical Center and St. Luke's in Cedar Rapids, and there are three ophthalmology groups in Cedar Rapids, FELCI, Wolfe Eye Clinic and Iowa Eye Center. Cataract surgeries are currently performed at the Surgery Center of Cedar Rapids (SCCR) and Mercy Medical Center.
22. Beginning June 2017, Mercy Medical Center no longer offers cataract surgery onsite, but moved its cataract surgery services to a new medical park in Hiawatha, Iowa, which is roughly two miles from the Fox Eye Surgery location. Wolfe Eye Clinic, a competitor of Fox Eye Surgery, is a partner with Mercy in the new medical park, which, according to Fox Eye Surgery, makes it more difficult for Dr. Birchansky to obtain the surgical times he desires. Additionally, while Mercy indicates that independent providers like Dr. Birchansky may use the new outpatient surgery site, the signage at the new location and the set-up of the facility will make it appear to patients as if they are being treated at a Wolfe Eye Clinic facility.
23. The SCCR is owned by Iowa Eye Center, St. Luke's Hospital, and other partners. The SCCR has undergone significant expansion within the past four years.
24. Significant changes in the existing health care system, and specifically in the outpatient surgery health care market, have occurred in Cedar Rapids in the decade since the Council denied Dr. Birchansky's former applications. At the time of the prior denials, the facilities which provided outpatient surgery offered independent providers like Dr. Birchansky the opportunity to perform cataract surgeries at their locations on equal footing with physicians aligned with ophthalmology groups in Cedar Rapids. Currently, the existing facilities offering outpatient cataract surgery have more closely aligned with competitors to Dr. Birchansky. Specifically, Mercy has partnered with the Wolfe Eye Clinic in the development of the Hiawatha ASC and patients receiving cataract surgery at that location could clearly infer that they are being treated by Wolfe Eye-affiliated physicians. Additionally, both existing outpatient cataract surgery providers have made substantial investments in and undertaken expansions of their outpatient surgical facilities since the dates of the prior denials of Dr. Birchansky's applications.
25. Fox Eye Surgery provided one letter of support from 2016, and nine letters of support from 2007 in the application. These letters are from patients who expressed satisfaction with Dr. Birchansky, the desire to have their surgery at the same location as FELCI, and less wait time as reasons for their support.
26. Noted by an affected party who testified in support of the project at hearing was that block scheduling at current facilities causes operating rooms to be unavailable to other surgeons, such as Dr. Birchansky, until 24 hours in advance, and that the premier morning times are also not available.
27. Five letters of opposition were received from hospitals and providers in the area and seven affected parties appeared at the hearing in opposition to the proposal. Cited as reasons for opposition were excess surgical capacity at existing facilities, no delays in scheduling ophthalmologic surgeries or other outpatient surgeries, the distance of the drive to Cedar Rapids for surgery, no cost savings to patients, outdated equipment at Fox Eye Surgery, and the ability of Fox Eye Surgery to expand to include additional operating rooms or provide an unlimited range of services without further CON review.

28. Fox Eye Surgery anticipates minimal service volume impact to SCCR assuming that roughly one third of FELCI's patients will continue to choose SCCR for their cataract surgery. The applicant notes that Mercy and SCCR are being used in an appropriate, efficient, and profitable manner providing over 47,500 surgeries per year.
29. The applicant specifies 5.0 FTEs, including one nurse manager, 1.5 RN's, one certified scrub tech and one secretary/medical billing clerk will be needed to staff the ASC. Dr. Birchansky will serve at the 0.5 FTE medical director for the ASC.
30. There are no capital costs since the facility is in existence and is fully equipped. The applicant notes that the \$10,000 cash on hand is a buffer earmarked for paying any operating expenses due prior to receiving cash flow from operations.
31. If the costs increase by 15 %, the applicant will need to come back before the Council to request a cost overrun.

### 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. Dr. Birchansky has experienced difficulties in scheduling his patients for cataract surgeries at the alternative facilities in the service area, and those difficulties will be exacerbated with the opening of Mercy Medical Center's new outpatient surgical facility. Additionally, to require that Dr. Birchansky continue to perform surgeries a facility which is so publicly affiliated with another ophthalmology group is not an appropriate alternative, especially in light of his existing, but currently dormant, ASC. 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 and will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council takes note that collectively Mercy and SCCR perform 47,500 surgeries per year; the small percentage of these surgeries which originate from Fox Eye will have minimal impact on these facilities. Additionally, the Council notes that a portion of Fox Eye Surgery patients will continue to choose SCCR for their cataract surgery which will further minimize the impact on that facility. The Council further finds that both Mercy and SCCR have undergone significant expansions within the past several years which indicate their facilities are being utilized at an efficient level, and their continued investment in and expansion of outpatient surgery rooms indicates past and expected future rates of high utilization. Finally, Dr. Birchansky will continue to see patients and perform surgeries in the rural locations he currently services, further minimizing the impact on those facilities. 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 experience problems in obtaining care of the type which will be furnished by the proposed new institutional health service, in the absence of that proposed service. The Council finds that the applicant has had difficulties in scheduling times for surgeries for his patients at existing facilities and that those difficulties will increase given the ownership structure of existing facilities. The Council concludes that cataract surgery patients are primarily the elderly -- many of whom are handicapped, ambulate with difficulty and have poor hearing and eyesight. The Council concludes that these patients would benefit from having surgery done in a single story facility in the same location as FELCI and that they would also benefit from having the option of morning and Saturday surgery times, which may not be available at other locations. 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) (2017), 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 (2017).

It is required in accordance with 641 Iowa Administrative Code 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 (641 Iowa Administrative Code 202.14).**

Dated this 24 day of August 2017

Handwritten signature of H.W. Miller in black ink, written over a horizontal line.

H.W. Miller, M.D., 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 )  
 )  
HILLS AND DALES CHILD )  
DEVELOPMENT CENTER )  
 )  
DUBUQUE, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for hearing on Wednesday, July 19, 2017.

The applicant Hills and Dales Child Development Center (“Hills and Dales”) applied through the Iowa Department of Public Health for a Certificate of Need to increase their Intermediate Care Facility for the Intellectually Disabled licensed beds by 10, from 49 to 59. There is no cost for this project.

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. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. Marilyn Althoff, Carrie Kirschbaum, Kathy Billmeyer, Lisa Bernhard, Hills and Dales; and Sri Surapaneni, parent of a Hills and Dales’ resident, represented 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 5-0 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) (2017) made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Hills and Dales is a nonprofit organization providing services to medically fragile children and young adults with severe intellectual disabilities, as well as significant physical disabilities and behaviors. The applicant proposes to increase its licensed Intermediate Care Facility/Intellectually Disabled (ICF/ID) beds from 49 to 59.
2. Hills and Dales is one of the few agencies in Iowa that serves primarily children and the only one in northeast Iowa providing these services.
3. Hills and Dales also serves adults, many of them through their Home and Community-Based Services program.

4. According to Iowa Code section 135C.1(9), an Intermediate Care Facility for the Intellectually Disabled means “an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have an intellectual disability or a related condition and who are not related to the administrator or owner within the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with an intellectual disability established pursuant to the federal Social Security Act, §1905(c)(d), as codified in 42 U.S.C. §1396d, which are contained in 42 C.F.R. pt. 483, subpt. D, §410 – 480.”
5. Hills and Dales will convert existing space from administrative offices to bedrooms to accommodate the new beds.
6. Hills and Dales will use the beds to accommodate families who have made inquiry or who have been referred for their support and services.
7. Hills and Dales provides residential services 24 hours a day with on-site nursing services to attend to the extreme and severe medical needs of all residents.
8. The need for the additional beds is demonstrated by the high occupancy at Hills and Dales, which is consistently over 99.6%. An occupancy of 99% is forecasted with the addition of the 10 new beds.
9. Eligibility for requiring the ICF/ID level of care is determined by the Iowa Medicaid Enterprise based on Iowa Foundation for Medical Care criteria.
10. Level of Care is approved by the Iowa Medicaid Enterprise, then the selected Managed Care Organization is responsible for the per diem for each approved individual. Individuals are recertified every 120 days by their MCO as needing the ICF/ID Level of Care.
11. Hills and Dales currently serves individuals from 19 counties in Iowa, however they receive inquiries and referrals from the entire state. In 2016, Hills and Dales received 82 referrals, consistent with past years.
12. There are currently 19 individuals identified as eligible for placement at Hills and Dales given approval from their Managed Care Organization.
13. Iowa Code section 135.63(4)(a) states “The department shall not process applications for and the council shall not consider a new or changed institutional health service for an intermediate care facility for persons with an intellectual disability unless... the new or changed beds shall not result in an increase in the total number of medical assistance certified intermediate care facility beds for persons with intellectual disability in the state, exclusive of those beds at the state resource centers or other state institutions, beyond one thousand six hundred thirty-six beds.”

14. There are currently a total of 2,950 ICF/ID beds in the state, including the beds at Glenwood and Woodward Resource Centers, the state institutions. If these beds, 851 and 639 respectively, are excluded there are a total of 1,460 beds in the state, leaving 176 bed slots available.
15. There are four additional ICF/ID's in Dubuque County, as well as providers in Clayton and Jackson Counties. No affected party letters were received from these facilities.
16. There were six letters of support received for the project. These letters cite the necessary services furnished by Hills and Dales, skill and professionalism of staff, and the excellent care provided as reasons for their support.
17. There was also a letter of support received from the Dubuque County Board of Supervisors, as required by Iowa Code section 135.63(4)(b).
18. There were no letters opposition received.
19. Hills and Dales will incur no costs related to the project and does not project an operating deficit.

#### CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considered 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 population to be served by Hills and Dales requires 24 hour nursing care and supervision, that there is not a cost for the project, and that there are no

more appropriate, less costly services available in the area. 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 being and will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council concludes Hills and Dales provides services to a specific population needing 24 hour nursing care and supervision. The Council also notes that there are a total of 176 ICF/ID beds slots available in the state and that Hills and Dales will only be licensing 10 new beds. The Council notes that there are four other ICF/ID's in Dubuque County, and that no letters of opposition were received from these or any other facilities. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that this is not new construction. Iowa Code Sections 135.64(1) and 135.64(2)c.

4. The Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed health service, in the absence of that proposed service. The Council notes that Hills and Dales has a high occupancy rate, currently 99.6%, and that they have a waiting list. The Council concludes that Hills and Dales serves primarily children with severe intellectual disabilities and significant physical and behavioral disabilities and that individuals needing services would experience serious difficulty finding another appropriate placement. 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) (2017), 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 (2017).

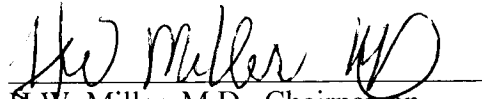
It is required in accordance with 641 Iowa Administrative Code 202.12 that a progress report shall be submitted to the Iowa Department of Public Health six (6) months after approval. This report shall fully identify the project in descriptive terms. The report shall also reflect an amended project schedule 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 (641 Iowa Administrative Code 202.14).**



Dated this 24 day of August 2017

A handwritten signature in cursive script, appearing to read "H.W. Miller", written over a horizontal line.

H.W. Miller, M.D., 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 )  
 )  
IOWA PLASTIC SURGERY CENTER )  
 )  
DAVENPORT, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for hearing on Wednesday, July 19, 2017.

The applicant Iowa Plastic Surgery Center applied through the Iowa Department of Public Health for a Certificate of Need to establish of an outpatient surgical facility. There is no cost for this project.

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. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. Benjamin Van Raalte, M.D., was present representing the applicant. The applicant made a presentation and answered questions.

John Vander Zee, M.D., an affected party in support of the proposal was present at the hearing.

Affected parties present at the hearing in opposition to the proposal were Doug Gross, Brown Winick Law representing Trinity Bettendorf and Mississippi Valley Surgery Center and Michael Patterson, Mississippi Valley Surgery Center.

The Council, after hearing the above-mentioned testimony and after reading the record entertained a motion to approve the project which failed on a vote of 2-3; the application for a Certificate of Need is therefore DENIED. As a basis for their decision the Council, considering all the criteria set forth pursuant to Iowa Code Section 135.64 (1 and 2) (2017) made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Iowa Plastic Surgery Center, a single operating room center, is owned and operated by Dr. Benjamin Van Raalte, a board certified plastic surgeon. Iowa Plastic Surgery Center's proposal is to convert from an office-based surgery to a Medicare certified ambulatory surgery center.
2. Iowa Code chapter 135 requires a certificate of need to open an outpatient surgical facility, which is defined in section 135.61(21) to include a facility certified or seeking certification as an ambulatory surgery center under the federal Medicare

program or under the medical assistance program established pursuant to chapter 249A.

3. Iowa Plastic Surgery Center has performed 100-160 major cosmetic cases and approximately 250 minor procedures per year for the past ten years in the office-based surgery suite.
4. The applicant estimates doing 20 reconstructive plastic surgery insurance cases, such as certain cases of breast reduction and scar revision, per year.
5. To obtain insurance coverage for these cases, Medicare certification as an ambulatory surgery center is needed. It is projected that approximately 5 percent of the cases at Iowa Plastic Surgery Center would be Medicare reimbursed.
6. The applicant states that the majority of the cases that he would be able to perform under this proposal are not being done. The uncertainty of insurance coverage and the cost are the prime reasons patients choose not to proceed.
7. In 2003, Iowa Plastic Surgery Center received a non-reviewability determination to add footage for a new office and office-based operating room. At that time the applicant did not plan to obtain Medicare certification. The applicant was in solo practice and the proposed operating room was to be for the use of his practice only. There was not an organized medical staff. The procedures to be performed are most commonly performed in a private physician's office. The operating room has Joint Commission accreditation as an office-based surgery center and meets Medicare construction requirements. The only factor that has changed is that the applicant now desires to seek Medicare certification as an ambulatory surgery center.
8. Iowa Plastic Surgery Center applied for a certificate of need to convert to an ambulatory surgery center in 2007 and 2008 and was denied each time. Reasons for denial included existing facilities having capacity to handle the additional cases and that utilizing the excess capacity at these facilities would be a more appropriate alternative to the proposed project, that patients would not experience problems obtaining care of the type proposed, and that existing facilities would lose about 5-10 cases per year.
9. The applicant has admitting privileges at all area hospitals, including Genesis and UnityPoint. Dr. Van Raalte has been on staff at these institutions for 23 years.
10. The applicant notes that he currently performs certain insurance-covered procedures that require anesthesia and cannot be performed at Iowa Plastic Surgery Center at Genesis, UnityPoint Trinity and Mississippi Valley Surgery Center.
11. There were letters of opposition received from Mississippi Valley Surgery Center; Brown Winick Law on behalf of UnityPoint Health, Trinity Bettendorf; and Genesis Health System, Davenport. These letters cite existing providers being able to meet

the need, no need for a new outpatient surgery center in the Quad Cities, patients experiencing no delays in scheduling services, the ability of Iowa Plastic Surgery Center to expand the type of surgery performed or open another ambulatory surgery center if granted a certificate of need, and that having an ambulatory surgery center designation will not stop insurance companies from denying payment for pre-approved surgeries, as reasons for their opposition.

12. No letters of support were received for this project.
13. Affected parties in opposition appearing at the hearing stated that there are 63 surgery suites in the Quad Cities that may be able to accommodate the applicant. Affected parties also noted that the applicant only scheduled two cases at Mississippi Valley Surgery Center in 2016, and four cases, with one pending, in 2017. A representative of Mississippi Valley Surgery Center noted that they do roughly 5,000 procedures a year and have the capacity for approximately 7,000 at optimum utilization. Also noted was that Mississippi Valley Surgery Center has similar or lower costs for cosmetic procedures than Iowa Plastic Surgery Center. Affected parties also noted that Iowa Plastic Surgery Center lacks the proper accreditation. They note that Iowa Plastic Surgery Center is accredited by the Joint Commission as an office-based surgery center, not an ambulatory surgery center, which has more stringent requirements and is more costly.
14. The necessary staff is already in place at Iowa Plastic Surgery; no new staff will be hired.
15. The budget information provided by the applicant indicates the facility operated at a loss in 2014 and 2015, but realized a profit of \$20,628 in 2016.
16. There are no capital costs involved in the proposed project as the operating suite already exists. Also, there is no significant impact on the costs or charges for providing the services.

#### 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. The Council concludes that utilizing the excess capacity at existing facilities is a more appropriate alternative to the proposed project. The Council concludes that establishing a new outpatient surgical facility simply to perform a very small number of outpatient surgical cases is not a less costly, more efficient, or more appropriate alternative to utilizing existing and established facilities. Iowa Code Sections 135.64(1) and 135.64(2)a.

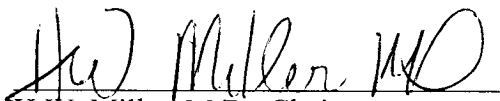
2. The Council concludes that existing facilities providing health services similar to those proposed are not being used in an appropriate and efficient manner. The Council concludes that existing facilities would lose several cases per year from the applicant. The Council also concludes that there is currently excess and underutilized capacity for outpatient surgery in the immediate area. In addition, the Council concludes that if the facility were granted a certificate of need the potential for expansion of capacity in the future by the applicant could further negatively impact existing facilities. 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 the limited number of additional cases that the applicant estimates would be done at the proposed facility can easily be handled at existing 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) (2017), led the Council to find that a Certificate of Need should be denied.

Dated this 24 day of August 2017

  
 H.W. Miller, M.D., 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 A REQUEST BY )  
 )  
OSKALOOSA CARE CENTER, INC. )  
 )  
OSKALOOSA, IOWA )  
 )  
TO MODIFY A CERTIFICATE OF NEED )

**DECISION**

This matter came before the State Health Facilities Council on July 19, 2017.

The request proposes the modification of an approved project. The request is to increase the cost of the proposal. On February 23, 2015, the Council granted a Certificate of Need for the construction of a 14 private bed skilled nursing facility addition at a cost of \$1,580,000. The Council granted a six month extension in February 2016, and a twelve month extension in July 2016. This request proposes an increase in cost of \$370,000 for a total project cost of \$1,950,000.

The record includes the request prepared by the project sponsor and all the testimony presented. Ken Carlson represented the applicant. The applicant answered questions posed by the Council.

No affected parties appeared.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 5-0 to grant a modification to the original Certificate of Need.

FINDINGS OF FACT

1. Oskaloosa Care Center Inc. was granted a Certificate of Need on February 23, 2015, for the construction of a 14 private bed skilled nursing facility addition at an original cost of \$1,580,000.
2. In June 2017 the department received an extension request from the applicant that reports significant progress on the project being made including the completion of exterior construction, installation of mechanical and plumbing systems, and interior painting. On July 19, 2017, the Council granted a six-month extension.
3. A revised Exhibit 3 outlining the cost over-run was submitted on June 26, 2017. The applicant reports causes of the cost overrun include the HUD review and approval process, architects and engineers taking longer than expected to complete final plans, sub-contractor availability and timeliness, and weather delays during the fall and winter of 2016-2017.

4. The estimated total cost of the project is now \$1,950,000, a 23.0% increase in the original total project costs. The cost increase is due to the size of the final building design to accommodate necessary space for private resident room showers, the cost to relocate an existing storm sewer, and soil removal and replacement.
5. The applicant reports that they have received city, state, and HUD approval for the project, and that the bank loan was secured in August 2016. The projected date of completion is September 2017.

### CONCLUSION

The Council concludes that the proposed change to the originally approved project represents an increase of approximately 23% in the cost of the project but does not substantially alter the nature and scope of the originally approved project.

Pursuant to 641 Iowa Administrative Code 202.14, the Council therefore approves the request to modify the Certificate of Need originally granted February 23, 2015, to \$1,950,000 as the approved cost of the project.

The decision of the Council may be appealed pursuant to Iowa Code section 135.70 (2017).

**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 (641 Iowa Administrative Code 202.14).**

Dated this 24 day of August 2017



H.W. Miller, M.D., 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 )

OSKALOOSA CARE CENTER, INC. )

OSKALOOSA, IOWA )

**DECISION**


This matter came before the State Health Facilities Council for review on Wednesday, July 19, 2017. The applicant was represented by Ken Carlson, Oskaloosa Care Center, Inc.

The project, construction of a 14 private bed skilled nursing facility addition, was originally approved on February 23, 2015, at an estimated cost of \$1,580,000. The original completion date for the project was August 2016; the new completion date is September 2017. The amount spent to date is \$1,257,958.

The Council, after reading the extension request and hearing comments by staff and the applicant, voted 5-0 to Grant an Extension of Certificate of Need per 641 Iowa Administrative Code 202.13. The decision is based upon the finding that sufficient progress has been made in developing the project.

The extension is valid for six months.

Dated this 24 day of August 2017



\_\_\_\_\_  
H.W. Miller, MD, 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 )  
SUNNYBROOK LIVING CARE CENTER, LC )  
FAIFIELD, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for review on Wednesday, July 19, 2017. The applicant was represented by Tom Elston, SunnyBrook Living Care Center.

The project, conversion of eight RCF beds to nursing facility beds, was originally approved on October 29, 2015, at no cost. The initiation of the project has been delayed to due to difficulty securing approval from the Department of Inspections and Appeals (“DIA”). In July 2017 the architect submitted information requested by DIA and the applicant provided the furniture measurements. Additionally the applicant will be submitting a variance for toilet placement within the restrooms. If there are no changes required by DIA, the conversion can be completed within 30 days; if remodeling of the rooms is required, the conversion will take approximately six months. If the costs change, the applicant will request a cost overrun.

The Council, after reading the extension request and hearing comments by staff and the applicant, voted 4-1 to Grant an Extension of Certificate of Need per 641 Iowa Administrative Code 202.13. The decision is based upon the finding that the project has not yet received final DIA approval, but that progress is being made toward completion of the project.

The extension is valid for six months.

Dated this 24 day of August 2017



H.W. Miller, MD, 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 APPLICATION OF	)	
	)	
TANAGER PLACE	)	<b>DECISION</b>
	)	
CEDAR RAPIDS, IOWA	)	

This matter came before the State Health Facilities Council for hearing on Wednesday, July 19, 2017.

The applicant Tanager Place applied through the Iowa Department of Public Health for a Certificate of Need to increase their Intermediate Care Facility for the Intellectually Disabled (ICF/ID) licensed beds by 10, from 8 to 18. There is no cost for this project.

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. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. Kim Venner and Andy Manternach, Tanager Place, represented 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 5-0 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) (2017) made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Tanager Place is a nonprofit organization that has been providing ICF/ID services since 2003 to children ages 5-17 who are diagnosed with intellectual disabilities and behavioral dysfunction. The applicant proposes to increase its licensed ICF/ID beds from 8 to 18.
2. Tanager Place will add the 10 beds by converting a 12-bed Psychiatric Medical Institution for Children (PMIC) unit to a nine bed ICF/ID. In addition, they will add one bed to their existing eight bed ICF/ID unit.
3. The plan for the current PMIC beds that will be transitioned to ICF/ID beds will be to use a 60-day transition period. Individuals in a PMIC bed, who have a planned discharge date within the 60days will remain in the facility bed until their discharge date. Individuals who have not reached their maximum treatment benefits within the 60-day period will be transferred to another Tanager Place PMIC facility bed. Upon receiving

CON approval Tanager Place will begin to strategically leave openings in their PMIC bed facilities to accommodate the necessary transfers.

4. According to Iowa Code section 135C.1(9), an Intermediate Care Facility for the Intellectually Disabled means “an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have an intellectual disability or a related condition and who are not related to the administrator or owner within the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with an intellectual disability established pursuant to the federal Social Security Act, §1905(c)(d), as codified in 42 U.S.C. §1396d, which are contained in 42 C.F.R. pt. 483, subpt. D, §410 – 480.”
5. Tanager place has experience serving youth who have intellectual disabilities and deficits in adaptive functioning, coupled with psychiatric and behavioral deficits, and they have developed a highly structured treatment environment that integrates evidence-based practices; clinical counseling; family counseling; and nursing, psychological and psychiatric services. They focus on preventing regression of current functional status and they provide individualized treatment services which are directed at the rehabilitation of behaviors.
6. The need for the additional beds is demonstrated by the high occupancy at Tanager Place, which has been operating at 100 percent capacity for the past three years. An occupancy of 87 percent is forecasted in year one with 98 percent capacity in years two and three following the addition of the ICF/ID beds.
7. Tanager Place serves youth from all 99 counties in Iowa, and had 42 individuals on their waiting list on the day of hearing. Their waiting list has individuals from 18 different counties, including Pottawattamie and Woodbury Counties in western Iowa. Additionally, Tanager Place receives multiple calls per week requesting ICF/ID services.
8. Eligibility for requiring the ICF/ID level of care is determined by the Iowa Medicaid Enterprise based on Iowa Foundation for Medical Care criteria.
9. Level of Care is approved by the Iowa Medicaid Enterprise, then the selected Managed Care Organization is responsible for the per diem for each approved individual. Individuals are recertified every 120 days by their MCO as needing the ICF/ID Level of Care.
10. Iowa Code section 135.63(4)(a) states “The department shall not process applications for and the council shall not consider a new or changed institutional health service for an intermediate care facility for persons with an intellectual disability unless ...the new or changed beds shall not result in an increase in the total number of medical assistance certified intermediate care facility beds for persons with intellectual disability in the state, exclusive of those beds at the state resource centers or other state institutions, beyond one thousand six hundred thirty-six beds.”

11. There are currently a total of 2,950 ICF/ID beds in the state, including the beds at Glenwood and Woodward Resource Centers, the state institutions. If these beds, 851 and 639 respectively, are excluded there are a total of 1,460 beds in the state, leaving 176 bed slots available.
12. There are seven additional ICF/ID's in Linn County. No affected party letters were received from these facilities.
13. There was a letter of support received from the Linn County Board of Supervisors, as required by Iowa Code section 135.63(4)(b).
14. There were no letters opposition received.
15. Tanager Place will incur no costs related to the project
16. Tanager Place anticipates an operational deficit of \$37,856, which reflects the estimated loss of revenue during a 60-day transition time period that will occur during which they will need to reduce the PMIC bed occupancy and build admissions for the new ICF/ID beds.

#### CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considered 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 population to be served by Tanager place are youth

ages 5-17 who are diagnosed with intellectual disability and behavioral dysfunction, that there is not a cost for the project, and that there are no more appropriate, less costly services available in the area. 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 being and 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 a total of 176 ICF/ID beds slots available in the state and that Tanager Place will only be licensing 10 new beds. The Council notes that there are seven other ICF/ID's in Linn County, and that no letters of opposition were received from these or any other facilities. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that this is not new construction. Iowa Code Sections 135.64(1) and 135.64(2)c.

4. The Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed health service, in the absence of that proposed service. The Council notes that Tanager Place has a high occupancy rate, currently 100%, and that they have a waiting list. The Council concludes that Tanager Place serves primarily children with intellectual and behavioral disabilities and that individuals needing services would experience serious difficulty finding another appropriate placement. 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) (2017), led the Council to find that a Certificate of Need should be awarded.

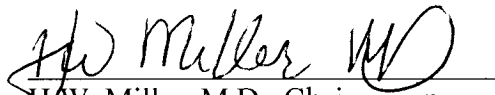
The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2017).

It is required in accordance with 641 Iowa Administrative Code 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 (641 Iowa Administrative Code 202.14).**

Dated this 24 day of August 2017

A handwritten signature in black ink, appearing to read "H.W. Miller" followed by a large, stylized initial "M". The signature is written over a horizontal line.

H.W. Miller, M.D., 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 )  
 )  
UNITED PRESBYTERIAN HOME )  
 )  
WASHINGTON, IOWA )

**DECISION**


This matter came before the State Health Facilities Council for review on Wednesday, July 19, 2017.

The project, the addition of seven skilled nursing beds by building a 17 bed private resident wing and conversion of an existing wing to a CCDI unit, was originally approved on October 29, 2015 at an estimated cost of \$4,836,772. On July 27, 2016, a cost overrun of \$1,363,228 was approved, bringing the total of the project to \$6,200,000. The original completion date for the project was January 2017; the new completion date is November 2017. The amount spent to date is \$4,178,308.

The Council, after reading the extension request and hearing comments by staff, voted 5-0 to Grant an Extension of Certificate of Need per 641 Iowa Administrative Code 202.13. The decision is based upon the finding that sufficient progress is being made in developing the project.

The extension is valid for nine months.

Dated this 24 day of August 2017

  
\_\_\_\_\_  
H.W. Miller, M.D., Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

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



**MINUTES**  
**STATE HEALTH FACILITIES COUNCIL**  
**THURSDAY JULY 20, 2017**  
**IOWA LABORATORY FACILITY, CONFERENCE CENTER, ROOM 208**  
**DMACC CAMPUS, ANKENY**

**8:30 AM ROLL CALL**

**MEMBERS PRESENT:** H.W. Miller, M.D., Chairperson; Roberta Chambers; Brenda Perrin; Connie Schmett; and Roger Thomas

**STAFF PRESENT:** Becky Swift and Heather Adams, Counsel for the State

**I. EXTENSION OF PREVIOUSLY APPROVED PROJECT**

1. WesleyLife, Johnston, Polk County: Build a 36-bed nursing facility – \$6,332,791 (*approved 2/24/2016; third extension request*)

Staff report by Becky Swift. The applicant was represented by Ed McIntosh, Dorsey & Whitney and Rob Kretzinger, WesleyLife. A motion by Perrin, seconded by Chambers, to grant a 12 month extension carried unanimously by voice vote.

**II. PROJECT REVIEW**

1. Iowa Methodist Medical Center, Des Moines, Polk County: Addition of a cardiac catheterization lab - \$2,920,485

Staff report by Becky Swift. The applicant was represented by Doug Gross, Brown Winick Law; Stephen House and Tom Mulrooney, UnityPoint Health; and Dr. Abul Nasser Khan, Iowa Clinic/Iowa Methodist Medical Center. The applicant made a presentation and answered questions posed by the Council. A motion by Perrin, seconded by Chambers to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

No affected appeared at the hearing.

A motion by Perrin, seconded by Schmett, to Grant a Certificate of Need carried 5-0.

2. Strategic Behavioral Health-LLC, Bettendorf, Scott County: Build a 72 bed psychiatric hospital - \$14,978,723.

Staff report by Becky Swift. The applicant was represented by Doug Fulton, Brick Gentry; Jim Shaheen, Scott Williams, and Mike Garone, Strategic Behavioral Health; and Dan Sullivan, Sullivan Consulting Group. The applicant made a presentation and answered questions posed by the Council. A motion by Schmett, seconded by Chambers, to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

Affected parties in support included Dawn Smith, Cedar County Board of Supervisors and Eastern Iowa Mental Health and Disability Services Region; Gregory Smith, Willow Creek Behavioral Health; Lori Elam, Eastern Iowa Mental Health and Disability Services Region; Doug Wilson, Integrated Telehealth; Dr. Kara Thompson, ER Physician and Des Moines

University; Tony Thompson, Black Hawk County Sheriff, representing the Iowa Sheriff's and Deputies Association; Chad Cribb, Scott County Sheriff's Office and Iowa Sheriff's and Deputies Association; Richard Vander Mey, Magistrate, Tama County; Chief Phil Redington, Bettendorf Police Department; Shane Walter, Sioux Rivers Mental Health and Disability Services Region and Iowa Community Services Association; Ashley Adams, representing NAMI Greater Des Moines; Christy Davis, Bettendorf Police Department; Janet Huber, Compassionate Counseling; Cindy Henning, Scott County Jail; Dawn Knutson, Yellow Ribbon Suicide Awareness and Scott County Kids; Christine Urish, Advocate; and Sharon Kendall Dunn, family member.

Affected parties in opposition were represented by Doug Gross, Brown Winick Law; Rick Seidler, CEO, UnityPoint Health - Trinity; Dennis Duke, President, UnityPoint - Robert Young Center; Joanne McNeal, Robert Young Center. The opposition made a presentation and answered questions posed by the council. A motion by Schmett, seconded by Perrin to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

Additional affected parties in opposition were represented by Ed McIntosh, Dorsey & Whitney; Dr. Ghada Hamdan-Allen, Jackie Anhalt, and Doug Cropper, Genesis Medical Center, Davenport; and David Swann, MTM Consulting Services. The opposition made a presentation and answered questions posed by the council. A motion by Perrin, seconded by Schmett to enter exhibits presented in support of oral testimony into the record carried unanimously by voice vote.

Other affected parties in opposition included Todd Noack, Life Connections Peer Recovery Services; Peggy Huppert, NAMI Iowa; Frank Klipsch, Mayor of Davenport; Jennifer Tamayo, Robert Young Center; Karrie Abbott, United Way of the Quad Cities Area; Ralph Johanson, Davenport School Board; and Richard Whitaker, Ph.D., Vera French Community Mental Health Clinic.

The applicant, represented by Doug Fulton, Brick Gentry; and Jim Sheehan and Mike Garone, Strategic Behavioral Health; and Dan Sullivan, Sullivan Consulting Group, provided rebuttal and closing remarks. A motion by Perrin, seconded by Chambers, to enter exhibits presented in support of oral testimony into the record carried by voice vote.

A motion by Thomas, seconded by Chambers to Grant a Certificate of Need, carried 4-1. Schmett voted no.

A motion by Thomas, seconded by Chambers to adjourn carried unanimously by voice vote.

The meeting adjourned at 7:40 p.m.

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

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

WESLEYLIFE )

JOHNSTON, IOWA )

**DECISION**

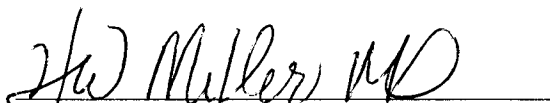
This matter came before the State Health Facilities Council for review on Thursday July 20, 2017. The applicant was represented by Ed McIntosh of Dorsey & Whitney and Rob Kretzinger, WesleyLife.

The project, construction of a 36-bed neighborhood model nursing facility, was originally approved on February 24, 2016, at an estimated cost of \$6,866,882. The original completion date for the project was September 2017. The project has been delayed due to negotiations for the purchase of the land, which took over nine-months to complete, as well as rezoning and wetland abatement. Financing was secured in June 2017 from Central State Bank. The new completion date for the project is August 31, 2018. To date \$484,792 has been spent on the project.

The Council, after reading the extension request and hearing comments by staff and the applicant, voted 5-0 to Grant an Extension of Certificate of Need per 641 Iowa Administrative Code 202.13. The decision is based upon a finding that sufficient progress is being made in developing the project.

The extension is valid for 12 months.

Dated this 24 day of August 2017



H.W. Miller, M.D., 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 APPLICATION OF )  
 )  
IOWA METHODIST MEDICAL CENTER ) **DECISION**  
 )  
DES MOINES, IOWA )

This matter came before the State Health Facilities Council for hearing on Thursday, July 20, 2017.

The applicant proposes the addition of a third cardiac catheterization laboratory at an estimated cost of \$2,920,000.

Iowa Methodist Medical Center 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. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. Doug Gross, Brown Winick Law; Stephen House and Tom Mulrooney, UnityPoint Health; and Dr. Abul Nasser Khan, The Iowa Clinic/Iowa Methodist Medical Center 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 5-0 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) (2017) made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Iowa Methodist Medical Center (“Methodist”) proposes the addition of a third dedicated cardiac catheterization lab. Iowa Methodist Medical Center is located in Des Moines, Polk County, Iowa.
2. Methodist’s ongoing mission is to serve the needs of low-income people. In 2016, Methodist provided \$16.3 million in quantifiable benefits to low-income patients, which included \$2.2 million in charity care at cost and \$14.1 million in unreimbursed Medicaid expenses.
3. Methodist treats all patient without regard to race, color, creed, age, sex, national origin, ancestry, religion or disability.

4. The service area for this project consists of 17 counties in central Iowa, which have a combined population of approximately 956,000. Most of these counties are outside the metro and only two of the non-metro counties have a cardiac catheterization lab (Marshall and Story Counties).
5. In 2016, 90 percent of Methodist's cardiac catheterization discharges involved patients from these counties; more than half of these discharges were from Polk County.
6. The population for this project includes individuals within the service area who present at Methodist with cardiovascular-related conditions.
7. Methodist has received CON's for three cardiac catheterization labs, but the third lab is now dedicated to providing electrophysiology ("EP") procedures, leaving two dedicated cardiac catheterization labs. Methodist also has a dedicated peripheral vascular ("PV") catheterization lab. Equipment in the EP and PV labs is not used to provide cardiac catheterization procedures.
8. In 2016, Methodist performed 2,778 cardiac catheterization procedures in its two dedicated labs, up from 2,241 in 2014. Methodist forecasts the number of procedures increasing to 2,909 in the first year after the proposed lab is added. This projection assumes that the increase in the utilization of cardiac catheterization Methodist has experienced in the recent years will continue.
9. Between 2014 and 2016, the number of procedures performed in Methodist's two dedicated cardiac catheterization labs increased by almost 24 percent, which has resulted in patient delays.
10. According to data from the Iowa Hospital Association, utilization of each of the current cardiac catheterization labs at Methodist is 75 percent higher than the statewide per-cath-lab average.
11. The industry standard for cardiac catheterization is approximately 1,000-1,200 procedures per lab per year. Methodist's 2016 volume - 2,778 in two labs - is at maximum capacity.
12. 641 Iowa Administrative Code 203.2(3)(c) contains the guidelines for minimum utilization of cardiac catheterization labs, stating that adult cardiac catheterization laboratories should be projected to operate at a minimum of 300 annually.
13. Capacity issues have forced Methodist to extend hours of operation of the cardiac catheterization labs into the evening, which often creates hardship for patients. Also, since Methodist's existing cardiac catheterization labs are operating at full capacity, scheduling delays can also arise when one piece of equipment has to be removed from service for upgrades, routine maintenance, or unscheduled repairs.

14. The two labs equipped for cardiac catheterization are operating at capacity, and making changes to scheduling and staffing would hinder patient care. The proposed lab will be available 24/7 for urgent and emergency coverage, and the primary hours for elective cases will be 7:00 am – 5:00 pm.
15. Cardiac catheterization procedures will be performed by four interventional cardiologists on staff. This includes physicians from UnityPoint Clinic and The Iowa Clinic, all of whom have privileges at Methodist Medical Center. A fifth cardiologist is expected to arrive in July 2017. In addition, Methodist currently employs 36 non-physician staff to cover its labs, and expects to hire five additional staff, including three RN's, one radiology tech, and one aide.
16. There were 11 letters of support received from the following: the Executive Director, American Heart Association – Central Iowa; CEO, Clark County Hospital; Assistant Chief – Operations, Clive Fire Department; Director, EMS Education, Des Moines Area Community College; CEO, Greater Regional Medical Center (Union County); CEO, Greene County Medical Center; CEO, Guthrie County Hospital; EMS Coordinator, UnityPoint Health, Des Moines; CEO, Lucas County Health Center; CEO, The Iowa Clinic; and CEO, Story County Medical Center. These letters cite the need for increased access to cardiac catheterization; the time necessary for more complex procedures, which takes up more time at the existing labs; delays in response time and the need to decrease patient wait times; and increasing demand for cardiac catheterization procedures as evidence of need for the expansion of Methodist's cardiac catheterization capabilities.
17. There were no letters of opposition received.
18. Methodist will purchase the cardiac catheterization lab equipment at an approximate cost of \$1,650,000. Methodist expects to incur costs of approximately \$1,270,000 to renovate space to house the catheterization lab, which results in the total cost of the project being approximately \$2,920,000. Methodist has cash on hand for the total cost of the project.
19. The applicant does not project an operational deficit.

#### 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 notes that the utilization of Methodist's labs was 2,241 procedures in 2014 and 2,778 in 2016, a nearly 24% increase. The Council further notes that the industry standard for cardiac catheterization is approximately 1,000-1,200 procedures per lab per year and that Methodist's 2016 volume - 2,778 procedures in two labs - is at maximum capacity. The Council also notes that Methodist has cash on hand for the project. The Council concludes that Methodist is operating at capacity and that alternatives are not available. 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 notes 11 letters of support, some from rural hospitals in the service area, and no letters of opposition to the project, were received. The Council also notes that only two of the non-metro counties served by Methodist have cardiac catheterization labs. The Council concludes that Methodist serves patients from a 17 county area in central Iowa, and that in 2016, 90 percent of their cardiac catheterization discharges came from this area. 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 experience problems in obtaining care of the type which will be furnished by the proposed health service, in the absence of that proposed service. The Council notes that capacity issues have forced Methodist to extend hours of operation of the cardiac catheterization labs into the evening, which often creates hardship for patients. The Council also notes that since Methodist's existing cardiac catheterization labs are operating at full capacity, scheduling delays can also arise when one piece of equipment has to be removed from service for upgrades, routine maintenance, or unscheduled repairs. The Council concludes that Methodist is operating its two dedicated cardiac catheterization labs at capacity and that patients are experiencing delays receiving services, and that such delays would only expand in light of increasing rates of utilization if the project was not approved. 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) (2017), led the Council to find that a Certificate of Need should be awarded.

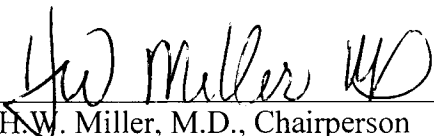
The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2017).

It is required in accordance with 641 Iowa Administrative Code 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 (641 Iowa Administrative Code 202.14).**

Dated this 24 day of August 2017



H.W. Miller, M.D., 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 )  
 )  
SBH DAVENPORT, LLC )  
 )  
BETTENDORF, IOWA )

**DECISION**

This matter came before the State Health Facilities Council for hearing on Thursday, July 20, 2017.

The applicant SBH Davenport, LLC applied through the Iowa Department of Public Health for a Certificate of Need to develop a 72-bed psychiatric hospital at an estimated cost of \$14,978,723.

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. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. Doug Fulton, Brick Gentry; Jim Shaheen, Mike Garone, and Scott Williams, Strategic Behavioral Health and Dan Sullivan, Sullivan Consulting Group were present representing the applicant. The applicant made a presentation and answered questions.

Affected parties in support included Dawn Smith, Cedar County Board of Supervisors and Eastern Iowa Mental Health and Disability Services Region; Gregory Smith, Willow Creek Behavioral Health; Lori Elam, Eastern Iowa Mental Health and Disability Services Region; Doug Wilson, Integrated Telehealth; Dr. Kara Thompson, ER Physician and Des Moines University; Tony Thompson, Black Hawk County Sheriff, representing the Iowa Sheriff's and Deputies Association; Chad Cribb, Scott County Sheriff's Office and Iowa Sheriff's and Deputies Association; Richard Vander Mey, Magistrate, Tama County; Chief Phil Redington, Bettendorf Police Department; Shane Walter, Sioux Rivers Mental Health and Disability Services Region and Iowa Community Services Association; Ashley Adams, representing NAMI Greater Des Moines; Christy Davis, Bettendorf Police Department; Janet Huber, Compassionate Counseling; Cindy Henning, Scott County Jail; Dawn Knutson, Yellow Ribbon Suicide Awareness and Scott County Kids; Christine Urish, Advocate; and Sharon Kendall Dunn, family member.

Affected parties in opposition included Doug Gross, Brown Winick Law; Rick Seidler, CEO, UnityPoint Health - Trinity; Dennis Duke, President, UnityPoint - Robert Young Center; Joanne McNeal, Robert Young Center; Ed McIntosh, Dorsey & Whitney; Dr. Ghada Hamdan-Allen, Jackie Anhalt, and Doug Cropper, Genesis Medical Center, Davenport; and David Swann, MTM Consulting Service; Todd Noack, Life Connections Peer Recovery Services; Peggy Huppert, NAMI Iowa; Frank Klipsch, Mayor of Davenport; Jennifer Tamayo, Robert Young Center; Karrie Abbott, United Way of the Quad Cities Area; Ralph Johanson, Davenport School Board; and Richard Whitaker, Ph.D., Vera French Community Mental Health Clinic.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 4-1 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) (2017) made the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. SBH Davenport, LLC (“SBH”) is a project of Strategic Behavioral Health, a Memphis, Tennessee based behavioral healthcare organization. SBH proposes the construction of a free-standing 72-bed psychiatric hospital in Bettendorf, Scott County, Iowa. Five separate units are planned housing children (10 beds) and adolescents (18 beds), adults (28 beds in two units), and geriatric patients (16 beds). The building will be designed to accommodate patients who are at risk to self and others.
2. SBH has been in operation for 11 years, and currently operates 10 facilities in other states similar to the one proposed in Bettendorf.
3. SBH applied for a Certificate of Need (CON) in 2015, but deferred their first hearing due to having a four person Council. They appeared in front of a four person Council in February and October 2016, each time receiving a tie vote. The July 2017 meeting was their third attempt to obtain a CON for their facility.
4. SBH will serve patients with serious psychiatric illness that cannot be treated in a less restrictive or intensive environment in the community. Patients admitted to the inpatient setting will be suicidal, homicidal or gravely disabled due to a primary psychiatric illness. According to testimony offered at the hearing, SBH will also offer co-occurring (substance abuse and mental health) services as well.
5. SBH notes that patients are managed based on their needs, psychiatric conditions, and their safety and safety of others. They also state that patients will remain in the hospital until a safe and effective discharge plan and adequate aftercare living arrangements have been developed.
6. SBH will offer Intensive Outpatient (“IOP”), Partial Hospitalization (“PHP”) and around-the-clock free mental health assessment screening services to patients. IOP services are provided in a group setting 3-5 days per week for three hours and PHP service are provided in a group setting for 5 days a week for eight hours per day. IOP and PHP services offer a step down from acute psychiatric hospitalization or a patient can be directly admitted to these services. Additionally, they will provide community education on mental health related issues.
7. Eastern Iowa was identified by SBH as an area with a significantly underserved population with respect to inpatient psychiatric services. This identification was done through a nationwide needs analysis and meetings with community stakeholders.
8. SBH proposes to serve all patients including the medically underserved, persons in rural areas, low-income persons, racial and ethnic minorities, handicapped persons and the elderly.

9. SBH projects an occupancy of 33.12 percent in year one, 65.05 percent in year two, and 79.88 percent in year three. Using the company average, SBH estimates the average length of stay to be eight days.
10. Formal transfer agreements for patients who need a level of care beyond the capability of SBH will be executed by the date services are initiated.
11. Using the Iowa Hospital Association payer mix, SBH projects a payer mix of 30% Medicare, 30% Medicaid, 15% Other Private Insurance, 15% Blue Cross & Blue Shield, and 10% indigent/adult Medicaid.
12. SBH anticipates charging \$1,500 per patient day and anticipates costs being contractually reduced by insurance companies.
13. The primary service area for SBH will be the Eastern Iowa Mental Health and Disability Services (“MHDS”) Region of Scott, Clinton, Jackson, Cedar and Muscatine counties, although outlying counties may also be served.
14. According to documents submitted by SBH at the hearing, there are 53 licensed psychiatric beds in the Eastern Iowa MHDS Region and based on figures from the Treatment Advocacy Center, which recommends 50 beds per 100,000 residents, there is a net need of 98 beds for the region, or 77 beds once all of Genesis’ beds are factored into the formula. Additionally, SBH has found in other locations that adding free standing psychiatric beds uncovers significant unmet and unidentified need.
15. SBH will have a 24-hour referral and assessment line for healthcare and other service providers to refer patients. In addition, mobile assessors will go onsite to the referring facility to conduct face-to-face screening with a potential patient.
16. SBH considered several alternatives to the proposed project, including a joint venture with an existing hospital, building a smaller facility and the renovation of existing space. They determined that none of these alternatives met the identified needs.
17. In 2015, the Iowa Department of Human Services (“DHS”) implemented a voluntary psychiatric bed tracking system, a tool that allows healthcare institutions the ability to locate beds when mental health inpatient treatment is needed.
18. On three dates in June 2017 (June 20, 23 and 28), according to the DHS bed tracking system, there was an average of 11 adult inpatient psychiatric beds available and seven child/adolescent inpatient beds available in the five counties of the Eastern Iowa MHDS Region. There was an average of six adult inpatient psychiatric beds available and four child/adolescent inpatient beds available in nine counties (Dubuque, Delaware, Jones, Linn, Johnson, Washington, Louisa, Henry, and Des Moines) near the Eastern Iowa MHDS Region during that same time period. Statewide, there was an average of 51 adult psychiatric beds available and 30 child/psychiatric beds available for the three June dates. However, testimony at hearing indicated that the database may not be updated as frequently as necessary and that

there may be reasons why the tracking system indicates a bed is available when in fact it is not, such as patient gender, patient needs, or staffing shortages.

19. Although Strategic Behavioral Health's proposed project is to build psychiatric inpatient beds and provide psychiatric inpatient services, once established as an acute care hospital, redistribution of psychiatric inpatient beds to another type of acute care bed category (i.e., general medical-surgical care, etc.) may not require additional review and approval by the Health Facilities Council. Iowa Code section 135.63(2)(k). However, SBH indicated that the facility will not be designed or operated in a manner which would be conducive to operation as a non-specialty acute care hospital. SBH further indicated that none of the beds in their other facilities have been converted to any other type of acute care bed, and that the company has no intention of converting any of these psychiatric beds to any other category of beds.
20. In 2013, Genesis Medical Center ("Genesis") in Davenport, an affected party in opposition to this project, along with other community providers conducted a community needs assessment related to behavioral health services. In September 2015, Genesis completed a bed redistribution request to convert 21 medical/surgical beds to psychiatric inpatient beds in the first stages of a project to open a 60-bed inpatient psychiatric unit at Genesis. In December 2015, Genesis opened a five bed child/adolescent unit which was increased to eight in 2016. They also opened an 18 bed adult unit, which became a 28 bed unit as of July 2016. A 24-bed geriatric unit opened in July 2017. In addition to the inpatient beds, Genesis also established a Behavioral Health Patient, Family and Community Advocacy Council; expanded intensive outpatient services, including adult and adolescent services; and opened a crisis stabilization unit. Additionally they collaborate with the Eastern Iowa MHDS region for telehealth services for behavioral health patients. As of the date of hearing, Genesis was operating 28 adult and 8 child/adolescent beds. Affected parties from Genesis at the hearing indicated that there has not been a single day when capacity had been reached in their facility.
21. Affected parties representing Genesis cite as points of opposition that Genesis is meeting the community need, that SBH does not offer comprehensive patient care including medical services, that adding more inpatient beds is not the solution to the need for mental health services, and that they believe SBH cannot participate in Iowa's Adult Medicaid program.
22. Affected parties in opposition raised the issue of Medicaid's Institution for Mental Disease ("IMD") exclusion, stating that based on current Iowa law, SBH would not be able to participate as a certified provider in the Centers for Medicare and Medicaid Services ("CMS") rule which provides that individuals between the ages of 21-64 are eligible to receive IMD services paid by Medicaid no more than 15 days of services per month. According to DHS, effective July 1, 2017, the IMD's at Cherokee and Independence are the only two hospitals in Iowa that fit the IMD description. However, DHS indicated that "If a provider was able to meet the criteria, the facility could be enrolled in Medicaid fee for service." SBH testified that it believes it will be able to meet criteria.
23. UnityPoint Health – Trinity, Robert Young Center ("RYC"), which is located in Rock Island, Illinois, and is part of the Quad Cities Area of Davenport and Bettendorf, Iowa and Rock Island and Moline, Illinois, is an affected party in opposition to the SBH proposal. The RYC

has adult psychiatric inpatient beds and has a long-range plan to redistribute beds to 11 child/adolescent psychiatric inpatient beds and 12 geriatric psychiatric inpatient beds in 2018. In 2017, changes in Illinois law allow for a two-year pilot project to permit cross border involuntary commitments of adults between the Eastern Iowa MHDS Region and Rock Island County, IL. In a letter dated March 7, 2017, it was noted that six hospitals in the Eastern Iowa MHDS Region have signed Memorandums of Understanding to participate in the RYC's crisis assessment services. The crisis assessment service allows emergency departments to access 24-hour crisis clinicians via tele-health with behavioral health patients presenting at the hospital. Also noted in that letter was that during 2016, RYC completed 1,156 crisis evaluations for the Eastern Iowa MHDS Region, and connected 646 of these individuals to community resources. In addition to crisis assessment services, RYC has also initiated, in the Eastern Iowa MHDS Region, a 24-hour crisis hotline and care coordination. UnityPoint Health cites as points in opposition that the number of psychiatric beds in the region has increased and that current services in the area are sufficient to meet the needs of mental health patients; that many mental health patients also have medical conditions; and that there is currently a sufficient number of inpatient psychiatric beds in the Quad Cities area.

24. There were over 30 letters of opposition received. In addition, 16 affected parties appeared at hearing in opposition to the project. These letters and witnesses cite the addition of psychiatric inpatient beds at existing providers as being less costly and more quickly implemented, that the project would constitute a duplication of services, concerns over the motives of a for-profit provider, concerns over treatment of patients who also have medical conditions, and shortages of psychiatrists and behavioral health specialists worsening with an increased number of psychiatric inpatient beds, as evidence in opposition to the proposal.
25. There were over fifty letters of support received for this project, including letters from law enforcement agencies, health care providers, businesses, Boards of Supervisors, other governmental entities, community organizations, family members, educational institutions, and residents. In addition, 17 affected parties appeared at the hearing in support of the application. The letters and testimony cite the substantial need for additional inpatient beds and outpatient services, lengthy wait times for beds, and the need for law enforcement to transport patients' long distances to find open beds, as reasons for their support of SBH.
26. An affected party in support of the proposal from the Scott County Sheriff's Office indicated at the hearing that in the past three months the Sheriff's Office had transported three people to Council Bluffs for mental health treatment. The affected party further noted that in the past six to eight months, 32 Scott County residents had been transported out of the county for treatment, and that transports consume a substantial amount of law enforcement time and resources. Law enforcement officers testified that the current system is criminalizing the mentally ill and that law enforcement officials at all levels see a tremendous need for additional inpatient psychiatric beds to properly treat this population.
27. The applicant anticipates a total of 69.4 FTEs for the proposed facility in year one and a total of 107.8 FTEs by years two and three. SBH anticipates hiring or contracting with, among others, psychiatrists and physicians; physicians assistants and nurse practitioners; pharmacists; psychiatric nurses and mental health professionals.

28. SBH noted during the hearing that they will have medical staff (psychiatrists and physicians) on-site during regular day hours and on call overnight, guaranteeing full coverage.
29. SBH will employ mobile assessors who are mental health professionals whose role is to provide free assessments and screenings to patients living outside the primary service area in an effort to reduce the barriers created by distance and transportation challenges.
30. SBH will also employ community liaisons whose primary responsibility is to bridge gaps in communication between the hospital and the community.
31. SBH staff will participate in existing community-based collaborations to improve care coordination of patients, and community-based providers will be asked to attend discharge planning meetings.
32. Site costs will be \$2,237,848, facility costs will be \$11,670,875, the moveable equipment costs will be \$820,000, and the financing costs will be \$250,000 for a total project cost of \$14,978,723. The applicant anticipates borrowing \$8,987,234 for the proposed project. Additional funding for the proposal will be cash on hand (\$5,991,489).
33. The application includes the terms of debt and the applicant indicates a development line of \$70M with \$16,474,936 outstanding on May 16, 2017.
34. SBH does not anticipate an operating deficit after year one.

#### 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 eastern Iowa was identified by SBH through a nationwide needs analysis and meeting with community stakeholders as an area with a significantly underserved population with respect to inpatient psychiatric services. Additionally, the Council was convinced by the compelling testimony from the many affected parties that existing facilities are not meeting the substantial need for inpatient psychiatric services in this region. The Council found especially compelling the testimony from law enforcement officials regarding the difficulties in placing persons with psychiatric conditions and the lack of existing alternatives for these individuals. The Council further concludes that SBH considered alternatives, such as a joint venture with an existing hospital, a smaller facility and modernization of an existing building but found that none of these alternatives met the needs for psychiatric patients in eastern Iowa. 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 and will continue to be used in an appropriate and efficient manner. The Council notes that based on data provided at the hearing there are currently 53 psychiatric beds available in the Eastern Iowa MHDS Region, and there is a net need for 98 beds in the area, or 77 beds once all of Genesis' beds are on-line. The Council further notes that the beds at Genesis and other existing facilities are being used and will continue to be used in an appropriate and efficient manner as is evidenced by the continued expansion of those facilities and the growing need for mental health treatment. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the proposed project involves the construction of a single story 54,476 square foot, free-standing hospital. The Council takes note that this single specialty psychiatric hospital will be built to accommodate patients who are at risk to self and others. The Council concludes that alternatives such as building a smaller facility, modernization of an existing building and sharing arrangements with a local hospital have been considered and implemented to the maximum extent practicable. Iowa Code Sections 135.64(1) and 135.4(2)c.

4. The Council concludes that patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service, in the absence of that proposed service. The Council notes that even with the opening of psychiatric beds at Genesis, 32 individuals in need of mental health care were transported by law enforcement out of county for treatment within the past six to eight months, and that within the past three months three individuals had been transported to Council Bluffs for treatment. Additionally, the Council concludes that the testimony from family members and advocates for those with mental illness establishes the serious difficulties persons with mental illness have encountered and will continue to encounter in obtaining treatment if this project is not approved. The Council also notes that Iowa residents are crossing the border into Illinois for treatment, indicating a lack of resources in the Eastern Iowa MHDS Region and providing further evidence of the problems patients have experienced in obtaining inpatient services in this region. 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) (2017), led the Council to find that a Certificate of Need should be awarded.

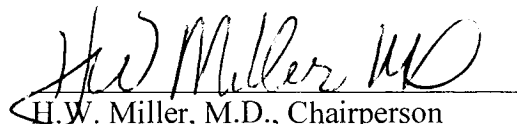
The decision of the Council may be appealed pursuant to Iowa Code Section 135.70 (2017).

It is required in accordance with 641 Iowa Administrative Code 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 (641 Iowa Administrative Code 202.14).**

Dated this 24 day of August 2017



H.W. Miller, M.D., Chairperson  
State Health Facilities Council  
Iowa Department of Public Health

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