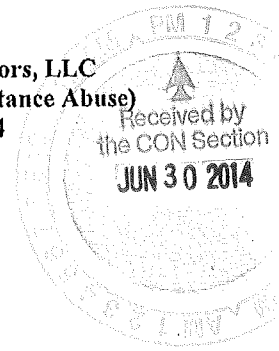


Written Comments Filed by Frye Regional Medical Center, Inc.
Concerning MBHS of North Carolina, LLC and Alexander Hospital Investors, LLC
CON Application to Develop 15 Child/Adolescent Chemical Dependency (Substance Abuse)
Treatment Beds in Alexander County - Project I.D. No. E-10289-14



June 30, 2014

Martha Frisone, Interim Chief
Julie Halatek, Project Analyst
N.C. Department of Health and Human Services
Division of Facility Services
Certificate of Need Section
805 Biggs Drive
Raleigh, North Carolina 27603-2008

RE: Written Comments regarding MBHS of North Carolina, LLC and Alexander Hospital Investors, LLC CON Application, Alexander County - Project I.D. No. E-10289-14

Dear Ms. Frisone and Ms. Halatek:

Frye Regional Medical Center, Inc. ("Frye") provides these comments in response to the CON application filed by MBHS of North Carolina, LLC ("MBHS") and Alexander Hospital Investors, LLC ("AHI") (collectively, the "Applicants") to develop fifteen (15) child/adolescent chemical dependency (substance abuse) treatment beds in a new licensed inpatient facility in Alexander County, pursuant to the need determination in the 2014 State Medical Facilities Plan (hereinafter, the "Application"). These comments are filed in accordance with N.C.G.S. 131E-185(a1)(1). After a review of the MBHS application, Frye believes that the Applicants have not accurately identified the project they intend to develop, have not shown a need for that project, have not demonstrated sufficient clinical staff to support the project, and have not identified all of the costs associated with that project. Therefore, the project fails to comply with multiple Agency statutory review criteria and rules.

The Applicants have not provided sufficient information on the setting and programmatic details of the proposal. There is insufficient information on who will serve the patients and families clinically. There would need to be psychiatrists with specialties in this age group identified to be the key admitters to this program to meet the needs and requirements for this population. There is literally no evidence of physician support for the Application. All of the letters of support in Exhibit L to the Application are from business and community leaders. Exhibit K to the Application contains a blank letter from MBHS' VP of Operations stating that the applicants "need to identify physicians in the area who will be willing to serve our clients' medical needs." Frye has had significant difficulty over the years finding psychiatrists willing to treat children and adolescents. If they cannot be found to serve a much larger market in Hickory and Catawba County, it is highly unlikely this type of physician support can be found to serve

Written Comments Filed by Frye Regional Medical Center, Inc.
Concerning MBHS of North Carolina, LLC and Alexander Hospital Investors, LLC
CON Application to Develop 15 Child/Adolescent Chemical Dependency (Substance Abuse)
Treatment Beds in Alexander County - Project I.D. No. E-10289-14

a smaller facility in Alexander County. Without physicians willing to refer patients needing this service to the facility or treat those patients once they are admitted, the Application must be found non-conforming with Criterion 3.

In addition, the Applicants need to demonstrate that the facility would include a school setting required as well as other social, recreational, dietary and medication therapies that are age appropriate. While there is a staffing chart showing the Applicants' intention to retain staff or consultants for some of these areas, there is no evidence in the Application showing that the residents' educational needs will be met.

Without the appropriate physician and other essential staff support for the project, the applicant must be found non-conforming with Criteria 7 and 8.

The Application states that the proposed facility will be located at 326 3rd Street S.W. in Taylorsville. Section VIII of the Application provides that construction costs will be in the area of \$1.9 million, including \$250,000 in site costs. Other than the street address, the body of the Application provides little information as to the identity of the site. The narrative of the Application, as well as the site plan of the proposed facility attached as Exhibit R to the Application, would lead one to believe that the Applicants are planning to develop a free-standing building on the site dedicated solely to the project proposed in the Application, surrounded solely by open green space and parking lots. Similarly, the proposed lease between the Applicants attached as Exhibit F references "a 12,500 square foot facility in Taylorsville, North Carolina, to provide fifteen chemical dependency treatment beds (the "Premises")...".

In fact, the proposed site is the same site as the former Alexander Community Hospital, which closed in 2007. See, e.g., the letter from the proposed general contractor in Exhibit P to the Application ("Please accept this letter as our intent to complete a 12,500 square... (foot) ...facility for the proposed Children/Adolescent Hospital Unit at the current Alexander Hospital site."); and the zoning letter from the Town of Taylorsville in Exhibit S ("Subject: Zoning – Infrastructure Capacity Former Alexander Community Hospital Site 226 Hwy 16 South Taylorsville"). The hospital location in Exhibit 1 is also consistent with the Flood Plain Map contained in Exhibit T to the Application. In addition, a Google Maps aerial shot of the current hospital site, attached as Exhibit 1, clearly shows that the proposed facility is located virtually in the middle of the current hospital building.

It is unclear from the capital cost projections and site information in Sections VIII and XI whether the Applicants intend to tear down the entire building and start over, or renovate this space and use it in conjunction with other parts of the building. The timetable in Section XII of the application would suggest an intent to renovate existing space, rather than construct a new building, in that it projects construction to be complete within a year of award of the CON. The location of the proposed space in the middle of the existing building, as shown in the aerial shot in Exhibit 1, supports that conclusion. If the

Written Comments Filed by Frye Regional Medical Center, Inc.
Concerning MBHS of North Carolina, LLC and Alexander Hospital Investors, LLC
CON Application to Develop 15 Child/Adolescent Chemical Dependency (Substance Abuse)
Treatment Beds in Alexander County - Project I.D. No. E-10289-14

Applicants do intend to renovate other space in the building, they must (1) describe the plans for that space, (2) identify a need for it, (3) demonstrate that the cost to construct or renovate the space has been accounted for in the capital cost estimates, and (4) demonstrate that funds are available to construct that space.

In addition, if this project is going to reside within the existing old hospital space, the Applicants would need to describe how they intend to meet current NFPA Life Safety Codes. These Codes require any inpatient stay facility to have exterior windows in all overnight patient rooms. The Codes also require emergency lighting, and three electrical branch circuits for normal, life safety, and critical power. In addition, the NFPA Life Safety Codes require a generator to support all three branches in any overnight stay facility. It is unclear in their submittal if the Applicants have accounted for the cost of a generator. Of greatest concern is the need for appropriate fire separation between existing and new proposed occupied space unless the Applicants intend to upgrade and maintain life safety readiness in the entire building, both occupied and unoccupied. If that is the case, the cost of those upgrades would necessarily need to be included in the capital cost of the project, since the project could not be developed without those upgrades.

Separate and apart from this CON Application, AHI has publicly declared an intent to convert previously licensed acute care beds to inpatient psychiatric beds at the same location, as part of a settlement of a contested case challenging the 2009 decision by the Department's Acute and Home Care Licensure Section to revoke Alexander Community Hospital's hospital license. See the June 2, 2014 letter to the Honorable Donald W. Overby, Administrative Law Judge from AHI's counsel, attached as Exhibit 2. The letter states that AHI intends to ask the CON Section for an exemption from CON review for this conversion project as soon as it has entered into a contract with Smoky Mountain Center. Thus, it appears that it is AHI's intent to develop both child/adolescent chemical dependency (substance abuse) treatment beds and psychiatric beds at the same time on the same site.

This intent is further confirmed in a letter attached as Exhibit A to the Application. In that letter, Stirling Realty Advisors expresses its interest in providing construction and permanent financing "for your conversion of Alexander Hospital to an Acute Psychiatric Facility", not a child/adolescent chemical dependency (substance abuse) facility. However, the financing amount approved and the attached amortization table is only sufficient to cover the proposed capital costs for the latter facility.

Since AHI clearly intends to develop a separately licensed psychiatric facility on the same site at virtually the same time, it must demonstrate both the need for and capital costs of that project. At the very least, AHI must demonstrate that the financing for the

Written Comments Filed by Frye Regional Medical Center, Inc.
Concerning MBHS of North Carolina, LLC and Alexander Hospital Investors, LLC
CON Application to Develop 15 Child/Adolescent Chemical Dependency (Substance Abuse)
Treatment Beds in Alexander County - Project I.D. No. E-10289-14

proposed psychiatric hospital will not impinge upon its ability to develop and operate the project described in the Application.¹

Even if the Applicants do not intend to develop the psychiatric beds on the same site, the Application nevertheless does not demonstrate sufficient capital costs for the equipment needed to provide the services actually proposed. MBHS has identified no fixed equipment and AHI has identified no fixed or mobile equipment in the proposed capital expenditures in Section VIII. However, Section IX of application identifies facility start-up expenses in excess of \$1,000 for labs and x-rays, despite the fact that there is neither space nor equipment identified in the Application which would indicate an intent or ability of the facility to provide lab or x-ray services to residents. Further, it does not appear that necessary equipment such as HVAC, kitchen equipment, washing machines, dryers, telephones, computers, etc. have been accounted for in the proposed capital costs.² Without this equipment, the facility cannot function. Therefore, the Application is non-conforming with Criterion 5 and must be disapproved.

It has been long-standing CON Section policy that whenever an applicant files a CON application to develop a new institutional health service, it must demonstrate the need for all services proposed to be developed at the same time or within a year of completion of the project, even if some of those services would not require a CON if developed outside this time frame. This Application fails to even mention, much less demonstrate the need for, an inpatient psychiatric facility which apparently will be developed in the same building and at the same time as the proposed child/adolescent chemical dependency (substance abuse) facility. Further, the letter from AHI's counsel attached as Exhibit 2 does not explain whether AHI intends for the psychiatric beds to be adult psychiatric beds or child/adolescent psychiatric beds. Such an explanation is needed for the CON Section to determine whether the setting of any proposed psychiatric services is consistent with the chemical dependency services they propose to provide to children and adolescents.

If the targeted population is to be child/adolescent psychiatric patients, then all of the problems discussed above regarding the lack of physician and educational support would apply. If the targeted population is to be adult psychiatric patients, AHI still must identify psychiatrists who would support both programs.

Because the Applicants have failed to explain what they intend to do with the remainder of the Alexander Community Hospital building, the CON Section is unable to determine

¹ In this regard, AHI incorrectly answers "not applicable" to question 9(b) in Section VIII, p. 66 of the Application, which asks for the capital costs and proposed financing of all projects that are under development or proposed for development in North Carolina. The question properly is not limited to projects which are subject to CON review, since question 9(c) on 77 follows up by asking the applicant to demonstrate that it has sufficient funds to finance all existing and proposed projects.

² There is no equipment list in the body of the application or the exhibits.

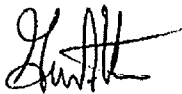
Written Comments Filed by Frye Regional Medical Center, Inc.
Concerning MBHS of North Carolina, LLC and Alexander Hospital Investors, LLC
CON Application to Develop 15 Child/Adolescent Chemical Dependency (Substance Abuse)
Treatment Beds in Alexander County - Project I.D. No. E-10289-14

whether the Applicants have identified the least costly or most effective alternative, and the Application is non-conforming with Criterion 4.

For all of these reasons, Frye recommends disapproval of MBHS's and AHI's proposed project.

Thank you for the opportunity to provide these comments and your careful consideration of these important issues.

Respectfully Submitted,



Garfield Atchison
Chief Operating Officer

Google



EXHIBIT
1

K&L Gates LLP
Post Office Box 14210
Research Triangle Park, NC 27709-4210
430 Davis Drive, Suite 400
Morrisville, NC 27560
T 919.466.1190 www.klgates.com

June 2, 2014

Susan K. Hackney
D 919.466.1195
F 919.516.2025
susan.hackney@klgates.com

VIA E-MAIL AND US MAIL

The Honorable Donald W. Overby
Administrative Law Judge
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

Re: *Alexander Hospital Investors LLC, Charles E. Trefzger, and David S. Jones v. North Carolina Department of Health and Human Services, Division of Health Service Regulation, Licensure and Certification Section (09 DHR 1179)*

Dear Judge Overby:

Petitioners file this report to update you on the status of this case. Petitioners and the Agency have reached an understanding regarding the steps that need to be taken to settle this contested case. In order to settle, Petitioners will seek to convert licensed acute care beds to inpatient psychiatric beds pursuant to N.C. Gen. Stat. § 131E-184(c), an exemption in the CON Law ("Petitioners' project").

The first step required by this exemption is an executed contract with the Division of Mental Health or one of the Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities ("Area Mental Health Authority") to provide psychiatric beds to patients the Area Mental Health Authority refers to Petitioners.

Petitioners have had several conversations with Smoky Mountain Center, an Area Mental Health Authority. Smoky Mountain Center indicated that due to its tremendous need for inpatient psychiatric beds, it desires to contract with Petitioners. Accordingly, on May 23, 2014, Petitioners sent a draft contract to Smoky Mountain Center's attorney, for her review. Petitioners are awaiting comments from Smoky Mountain Center. Soon after executing the contract, Petitioners will take the second step required pursuant to the exemption - filing an Exemption Notice, asking the CON Section to confirm that its project is exempt from CON Review.

Therefore, Petitioners ask that you continue to hold in abeyance all discovery, mediation, and other deadlines while the parties proceed with the steps to settle the case. Settlement of this case will provide citizens of Alexander County and the surrounding areas

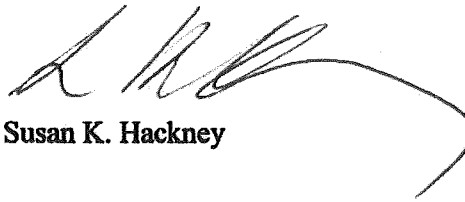
EXHIBIT

2

Donald W. Overby
June 2, 2014
Page 2

with greatly needed mental health services. Petitioners will provide you with another status report no later than December 1, 2014, which should be after the Agency has confirmed that Petitioners' project is exempt from CON review.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Hackney', with a long, sweeping flourish extending to the right.

Susan K. Hackney

cc: June Ferrell
S. Todd Hemphill (courtesy copy to non-party amicus)
Forrest W. Campbell, Jr. (courtesy copy to non-party amicus)