

HEALTH SERVICES AND DEVELOPMENT AGENCY

MINUTES

June 22, 2011

AGENCY MEMBERS PRESENT

Koella, Carl, Chair
Handorf, Charles, Vice Chair
Burns, Charlotte
Gaither, Keith, designee for the TennCare Director
Johnson, D. Lynn
Jordan, Lisa, designee for the Commissioner of Commerce and Insurance
Lammert, Greg
Southwick, Bill
Weaver, Faye, designee for the Comptroller of the Treasury
Wright, James

AGENCY MEMBERS ABSENT

Jones, Clark

AGENCY STAFF PRESENT

Hill, Melanie, Executive Director
Bobbitt, Melissa, Administrative Services Assistant III
Christoffersen, Jim, General Counsel
Craighead, Alecia, Statistical Analyst III
Farber, Mark, Assistant Executive Director
Finchum, Rhonda, Director of Administrative Services
Wells, Phil, Health Planner III

COURT REPORTER

Haun, Dawn

GUESTS PRESENT

Baker, E. Graham, Esq.
Basaraba, Hitch, M.D., Southern Tennessee Medical Center
Bonner, Gwen, COO, Saint Francis Hospital-Bartlett
Braber-Grove, Sandra, Assistant General Counsel, Tennessee Department of Mental Health
Bradley, Patrick, Tennessee Hospital Alliance
Brotherton, Matthew, Kramer Rayson, LLP
Burdette, Michelle, Director of Finance, Grace Healthcare
Byers, Tracy, COO, Harton Regional Medical Center
Cannon, Josh, Administrator, Hillview Health Center
Chabrew, Jaysan, Analyst, Outpatient Imaging Affiliates, LLC
Corritore, Danell, Tennessee Department of Health
Duncan, Bruce, Vice President, National HealthCare Corporation
Elrod, Dan, Esq., Miller & Martin
Fitzpatrick, Diana, Director Surgical Services, St. Thomas Health Services

Gaffney, Lauren, Esq., Bass Berry & Sims, PLLC
Gentry, Patty, Assistant Administrator, Ivy Hall Nursing Home
Gooch, Warren, Esq., Kramer, Rayson, LLP
Hill, Ronald, Vice President, Strategic Development, Vanderbilt University Medical Center
Houchin, Barbara, Executive Director, Planning, St. Thomas Health Services
Hutchings, Mara, R.N., St. Thomas Medical Center
Jackson, Misti A., Director Medical Imaging, St. Thomas Health Services
Kravec, Emrick, Director, Facility Management, St. Thomas Hospital
Lambdin, Leeann, Planning, St. Thomas Health Services
Lawley, Erin, Managing Editor, Nashville Post
Lea, John W., IV, M.D., Cardiovascular Surgery Associates, PC
Lively, Deborah, Director, Tennessee Health Care Association
Looney, Kim Harvey, Esq., Waller Lansden & Dortch
Lucchesi, Jane, Strategic Planning, Memorial Hospital
Ockerman, Jeff, Director, Division of Health Planning, Tennessee Department of Finance & Administration
Ozburn, Tom, CEO, Southern Hills Medical Center
Parker, Stephanie M., Financial Controller, Grace Healthcare
Phillips, Brant, Esq., Bass Bery & Sims PC
Polkow, Craig, COO, St. Thomas Hospital
Powers, Joy, Administrator, Roan Highlands Nursing Center
Puri, Christopher, Esq., Bass, Berry & Sims
Reed, Ann, R., RN, Director of Health Care Facilities, Tennessee Department of Health
Robbins, Mark, M.D., Cardiologist, Vanderbilt University Medical Center
Roberts, Mike, COO, Grace Healthcare
Sheehan, John, President, Ocoee Foundation, Inc.
Sheehan, Margaret, Treasurer, Ocoee Foundation
Talbot, Jill, Tennessee Hospital Alliance
Tally, Sarah Lodge, Esq., Miller & Martin
Taylor, Jerry, Esq., Farris, Mathews, Bobango
Trauger, Byron, Esq., Trauger & Tuke
Tumlin, Richard, COO, Southern Hills Medical Center
Tyrrell, Wade, CNO, Saint Francis Hospital-Bartlett
Wellborn, John, Consultant, Development Support Group
West, William H., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz
Young, Phil, CEO, Southern Tennessee Medical Center

Chairman Koella called the meeting to order at 8:30 a.m. in Room 12, of Legislative Plaza, Nashville, Tennessee. Mr. Koella announced that this was the last meeting for Dr. Handorf and Mr. Jones, and stated how much their years of service have been appreciated.

DIRECTOR'S ANNOUNCEMENTS

Melanie Hill, Executive Director, made general announcements. Ms. Hill stated that Chattanooga Medical Investors Limited Partnership dba Life Care Center of Ooltewah and NOL, LLC dba Premier Radiology, have been deferred to the July meeting; there will be four (4) applications to be presented at the July meeting; five (5) at the August meeting; and possibly five (5) at the September meeting; and the meetings through December will be held at Legislative Plaza. Ms. Hill further stated that the Provider Reimbursement In-service will be at the conclusion of today's regularly scheduled Agency meeting; Dr. Handorf will address Physician reimbursement; Mr. Gaither will address TennCare reimbursement; and the audience members were invited to attend.

OTHER BUSINESS

- 1) State Health Plan – Jeff Ockerman, Director, Division of Health Planning, Finance & Administration discussed the status of the state health plan.
- 2) Rulemaking: Presentation of draft rulemaking rule regarding the addition of therapeutic cardiac catheterization to facilities with a Certificate of Need limited to “diagnostic only” to reflect direction provided to Agency staff at the June 22, 2011 meeting.

CARDIAC CATHETERIZATION DISCUSSION

Jeff Ockerman, Director, Division of Health Planning, Dept. of Finance & Administration, discussed the new criteria and standards for diagnostic and interventional cardiac catheterization in the state health plan, and the process by which they were derived. He stated that the position of the Health Planning Division is that diagnostic and interventional cardiac catheterization are different services, and that a new CON should be required for the addition of interventional cardiac catheterization services.

Dan H. Elrod, Esq., speaking on behalf of Southern Tennessee Medical Center and Life Point Hospitals, took issue with Mr. Ockerman's interpretation of existing Agency rules. He also stated that if any policy or rule changes are made, they should apply to requests received thereafter, and not to those requests already filed with the Agency.

There being no other public comments, Mr. Christoffersen discussed the Agency Rules permitting requests for removal of conditions, and outlined the following options for requests for the removal of "diagnostic only" cardiac catheterization limitations: 1) continue to permit the removal of such conditions via the General Counsel's report, 2) require the addition of interventional cardiac catheterization via a new CON, whether by adopting a policy that requests for the removal of the limitation will be denied going forward, or preferably, a rule.

Mr. Koella opened the discussion to the Agency Members. Mr. Christoffersen answered members' questions about the options.

Mr. Southwick made a motion that the Agency adopt a policy that a new CON should be required for the addition of interventional cardiac catheterization services, that the policy shall apply to those who do not already have a request before the Agency for the removal of the limitation for "diagnostic only" cardiac catheterization services, and that the rulemaking process shall be initiated to make the policy a rule. Mr. Lammert seconded. The motion CARRIED [9-0-0]. APPROVED

AYE: Jordan, Wright, Burns, Johnson, Lammert, Gaither, Weaver, Southwick, Koella
NAY: None

CERTIFICATE OF NEED APPLICATIONS

Mark Farber summarized the following CON applications

Ms. Burns recused.

Hillview Health Center - (Elizabethton, Carter County) - Project No. CN1103-007

The addition of twenty (20)* skilled nursing beds at its facility. The facility is currently licensed for fifty-six (56) dually-certified beds, and this application, if approved, will result in a total licensed bed complement of seventy-six (76) nursing home beds. The additional twenty (20) beds will be dually certified. There is no major medical equipment involved with this project. No other health services will be initiated or discontinued. It is proposed that the facility will continue to serve Medicare, Medicaid, commercially insured, and private-pay patients, and the facility will continue to be licensed by the Tennessee Department of Health. Project Cost \$1,799,816.00. * These beds will be subject to the 125 nursing home bed pool for 2010-2011.

E. Graham Baker, Jr., Esq., representing the applicant, addressed the Agency. Josh Cannon, Administrator, Hillview Health Center spoke on behalf of the project. Present in support of the project were: Michelle Burdette, Director of Finance, Grace Healthcare; John Sheehan, President, Ocoee Foundation, Inc.; Mike Roberts, COO, Grace Healthcare; and Stephanie M. Parker, Financial Controller, Grace Healthcare.

Speaking in opposition were: Jerry W. Taylor, Esq., representing Ivy Hall Nursing Home in Elizabethton and Roan Highlands Nursing Center in Roan Mountain; Joy Powers, Administrator, Roan Highlands Nursing Center; and Patty Gentry, Assistant Administrator, Ivy Hall Nursing Home.

Mr. Baker rebutted.

Mr. Taylor provided summation for the opposition.

Mr. Baker provided summation for the applicant.

Mr. Johnson moved for approval of the project based on: 1) Need – The need is demonstrated by their waiting list; 2) Economic Feasibility – The project is economically feasible and financing is in place; and 3) The project does contribute to the orderly development of adequate and effective health care as they have demonstrated their ability to get a high percentage of people back into their homes. Ms. Jordan seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Jordan, Wright, Johnson, Lammert, Gaither, Weaver, Southwick, Koella
NAY: None

Chattanooga Medical Investors Limited Partnership dba Life Care Center of Ooltewah - (Ooltewah, Hamilton County) - Project No. CN1103-009

The relocation and replacement of a nursing home (Life Care Center of Chattanooga) located at 455 North Highland Park Avenue, Chattanooga (Hamilton County), TN 37404. The replacement facility will be located on a 8.4 acre site, which has not been assigned an address, located on the northeast corner of Mountain View Road and Snow Hill Road, Ooltewah (Hamilton County), TN 37363. The number of licensed beds will be reduced from 153 to 120. No services will be initiated nor discontinued, and no major medical equipment is requested. Project Cost \$20,990,000.00.

DEFERRED TO THE JULY MEETING

Mr. Southwick recused. Dr. Handorf arrived. Mr. Koella commented about Dr. Handorf's dedication and exemplary service to the citizens of Tennessee that he has shown through his service to the Agency.

Saint Thomas Hospital - (Nashville, Davidson County) - Project No. CN1103-010

The renovation of its existing Cardiac Surgery Suite within the hospital. The project involves the renovation of eight (8) operating rooms in approximately 11,143 square feet of existing operating room space and the purchase of major medical equipment. Major medical equipment for the project consists of two (2) Siemens Artis zeego floor mounted, multi-axis C-arm angiography systems. There are no additional services, operating rooms, or beds requested in the project. Project Cost \$10,275,135.00.

Warren L. Gooch, Esq., representing the applicant, addressed the Agency. John W. Lea, IV, M.D., Cardiovascular Surgery Associates, PC, spoke on behalf of the project. Present in support of the project were: Barbara Houchin, Executive Director, Planning; Craig Polkow, COO, St. Thomas Hospital; Emrick Kravec, Director, Facility Management, St. Thomas Hospital; Diana Fitzpatrick, Director Surgical Services, St. Thomas Hospital; and Misti A. Jackson, Director Medical Imaging, St. Thomas Hospital.

Dr. Handorf moved for approval of the project based on: 1) Need – The need is evident in that advances in cardiac operative procedures for this leader to maintain its position to deliver services, the application is necessary; 2) Economic Feasibility – The project is economically feasible with cash reserves meeting the financial need; and 3) The project does contribute to the orderly development of adequate and effective health care by continuation of existing services. Ms. Burns, Ms. Weaver and Mr. Johnson seconded the motion. The motion CARRIED [9-0-0]. **APPROVED**

AYE: Jordan, Wright, Burns, Johnson, Lammert, Handorf, Gaither, Weaver, Koella
NAY: None

NOL, LLC dba Premier Radiology - (Mt. Juliet, Wilson County) - Project No. CN1104-012

To establish an outpatient diagnostic center (ODC) at 5002 Crossing Circle, Mt. Juliet (Wilson County), including the initiation of magnetic resonance imaging (MRI). The proposed ODC will be established by converting existing equipment and facilities currently operated at the location by NOL, LLC dba Premier Radiology as part of its physicians' practice. The diagnostic services in the existing physicians' practice and in

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the proposed ODC include MRI, CT, nuclear medicine, ultrasound, and x-ray. The project will not add any new services to the market or change the location of existing services. No other services will be initiated or discontinued and no additional equipment will be acquired as a part of this project. Project Cost \$3,000,848.00.

DEFERRED TO THE JULY MEETING

GENERAL COUNSEL'S REPORT

Jim Christoffersen summarized the following CON modification requests:

Mr. Southwick recused.

Southern Tennessee Medical Center, LLC - (Winchester, Franklin County) - Project No. CN0712-096A

Request for removal of condition limited to diagnostic catheterization services. This project was approved on March 2008 for the acquisition of fixed cardiac catheterization equipment and the initiation of cardiac catheterization services to replace its existing mobile services. The expiration date was May 1, 2010 and the project cost was \$3,521,538.00. The project was implemented in November 2009. Project Cost \$3,521,538.00. **Deferred from the April Meeting**

Dan H. Elrod, Esq., representing the applicant, addressed the Agency. Mark Robbins, M.D., Cardiologist, Vanderbilt University Medical Center, spoke on behalf of the request. Present in support of the request were: Sarah Lodge Tally, Esq.; Phil Young, CEO, Southern Tennessee Medical Center; and John L. Wellborn, Consultant.

Speaking in opposition were: Brant Phillips, Esq., representing Harton Regional Medical Center and Tracy Byers, Harton Regional Medical Center.

Mr. Elrod rebutted

Mr. Phillips provided summation for the opposition.

Mr. Elrod provided summation for the applicant.

Mr. Johnson moved for approval of the request based on: 1) Need – the need has been established. The services are not provided in the community that is being described, so the need is there; 2) Economic Feasibility – The project is economically feasible as financing is available; and 3) The project does contribute to the orderly development of adequate and effective health care services for the citizens of Winchester and Franklin County and will be provided in a convenient manner that is not currently available. Ms. Burns seconded the motion. The motion CARRIED [6-3-0]. **APPROVED**

AYE: Jordan, Wright, Burns, Johnson, Gaither, Weaver

NAY: Lammert, Handorf, Koella

Southern Hills Medical Center - (Nashville, Davidson County) - Project No. CN1003-014A

Request for a modification to increase the project cost increase and square footage. The project cost will increase by \$390,000.00, from \$450,000.00 to \$840,000.00. The square footage will increase by 2,588 square feet, from 3,110 square feet to 5,698 square feet. The project was approved at the June 23, 2010 meeting for the initiation of inpatient rehabilitation services and the addition of twelve (12) inpatient beds to its license to be designated as rehabilitation beds, and the establishment of a twelve (12) bed inpatient rehabilitation unit in the main hospital facility.

Jerry W. Taylor, Esq., representing the applicant, addressed the Agency. Tom Ozburn, CEO, spoke on behalf of the request.

Ms. Jordan moved for approval of the request for modification to increase the project cost and square footage. Ms. Weaver seconded the motion. The motion CARRIED [9-1-0]. **APPROVED**

AYE: Jordan, Wright, Burns, Johnson, Handorf, Gaither, Weaver, Southwick, Koella
NAY: Lammert

Saint Francis Hospital - Bartlett - (Bartlett, Shelby County) - Project No. CN0712-099A

Request for a twelve (12) month extension of the expiration date from July 1, 2011 to July 1, 2012. This project was approved on May 28, 2008 for the initiation of a ten (10) bed neonatal intensive care unit (NICU) at the hospital's campus. There will be no new beds as a result of this project. The project cost is \$33,000.00. Project Cost \$33,000.00.

Kim H. Looney, Esq., representing the applicant, addressed the Agency. Present in support were: Gwen Bonner, COO, Saint Francis Hospital-Bartlett; and Wade Tyrrell, CNO, Saint Francis Hospital-Bartlett.

Mr. Lammert moved for approval of the request for a twelve (12) month extension of the expiration date from July 1, 2011 to July 1, 2012. Ms. Weaver seconded the motion. The motion CARRIED [9-0-1]. **APPROVED**

AYE: Jordan, Wright, Burns, Johnson, Lammert, Gaither, Weaver, Southwick, Koella
NAY: None

ABSTAINED: Handorf

CONTESTED CASE

Mr. Christoffersen provided an update on contested cases.

LEGISLATIVE UPDATE

Mr. Christoffersen discussed the following changes to CON laws that were made by the Legislature in 2011: 1) the 125 Nursing Home Bed Pool for nursing home beds has been extended for another two (2) years; and 2) the language regulating outpatient methadone treatment facilities has been changed to apply to all non-residential substitution based treatment centers for opiate addiction including but not limited to stand alone clinics offering methadone products containing specific drugs or anything in the future that is substitution based.

MINUTES

The minutes of the May 27, 2011 meeting were accepted by unanimous voice vote.

ADJOURNMENT

There being no further business, the meeting adjourned.

Melanie M. Hill, Executive Director

MMH/mab