

HEALTH SERVICES AND DEVELOPMENT AGENCY

MINUTES *

June 22, 2016

AGENCY MEMBERS PRESENT

Johnson, D. Lynn, Chair
Wright, James, Vice-Chair
Doolittle, Robert S.
Burns, Charlotte
Fleming, Martin, M.D.
Mills, Thom
Grandy, Joe
Ridgway, Corey
Gaither, Keith, designee for the TennCare Director
Jordan, Lisa, designee for the Commissioner of Commerce and Insurance

ABSENT

Harding, Jaclyn, designee for the Comptroller of the Treasury

AGENCY STAFF PRESENT

Hill, Melanie, Executive Director
Ausbrooks, Mark, Administrative Assistant III
Christoffersen, Jim, General Counsel
Craighead, Alecia, Statistical Analyst III
Earhart, Phillip, HSD Examiner
Farber, Mark, Deputy Director
Finchum, Rhonda, Administrative Officer

COURT REPORTER

Daniel, April

GUESTS PRESENT

Brent, Michael D., Esq., Bradley Arant Boult Cummings, LLP
Briningstool, Tony, MD, Chief Medical Officer, ALIGN MD
Burchfield, Joe, Senior Vice President, THA
Darnell, Steve, Administrative Law Judge
Duncan, Bruce, Assistant Vice President, National HealthCare Corporation
Dyer, Janice, Planning, Blount Memorial Hospital
Elrod, Dan, Esq., Butler Snow
Estes, Blake, Executive Director, Planning, Saint Thomas Health Services
Felts, Ginna, Business Development, Vanderbilt University Medical Center
Garone, Mike, Director of Development, Strategic Behavioral Health
Gooch, Warren L., Esq., Kramer Rayson, LLP
Grant, Charles, Esq., Strategic Behavioral Health
Hampe, Joseph, CFO, Alive Hospice
Heinemann, Don, CEO, Blount Memorial Hospital
Jones, Elizabeth, Assistant Director, Division of Health Planning, Department of Health,
Kroplin, Matthew, Esq., Burr & Forman
Merville, LaDonna, Vice President, Hospital Alliance of Tennessee
Moore, Elliot, Mountain States Health Alliance
Naramore, G. Harold, MD, Chief Medical Officer, Blount Memorial Hospital
Nelson, Jane, Assistant Administrator, Blount Memorial Hospital
O'Neal, Anna-Gene, CEO, Alive Hospice
Redwine, Robert, Chairman of the Board, Blount Memorial Hospital

Reed, Ann, R., RN., BSN, MBA, Director of Licensure, TDH, Division of Health Care Facilities
Rogers, Allison, Vice President, Strategic Planning, Mountain States Health Alliance
Sansing, Trent, CON Director, TDH
Shaheen, Jim, President, Strategic Behavioral Health
Swearingen, Travis, Esq., Butler Snow
Tarpley, Ben, Clerk, Burr & Forman
Taylor, Jerry W., Esq., Burr & Forman
Trauger, Byron, Esq., Trauger and Tuke
Vetter, Stacia, Assistant Vice President, National HealthCare Corporation
Vincent, Michelle, Senior Vice President, Retirement Companies of America
West, William H., Esq., Baker Donelson

ROLLCALL TO ESTABLISH QUORUM

Mr. Johnson requested roll call to establish a quorum.

PRESENT: Jordan, Mills, Gaither, Ridgway, Doolittle, Wright, Burns, Fleming, Grandy, Johnson

Ten (10) members present.

DIRECTOR'S ANNOUNCEMENTS

Melanie Hill, Executive Director, made general announcements regarding the following:

- 1) Instructions were provided for those providing testimony on the scheduled agenda items;
- 2) There will be no July meeting. Seven applications are scheduled for the August meeting;
- 3) Recognition of members with expiring terms
 - Corey Ridgway, ASTC Representative-Mr. Ridgway is eligible for reappointment for two full three-year terms since he served out the last year of Dr. Flora's unexpired term.
 - James Wright, Nursing Home Representative-Mr. Wright has served two full three-year terms so he is ineligible for reappointment at this time. He has served as Vice-Chair twice. His knowledge and experience in the nursing home industry have been noteworthy. As CEO of the Health Care Center at West Meade Place, he has implemented a highly regarded respiratory therapy program.
 - Charlotte Burns, Hospital Representative-Ms. Burns has served two three-year terms and the partial unexpired term of Ms. Peggy Troy so she is ineligible for reappointment at this time. Ms. Burns' wealth of experiences will be missed—as a RN; a CEO of a rural hospital that had a nursing home, swing beds, and a home health agency and now as VP of Network Affiliates of a huge health care corporation. She has served as the Audit Chair and on the audit committee several times. Ms. Burns' knowledge of health care issues covers many dimensions.
 - Chairman Lynn Johnson, Consumer Representative (Speaker of the House)-Mr. Johnson has served two full three-year terms so he is ineligible for reappointment at this time. Chairman Johnson has been tremendously supportive. With his 40 plus years of experience in government relations, he has provided excellent advice and counsel which has been invaluable.

APPROVAL OF MINUTES

Mr. Johnson presented the May 25, 2016 Minutes for approval.

Mr. Mills moved for approval of the Minutes as presented. Mr. Doolittle seconded the motion. The motion CARRIED [10-0-0]. **APPROVED by unanimous voice vote**

AYE: Jordan, Mills, Gaither, Ridgway, Doolittle, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

STATE HEALTH PLAN UPDATE

Elizabeth Jones, Assistant Director, Division of Health Planning, Department of Health, presented a brief update as follows:

1. The State Health Plan is on track to be sent to the governor on July 1st and it will include the Neonatal Intensive Care Unit and the standards for Psychiatric Inpatient Services.
2. The Freestanding Emergency Department standards and Organ Transplant Services Criteria and Standards are still in the review process.
3. Organ Transplant is out for comment and the Freestanding Emergency Department should be sent out June 27, 2016.

CERTIFICATE OF NEED APPLICATIONS

Mark Farber summarized the following CON Application:

Blount Memorial Hospital, Maryville (Blount County), TN – CN1603-011

The establishment of a 14 treatment room 17,250 GSF free standing Emergency Department to be located at 2410 Highway 411 South, Maryville (Blount County), Tennessee 37801. The proposed facility will be operated under the license of Blount Memorial Hospital, Inc., and include ancillary services including but not limited to medical lab, CT, X-Ray and ultra-sound. The project cost is \$7,887,351.

Byron Trauger, Esq. and Dr. Tony Briningstool addressed the Agency on behalf of the applicant.

Previously not speaking but responding to Agency member questions was Jane Nelson, Assistant Administrator, Blount Memorial Hospital.

Summation waived.

Ms. Burns moved for approval of the project based on the following: 1) Need – Is due to the continued increase in the number of ER visits at Blount Memorial Hospital over the past several years resulting in a need for an increased number of ER beds. And based upon the 2016 American College of Emergency Physician's Guidelines, the current ER does not have enough beds for the volume of visits that are occurring, the estimated area per bed is significantly less than what is recommended in the guidelines. There's a need for the freestanding ER since there's limited space on the main campus, and any addition to the main ER would cause a disruption in current operations; 2) Economic Feasibility – It's economically feasible with use of cash reserves; and the freestanding ER option is more cost effective to build than an expansion on the main campus, and projections are positive in years one and two; and 3) The project does contribute to the orderly development of adequate and effective health care by providing better access to emergency services in Blount and surrounding counties and specifically in that community, and it will help to offload the volume at the hospital's main campus so that patients can be seen and treated more timely. Since the facility will primarily serve patients in Blount County, this project will not have a negative impact on any other providers. Mr. Wright and Ms. Jordan seconded the motion. The motion CARRIED [10-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Ridgway, Doolittle, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

GENERAL COUNSEL'S REPORT

Mr. Christoffersen summarized the following CON modification requests:

The Farms at Bailey Station Skilled Nursing Facility, Collierville (Shelby County), TN – CN1303-008A

Request for an 23 month extension from August 1, 2016 to July 1, 2018.

The project was previously approved June 26, 2013, by a 10-0 vote.

The establishment of a skilled nursing facility consisting of thirty (30)* Medicare certified skilled nursing beds to be part of a continuing care retirement community (CCRC). The estimated project cost is \$7,301,961.

*These beds are subject to the 2012-2013 Nursing Home Bed Pool.

Jerry Taylor, Esq. and Michelle Vincent, Senior Vice President of Retirement Companies of America, addressed the Agency on behalf of the applicant.

Mr. Wright moved for approval of the 23 month extension from August 1, 2016 to July 1, 2018. Mr. Doolittle seconded the motion. The motion CARRIED [10-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Ridgway, Doolittle, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

The Farms at Bailey Station, Collierville (Shelby County), TN – CN1311-045A

Request for an 15 month extension from April 1, 2017 to July 1, 2018.

The project was previously approved February 26, 2014, by a 7-0 vote.

The addition of thirty (30)* Medicare-certified skilled beds to be part of the thirty (30) Bed SNF approved by CN1303-008A for a total of 60 SNF beds. The estimated project cost is \$6,306,575.00.

*These beds are subject to the 2013-2014 Nursing Home Bed Pool

Jerry Taylor, Esq. and Michelle Vincent, Senior Vice President of Retirement Companies of America, addressed the Agency on behalf of the applicant.

Mr. Wright moved for approval of the 15 month extension from April 1, 2017 to July 1, 2018. Mr. Doolittle seconded the motion. The motion CARRIED [10-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Ridgway, Doolittle, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

The Residence at Alive Hospice Murfreesboro, Murfreesboro (Rutherford County), TN– CN1408-037A

Request for an 12 month extension from January 1, 2017 to January 1, 2018.

The project was previously approved November 19, 2014, by a 8-0 vote.

The establishment of a ten (10) bed residential hospice in Murfreesboro (Rutherford County). The facility will be located at unaddressed Lot 13, which lies between Williams Drive and Carl Adams Drive, and is bounded by DCI Dialysis Clinic and by the Murfreesboro Medical Clinic/Surgicenter property at the intersection of Carl Adams Drive and Garrison Drive. The facility will be licensed separately as a residential hospice but will

operate under the existing provider number of Alive Hospice, Inc., a licensed and Medicare-certified home care organization providing hospice care. The estimated project cost is \$10,888,816.00.

Jerry Taylor, Esq. addressed the Agency on behalf of the applicant.

Mr. Doolittle moved for approval of the 12 month extension from January 1, 2017 to January 1, 2018. Mr. Ridgway seconded the motion. The motion CARRIED [10-0-0]. **APPROVED**

AYE: Jordan, Mills, Gaither, Ridgway, Doolittle, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

REVIEW OF ADMINISTRATIVE LAW JUDGES INITIAL ORDER

Administrative Law Judge Darnell summarized the following:

Mr. Ridgway recused.

SBH-Kingsport, LLC, Kingsport (Sullivan County), TN 37660 - CN1312-050DA

SBH-Kingsport, LLC is seeking approval for the establishment of a new 72 bed free standing mental health hospital and initiation of inpatient psychiatric and substance abuse services. The proposed mental health hospital will consist of 28 inpatient beds for psychiatric care for children ages 5-17, 18 inpatient beds for adult psychiatric care for adults ages 18-64, 16 inpatient beds for geropsychiatric care for ages 55+, and 10 adult chemical dependency beds. The proposed project will accept voluntary and/or involuntary admissions. The estimated project cost is \$11,717,915.00.

The Agency will review the Initial Order approving CN1312-050DA. In such a review proceeding, the Agency's review is strictly limited to the record which was developed before the Administrative Judge. No additional evidence is to be received or considered by the Agency.

William H. West, Esq., addressed the Agency on behalf of the applicant.

Dan Elrod, Esq., addressed the Agency on behalf of the opposition, Mountain States Health Alliance.

Mr. Mills moved for approval of the project based on the following: 1) Need - It's going to prevent outmigration of current residents needing services and allow for treatment and admission locally. It's going to supply the need with board certified psychiatrists and adolescents, to provide a facility for resident students of East Tennessee State University to do their residency at this facility. It satisfies the need to provide services for ages five through the end of life, and is going to reduce the deferral of patients for services to other areas; 2) Economic Feasibility - Regarding economic feasibility, based on the CFO's financial statement of record, the applicant has \$70 plus million line of credit for capital – of capital for expansion of the facilities. And then with the motion for the 72 freestanding mental health hospital beds, there will be 28 inpatient beds for psychiatric care for children ages 5 through 17, 18 inpatient beds, psychiatric care of adults ages 18 to 64, 16 inpatient beds for geropsych care for ages 55 plus, and 10 adult chemical dependency beds; and 3) The project does contribute to the orderly development of adequate and effective health care by providing an unmet need in the five-county service area that they have identified. It will provide access making it easier for patients of the service area as it's closer than other providers outside of the defined service area. And an applicant will be able to attract majority of their patients from the five-county service area they have identified, and also the service area has been defined as reasonable by the administrative law judge. Dr. Fleming seconded the motion. The motion CARRIED [5-4-0]. **APPROVED**

AYE: Jordan, Mills, Doolittle, Fleming, Johnson
NAY: Gaither, Wright, Burns, Grandy

Administrative Law Judge Darnell instructed the Agency to make a policy statement.

Mr. Wright moved that the Agency's action today is necessary to ensure the establishment and the modification of healthcare institutions, facilities, and services that shall be accomplished in a manner that is orderly, economically sound, and consistent with the effective development of necessary and adequate means of providing for the healthcare of the people of Tennessee as prescribed by the State Health Plan. Mr. Doolittle seconded the motion. The motion CARRIED [9-0-0]. **APPROVED by unanimous voice vote.**

AYE: Jordan, Mills, Gaither, Doolittle, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

EMERGENCY RULE MAKING/RULE MAKING

Mr. Gaither departed the meeting.

Mr. Christoffersen summarized the following:

Pub. Ch. 1043 eliminates approximately half of the Agency's revenue stream, while directing it to adjust fees by rule to provide that the program is self-sufficient. Staff reductions and other cost-cutting measures only cover a small part of the shortfall, which means fees must be adjusted upward. The Department of Finance and Administration indicated that the budget for FY 16/17 will be revisited after several months if the Agency isn't on track to cover its budget.

Agency staff provided an example that might generate approximately \$800,000/FY, which the Agency rejected as inadequate, because: 1) \$800,000/FY would not cover the Agency's budget, even with staff reductions and other cost reductions, and 2) filing fees vary year-to-year, with 1 out of 3 past Fiscal Years examined resulting in a much larger shortfall. The Agency had staff run different scenarios until arriving upon numbers that might enable the Agency to be self-sufficient, even in leaner years.

Mr. Doolittle departed the meeting during the discussion.

Mr. Grandy moved to set the filing fee at \$5.75 per thousand-dollar project cost, with a minimum of \$15,000 and maximum of \$95,000 via emergency rule and regular rulemaking. Ms. Jordan seconded the motion. The motion CARRIED [8-0-0] **APPROVED**

AYE: Jordan, Mills, Ridgway, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

Mr. Christoffersen summarized the following:

TCA 68-11-1610 provides that all costs of the contested case proceeding, including the administrative law judge's costs, shall be assessed against the losing party in the contested case. It also provides that no costs shall be assessed against the agency. The Attorney General's Office has suggested language to clarify that ALJ fees paid by the Agency shall be reimbursed in all cases, even where judgment is not entered. Mr. Christoffersen recommended that the Agency adopt the following changes to Agency Rule 0720—13—.02(2): In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the petitioner and other parties with the exception of The Agency shall bear the cost for all court reporters and transcriptions, and charges billed to the Agency for the Administrative Judge's work/time; in a contested case where the petition is dismissed, whether voluntarily or involuntarily, the petitioning party or parties shall be considered a "losing party" under TCA 68-11-1610. The original transcript and one copy of the transcript for each member of The Agency shall be provided to The Agency by the other parties, if the case is to be reviewed by the full Agency. Other costs of the proceeding, including the Administrative Judge's costs shall be assessed by The Agency in accordance with T.C.A §§ 68—11—1609 and 68—11—1610.

Mr. Wright moved for approval to adopt the language as suggested by Mr. Christoffersen via emergency rule and regular rulemaking. Mr. Ridgway seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Jordan, Mills, Ridgway, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

OTHER BUSINESS

Ms. Hill summarized the following.

- A. **POLICY DISCUSSION:** Delegation of authority to the Executive Director pursuant to TCA § 68-11-1606(d) regarding approval or denial of modifications, changes of conditions or ownership, and extensions of certificates of need.

Mr. Mills moved for the motion to adopt the language proposed by Ms. Hill. Ms. Jordan seconded the motion. The motion CARRIED [8-0-0]. **APPROVED by unanimous voice vote.**

AYE: Jordan, Mills, Ridgway, Wright, Burns, Fleming, Grandy, Johnson
NAY: None

- B. **Audit Committee Report:** Audit Committee Chair Thom Mills presented the Audit Committee Report and emphasized the importance of providing adequate justification in motions to approve or deny certificates of need. He indicated the committee would meet again in August when Ms. Burns would need to be replaced because her term on the agency would expire. He also noted the Performance Audit would begin soon and would be performed as a Desk Audit rather than a conventional audit.

ADJOURNMENT

There being no further business, the meeting adjourned.



Melanie M. Hill, Executive Director

* Minutes provide only a brief staff summary of the meeting and are not intended to be an all-inclusive report. The HSDA maintains a detailed record of each meeting (recording and transcript) that is available upon request by contacting the HSDA office at 615-7412364.