



State of Tennessee
Health Facilities Commission

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

August 11, 2023

M. Clark Spoden, Esquire

via email: cspoden@gstrm.com

**RE: TriStar Hendersonville Medical Center – Gallatin FSED
CN2305-012**

Dear Clark:

Health Facilities Commission staff's response to your letter, dated August 1, 2023, is as follows.

T.C.A. § 68-11-1607 lays out a process for an applicant to submit information for the Commission's consideration; the process provides for a 30 day period for staff to review and verify what the applicant has submitted "to ensure that the information is accurate, complete, comprehensive, timely, and relevant to the decision to be made by the commission." While Commission rule allows for the applicant to respond to the staff report, the process does not contemplate staff reviewing and verifying new assertions after completion of the review cycle. Therefore, staff will not include late-filed assertions in its analysis.

The elimination of "orderly development" from the statute eliminated consideration of the proposed project's *impact upon existing providers*, not whether additional capacity is needed in the service area; "need" is still a criterion mandated by T.C.A. § 68-11-1609(b), and existing capacity is still part of the analysis, as detailed in Commission Rule 0720-11-.01:

The Commission will consider the following general criteria in determining whether an application for a certificate of need should be granted:

- (1) Need. The health care needed in the area to be served may be evaluated upon the following factors:
 - (a) The relationship of the proposal to any existing applicable plans;
 - (b) The population served by the proposal;
 - (c) The existing or certified services or institutions in the area;
 - (d) The reasonableness of the service area;
 - (e) The special needs of the service area population, including the accessibility to consumers, particularly women, racial and ethnic minorities, TennCare participants, and low-income groups;
 - (f) Comparison of utilization/occupancy trends and services offered by other area providers;
-



State of Tennessee
Health Facilities Commission

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

(g) The extent to which Medicare, Medicaid, TennCare, medically indigent, charity care patients and low-income patients will be served by the project. In determining whether this criteria is met, the Commission shall consider how the applicant has assessed that providers of services which will operate in conjunction with the project will also meet these needs.¹

TriStar Hendersonville Medical Center's operational needs may or may not support a conclusion that *it* needs additional ED capacity; however, locating an FSED in another town with existing ED services necessitates an analysis of the extent to which it would materially relieve pressure at the hospital's ED *and* whether *patients in the proposed service area* need an additional FSED. There are parts of TriStar Hendersonville Medical Center's existing service area with a high concentration of its patients that would not have been as closely situated to existing providers, for which existing capacity might not have been an issue.

Your arguments include whether the Criteria & Standards are requirements or guidelines. T.C.A. § 68-11-1609(b) states that "the commission shall use as guidelines the goals, objectives, criteria, and standards adopted to guide the commission in issuing certificates of need." The staff report is supposed to inform the Commission whether the Criteria & Standards have been met. The Davidson County Chancery Court has ruled that the [Commission] may not ignore the Criteria & Standards, and that it must have a reason to make its decision contrary to them. Staff advises the Commission to look to its rules to determine whether there is reason to reach a decision contrary to the Criteria & Standards whenever deciding whether to approve or deny a CON application, because T.C.A. § 68-11-1609(b) includes them in the Commission's analysis.

Lastly, your disagreements with staff's application of the Criteria & Standards to this CON application are noted, but do not change staff's analysis or conclusions. You are welcome to challenge the staff report before the Commission, and staff will be available to respond.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. B. C.", written over a horizontal line.

James B. Christoffersen
General Counsel

cc: Byron Trauger, Esq.

¹ The Commission's rules for need, quality and consumer advantage have been revisited and modified where necessary in light of statutory changes to the CON program, including the elimination of "orderly development".
