

HEALTH SERVICES AND DEVELOPMENT AGENCY

MINUTES

December 12, 2018

AGENCY MEMBERS PRESENT

Scarboro, Douglas, Chair
Patric, Kenneth, M.D., Vice-Chair
Alsup, Thomas
Brown, Laura Beth
Chinn, R.G. Rick
Korth, Paul
Ridgway, Corey
Gaither, Keith, Designee for TennCare
Harding, Jaclyn, Designee for Comptroller
Jordan, Lisa, Designee for Commerce & Insurance Commissioner

AGENCY MEMBERS ABSENT

Todd Taylor

AGENCY STAFF PRESENT

Hill, Melanie, Executive Director
Christoffersen, Jim, General Counsel
Craighead, Alecia, Information and Data Analyst
Earhart, Phillip, HSD Examiner
Eden-Hoback, Lowavia, Executive Assistant
Farber, Mark, Deputy Director

COURT REPORTER

Daniel, April

GUESTS PRESENT

Anderson, Derrick, Member, Goshen Hospice
Bailey, Joy, Admin, New Hope Treatment Center
Barbeito, Brian, CEO, Mid—South Imaging Therapeutics
Becker, Daniel, M.D., Mid—South Imaging Therapeutics
Blankenship, Jeff, CFO, West Tennessee Healthcare
Boyd, Kenny, CEO, MRH
Boyce, Reginald, Member, Goshen Hospice
Brent, Michael, Esq., Bradley Arant Boult Cummings, LLP
Brown, Dere, Director of Health Planning and License/Certification, NHC
Bruno, Greg, Radiologist, Jackson Radiology Associates
Conner, David, Medical Director, Team Health
Elrod, Dan, Esq., Butler Snow
Felts, Ginna, Business Development, Vanderbilt University Medical Center
Girard, James, Owner, M&M Development Company
Gooch, Warren, Esq., Kramer and Rayson, LLP
Griffin, Christi, Esq., Griffin Law Office
Harris, Jimmy, Mayor, Madison County
Higham, Jay, CEO, BHG
Hinesley, Jay, CFO, Tennova
Hubbard, Debbie, Administrator, NHC Kingsport
Jackson, Ed, Senator, TN State Senate
Kaegi, Bryan, SVP, Acadia
Kenney, Al, CFO, Mid—South Imaging Therapeutics
King, Lakeisha, Administrator, Caris Healthcare

Looney, Kim, Esq., Waller Lansden
 Loyd, Stephen, Physician, New Hope Treatment Center
 Marshall, Chris, Physician, BHG
 May, Grover, Physician, State of Franklin Healthcare Associates
 Mishu, Michael, Developer, M&M Development
 Nason, Jay, RVP, NHC
 Perchik, Joel, M.D., Advanced Radiology
 Phillips, Brant, Esq., Bass Berry Sims
 Pruitt, Candace, COO, Mid—South Imaging Therapeutics
 Powe, Ronald, President/Elder, CMF Church
 Reed, Ann, R., RN., BSN, MBA, Director of Licensure, TDH, Division of Health Care Facilities
 Reeves, Donny, Member, Reeves Eye Surgery Center
 Robinson, Rod, AVP, LHC Group
 Rowlett, Shelly, Director, Hospice of West Tennessee
 Sherman, Richard, Physician, New Hope Treatment Center
 Shroyer, Amy, Admin, New Hope Treatment Center
 Slone, Duane, Circuit Court Judge, State of TN
 Smith, Katricia, VP of Operations, Goshen Hospice
 Stephens, Beverly, Member, Goshen Hospice
 Stephens, Ed Jr., Bishop, Golden Gate Cathedral
 Stephens, Ed III, Member, Goshen Hospice
 Stephens, Melanie, Member, Goshen Hospice
 Stephenson, Kate, Esq., Trauger & Tuke
 Swearingen, Travis, Esq., Butler Snow
 Taylor, Jerry W., Esq., Burr & Forman
 Thompson, Stanley, M.D., Team Health
 Trauger, Byron, Esq., Trauger and Tuke
 Treadway, Lucinda, Clinical Director, Reeves Eye Institute
 Vallie, Raymond, Member, Goshen Hospice
 Walsh, David, SVP, BHG
 Wellborn, John, Consultant, Development Support Group
 Woods, Jeffrey, M.D., Acadia Healthcare

CALL TO ORDER:

The meeting was called to order at 8:30 a.m. by Mr. Scarborough with the following members present: Jordan, Gaither, Korth, Patric, Scarborough, Brown, Chinn, Harding and Alsup. A quorum¹ was established with nine members being present. Mr. Ridgway arrived at 8:40 a.m. after roll call.

DIRECTOR'S ANNOUNCEMENTS

- The February 27, 2019 board meeting will be held at the TBI Headquarters.
- Director Hill announced this would be her last meeting and thanked everyone who had been a support system for her through her career in State Government.

EXECUTIVE DIRECTOR SEARCH

Subcommittee Chair Alsup briefed the Board about the process of reviewing applications, meeting discussions in which interviews were conducted and candidates were narrowed to two. Board members spoke on behalf of their supported applicant and explained why they felt that particular applicant better fit the Agency need. A vote was taken and Logan Grant was offered the position.

¹ Quorum Requirement- Six members shall constitute a quorum. TCA §-68-11-1604(e) (3)

APPROVAL OF MINUTES

Mr. Scarborough presented the October 24, 2018 minutes for approval.

Mr. Gaither moved for approval of the minutes as presented. Mr. Chinn seconded the motion. The motion CARRIED [10-0-0] unanimously by voice vote. **APPROVED**

STATE HEALTH PLAN UPDATE

TDH Division of Health Planning Director Jeff Ockerman reported that there were not any updates since the last meeting.

CONSENT CALENDAR

Ms. Hill introduced the application under consideration which was approved.

*West Cancer Center, Germantown (Shelby County), TN CN1808-038

Request: The initiation of a linear accelerator and PET/CT services at 7945 Wolf River Boulevard, Germantown, Shelby County, Tennessee 38138. The West Cancer Center is currently in collaboration between Methodist Le Bonheur Healthcare, the University of Tennessee Health Science Center, and The West Clinic. The medical equipment subject to this application includes two linear accelerators and one PET/CT scanner that are presently used for cancer diagnosis and treatment for West Cancer Center patients. The business relationship between the three parties will end January 1st, 2019. The applicant plans to purchase the existing site and medical equipment from Methodist Le Bonheur Healthcare, thereby, becoming the sole owner and continuing its use as part of the West Cancer Center. If approved, the medical equipment owned by Methodist will be transferred to The West Clinic. Estimated project cost is \$12,017,055.02.

Dr. Patric moved for approval with Ms. Harding providing the second.

Factual and Legal Basis for approval:

Need – Is demonstrated since the same services will be provided at the same site to the same service area population. This change of ownership will not disrupt patient services nor result in a decrease in utilization. The medical equipment owned by Methodist Le Bonheur Healthcare will be owned by West Clinic, a physician practice doing business as West Cancer Center;

Economic Feasibility – The project meets the economic feasibility criteria because adequate funding is available via loan. The costs are based upon the fair market value of an existing site and equipment, and the services are currently being highly utilized. Net charges for the service will decrease, and positive cash flow is projected in the first year;

Healthcare that Meets Appropriate Quality Standards – The project meets the quality standards criteria since West Cancer Center will continue to be accredited by the American College of Radiology. Additionally, the affiliation with OneOncology should permit collaboration on best practices in the field of oncology;

Contribution to the Orderly Development of Healthcare – The orderly development criteria is met as the applicant will continue to have contractual agreements in place, serve the Medicare and Medicaid/TennCare population, and continue its transfer agreement with Methodist Le Bonheur Healthcare. Staffing is in place as the current staff are expected to transition to West Clinic employment. There's no duplication of services since it's simply a change of ownership of existing medical equipment.

Ten members voted to approved the application— Ridgway, Jordan, Gaither, Korth, Patric, Brown, Chinn, Harding, Alsup, and Scarboro. The motion CARRIED [10-0-0] with the certificate of need being granted.

CERTIFICATE OF NEED APPLICATIONS

Six certificate of need applications were considered under TCA § 68-11-1609(b) which notes the conditions that must be met in order to grant a certificate of need—when the action proposed in the application is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care facilities or services.

Deputy Director Farber introduced each of the six applications under consideration with four being approved.²

Six approved applications and the factual and legal basis for the decisions follow:

New Hope Treatment Center, Newport (Cocke County), TN CN1807-034

Request: The establishment of a nonresidential-based treatment center for opiate addiction to be located at 135 Fox and Hound Way, Newport, Cocke County, Tennessee. The estimated project cost is \$554,000.

Ms. Jordan moved for approval with Dr. Patric providing the second.

Factual and Legal Basis for approval:

Need – There is no other opiate treatment program in the service area where the Department of Mental Health and Substance Abuse Services has indicated that in 2018, over 14,000 people have used opiates for nonmedical reasons, and over 4,400 people are addicted. The three OTPs in east Tennessee have experienced over a 100 percent increase in utilization since 2014;

Economic Feasibility – The project can be funded through cash reserves, and it is projected to be profitable in the second year of operations. It's also important to note that the applicant indicates that it will provide charity care to those who can't afford this treatment;

Healthcare that Meets Appropriate Quality Standards – The applicant will seek licensure from The Department of Mental Health and Substance Abuse Services and accreditation from the Commission on Accreditation of Rehabilitation Facilities. The owners and management of this applicant have extensive experience in operating OTPs that are also CARF accredited;

² Approve all or part of a certificate of need, upon any lawful conditions that the agency deems appropriate and enforceable on the grounds that those parts of the proposal appear to meet the applicable criteria. TCA §-68-11-1609 (a) (1)

Contribution to the Orderly Development of Healthcare – Because there are no other OTP providers in the service area, there will be no duplication of services or a negative impact on existing providers. This project will improve access to a medically underserved population and will reduce the distance and time people have to travel in order to receive these addiction treatment services. The applicant plans to have working relationship with area hospitals and to establish community linkages with other behavioral health providers. It is important to note that there is no objection voiced by local and state elected officials regarding the establishment of this type of facility because we have certainly seen that opposition with other applications.

Ten members voted to approved the application— Ridgway, Jordan, Gaither, Korth, Patric, Brown, Chinn, Harding, Alsup, and Scarboro. The motion CARRIED [10-0-0] with the certificate of need being granted.

Mid-South Imaging Center, Jackson (Madison County), TN CN1808-036

Ms. Brown recused.

Request: This application is for the establishment of an outpatient diagnostic center, initiation of MRI services, and acquisition of a new fixed 1.5 Tesla MRI unit in a 15,000 square foot building to be constructed at an unaddressed site on the east side of Exeter Road approximately 250 feet south of this intersection with Oil Well Road in Jackson, Madison County. The proposed ODC will also offer MRI, CT, ultrasound, and X-ray, including fluoroscopy. The estimated project cost is \$8,680,632.

Mr. Korth made a motion to deny this application based upon it does not meet the state criteria on minimum requirement need for MRIs in the service area.

Mr. Chinn seconded the motion.

Nine members voted to deny the application— Ridgway, Jordan, Gaither, Korth, Patric, Chinn, Harding, Alsup, and Scarboro. The motion CARRIED [9-0-0] with the certificate of need not being granted.

NHC Healthcare Kingsport, Kingsport (Sullivan County), TN – CN1809-041

Request: This application is for the addition of 30-Medicare certified skilled nursing beds to an existing 60-bed nursing home at 2300 Pavilion Drive in Kingsport, Sullivan County. The estimated project cost is \$3,516,102.

Dr. Patric moved for approval of the project with Ms. Jordan providing the second.

Factual and Legal Basis for approval:

Need – A net need of 626 nursing home beds in Sullivan County; therefore, the 30-bed request meets the need. The service area remains the same, and the 30-minute travel time will remain the same for the majority of Sullivan County residents.

Economic Feasibility – The three-and-a-half-million dollar project cost will come out of cash reserves, and the home corporation has a current ratio of 2.1 to one, making it feasible;

Healthcare that Meets Appropriate Quality Standards – The applicant has a Medicare rating of five, which is very good, and good ratings from other organizations. They will seek Medicare certification and will be licensed by the Tennessee Department of Health;

Contribution to the Orderly Development of Healthcare – The applicants has all the transfer agreements already in place, which will continue to exist. There should be no impact on other providers since there is an overall need in the area of 626 beds, and there's been no opposition.

Ten members voted to approve the application— Ridgway, Jordan, Gaither, Korth, Patric, Brown, Chinn, Harding, Alsup, and Mr. Scarboro voted to approve the application. The motion CARRIED [10-0-0] with the certificate of need being granted.

Goshen Hospice and Palliative Care, LLC, Memphis (Shelby County), TN CN1809-042

Request: The establishment of a home care organization and the initiation of hospice services. The hospice's principal office will be at 3949 Whitebrook Drive, Memphis, Shelby County. The estimated project cost is \$210,000.

Dr. Patric moved for approval with Ms. Harding providing the second.

Factual and Legal Basis for approval:

Need – Despite the formula numbers not being met, the data has been presented and testimony has been presented that indicates that there is indeed a subpopulation in which their needs are not being met mostly related to cultural and spiritual differences perhaps. For whatever reason, those aren't there. And not being met, and so there is a need;

Economic Feasibility – The low \$210,000 that would be needed to initiate this project will be financed from cash reserves from what is a very successful business elsewhere;

Healthcare that Meets Appropriate Quality Standards – The applicant will seek licensure from the Tennessee Department of Health. In other areas, they have no deficiencies in licensure. They will seek certification from both Medicare and TennCare, and they will seek accreditation from CHAP, which has CMS-deeming authority;

Contribution to the Orderly Development of Healthcare – There is testimony that there may be some impact on current providers of hospice in the area, the particular providers have seemingly not been able to penetrate that subpopulation of people within the service area; and, therefore, it's not likely that there's going to be a major impact. With regards to support from other providers in the area, it is, as seen, substantial. The hospice will be taking all payors, including TennCare and charity.

Nine members voted to approved the application— Jordan, Gaither, Korth, Patric, Chinn, Harding, Alsup, and Scarboro. Ridgway voted no. The motion CARRIED [9-1-0] with the certificate of need being granted.

Memphis Comprehensive Treatment Center, Memphis (Shelby County), TN CN1809-043

Request: The establishment of a nonresidential substitution-based treatment center for opiate addiction to be located at 3960 Knight Arnold Road, Suite 117, in Memphis, Shelby County. The estimated project cost is \$1,012,949 .

Dr. Patric moved for approval with Mr. Alsup providing the second.

Ten members voted. Five to approve the application— Ridgway, Patric, Harding, Alsup, and Scarboro. Five voted to not approve- Jordan, Gaither, Korth, Brown, and Chinn. The motion FAILED [5-5-0] with the certificate of need being denied.

Mr. Chinn stated the reason he voted no, was because of the current payor structure that we have in the state of Tennessee just doesn't justify a need for additional services at this point. There are patients out there that should be using this service, but there is not an amount or enough patients out there that can afford to pay it out of pocket, and our Medicare-Medicaid structure doesn't reimburse this.

Reeves Eye Surgery Center, Johnson City (Washington County), TN CN1809-044

Mr. Ridgway recused.

Request: The conversion of an ambulatory surgical treatment center or ASTC limited to ophthalmology and pain management to a multi-specialty ASTC. The ASTC is located at 2328 Knob Creek Road, Suite 500, in Johnson City, in Washington County. The estimated project cost is \$100,000.

Ms. Jordan moved for approval with Ms. Brown providing the second.

Factual and Legal Basis for approval:

Need – There is a need to convert to a multi-specialty ASTC in order to better utilize the OR and to provide access to lower cost OB/GYN surgical services that are currently being performed in a hospital-based setting. This project will also address the problems being experienced by the OB/GYNs to schedule OR times for less-acute cases and will improve provider efficiencies;

Economic Feasibility – The project will be funded by a commercial loan and will result in positive operating results in year one of operations;

Healthcare that Meets Appropriate Quality Standards – The applicant is licensed by the Department of Health, is Medicare and TennCare certified, and is Joint Commission accredited and intends to remain so;

Contribution to the Orderly Development of Healthcare – The ASTC has transfer agreements with area hospitals, and it is not expected that this project will have a significant negative impact on other facilities since the number of OB/GYN surgical cases that will be moved away from them is relatively small, and it's noted that none of those hospitals are here in opposition.

Nine members voted to approved the application— Jordan, Gaither, Korth, Patric, Brown, Chinn, Harding, Alsup, and Scarboro. The motion CARRIED [9-0-0] with the certificate of need being granted.

GENERAL COUNSEL'S REPORT

Mr. Ridgway recused.

Tennessee Orthopedics, P.C., Lebanon, (Wilson County) – CN1605-019AM

- Request for 38% cost increase, from \$2,720,555 to \$3,769,684

Unanimously approved on 10/26/2016 for the establishment of a Multi-Specialty ASTC with three operating rooms and one procedure room. The project has been completed.

Dr. Patric moved for approval with Mr. Chinn providing the second.

Nine members voted to approve the request— Jordan, Gaither, Korth, Patric, Brown, Chinn, Harding, Alsup, & Scarboro. The motion CARRIED [9-0-0] with the request for cost increase being approved.

Tennova Healthcare, Lebanon f/k/a University Medical Center, Lebanon (Wilson County) – CN1510-042A

- Request for 2 year extension, from 3/1/2019 to 3/1/2021

Approved on 1/27/2016 for the relocation of two adult psychiatric units representing a total of 49 licensed beds (both staffed at 16 beds each), and one rehabilitation unit representing 26 licensed beds (staffed at 10 beds) from the current satellite location located 3 miles away at McFarland Specialty Hospital 500 Park Avenue, Lebanon, TN to its main campus located at 1411 Baddour Parkway, Lebanon, Tennessee 37087. Renovations of the surgery and endoscopy areas located at the main UMC campus are also included in this proposed project.

Ms. Jordan moved for approval with Ms. Harding providing the second.

Ten members voted to approve the request— Ridgway, Gaither, Jordan, Korth, Patric, Brown, Chinn, Harding, Alsup, & Scarboro. The motion CARRIED [10-0-0] with the extension request being approved.

LP Johnson City, LLC, Johnson City (Washington County) – CN1609-032A

- Request for 3 month extension, from 2/1/2019 to 5/1/2019

Unanimously approved on 12/14/2016 for the construction of a 47 bed replacement nursing home to be located at 401 Princeton Road, Johnson City, TN on the campus of the former Northside Hospital. The new nursing home will relocate and replace, respectively, two Mountain States Health Alliance nursing homes, the 34-bed Princeton Transitional Care located within Johnson City Medical Center at 400 North State of Franklin Road, Johnson City and Franklin Transitional Care, which holds an inactive license for a 13-bed nursing home also at 400 North State of Franklin Road, Johnson City, TN.

Mr. Ridgway moved for approval with Ms. Brown providing the second.

Ten members voted to approve the request— Ridgway, Gaither, Jordan, Korth, Patric, Brown, Chinn, Harding, Alsup, & Scarboro. The motion CARRIED [10-0-0] with the extension request being approved.

Collins Chapel Health and Rehabilitation Center, Memphis (Shelby County) – CN1202-011AEEEE

- Request for 1 year extension, from 2/1/2019 to 2/1/2020

Unanimously approved on 6/27/2012 for the establishment of a 28 bed skilled nursing facility in which all beds will be dually certified for Medicare and Medicaid at 409 Ayers Street, Memphis, Tennessee 38105.

- 1 year extension approved on 2/26/2014
- 18 month extension approved on 5/27/2015
- 1 year extension approved on 12/14/2016
- 1 year extension, to 2/1/2019, approved on 12/13/201

Dr. Patric moved for approval with Mr. Chinn providing the second.

Ten members voted to approve the request— Ridgway, Gaither, Jordan, Korth, Patric, Brown, Chinn, Harding, Alsup, & Scarboro. The motion CARRIED [10-0-0] with the extension request being approved.

Contested Case Update

Mr. Christoffersen provided the following update:

The Agency has had two new appeals filed from the last meeting. One was Eye Surgery Center of Lenoir City. Covenant Health has appealed the approval of the establishment of an ASTC that would be limited to ophthalmic surgery to be located in Lenoir City. The parties are trying to work things out. The trial date was to be set, but instead another date to talk with the ALJ has been set.

The other application from the last meeting that's been appealed is Northridge Surgery Center, that was for the relocation of an existing multi-specialty ASTC with five operating rooms, one procedure room from Madison, Tennessee, to Hendersonville, Tennessee. The approval of this has been appealed by Sumner Regional Medical Center.

OTHER BUSINESS

Quality Measures/Annual Continuing Need Report Update

Deputy Director Mark Farber provided an update on Annual Continuing Need/Quality Standard Reporting. He gave a brief history of the addition of the fourth criterion regarding quality standards per Public Chapter 1043. He noted that all CONs approved after July 1, 2016 would be required to submit annual Continuing Need/Quality Standard Reports. He noted that the Agency voted at its October 2018 meeting to see Annual Continuing Need and Quality Standard reports that HSDA staff deemed as having compliance issues. Mr. Farber reported that 11 Annual Continuing Need/Quality Standard Reports had been received and 3 had compliance issues. Additional information on those 3 reports with compliance issues would be gathered in January and presented to the Agency at its February meeting. Dr. Patric had questions requesting some clarification that were answered by both Mr. Farber and Mr. Christoffersen.

ADJOURNMENT

There being no further business, the meeting adjourned.



Mark A. Farber, Deputy Director

HSDA Minutes provide a brief summary of agency actions. A detailed record of each meeting (recording and transcript) is available upon request by contacting the HSDA office at 615-741-2364.