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August 31, 2015

Ms. Kala Shipley
Certificate of Need Program
Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075

REQUEST FOR RECONSIDERATION

Re: *Presbyterian Village dba Grand JiVanté*

Dear Ms. Shipley:

This letter is a request for Reconsideration of the August 4, 2015 decision (“Decision”) of the Health Facilities Council (the “Council”) that the replacement of Grand JiVanté’s 70-bed licensed nursing facility (the “nursing facility”) required a Certificate of Need.

Background.

On March 24, 2015, Grand JiVanté requested a determination from the Department that its proposal to replace the nursing facility in Ackley with a nursing facility in Iowa Falls, each located in Hardin County, was not subject to Council review pursuant to Iowa Code Section 135.63(2)(I). (Attached Letter Requesting Determination)

The decision to move the nursing facility from Ackley to Iowa Falls was made after careful consideration of other options by the Grand JiVanté board of directors. Those options were communicated to the community early in the process in a variety of ways: Grand JiVanté’s own newsletters, newspaper articles, and sources within the community who were opposed to the Ackley facility closing. Grand JiVanté shared information early and often in the process, and it has been used against it in this process. The communications in 2013 and 2014 concerning options were just that—a discussion of options. However, once the board of directors determined it was not financially or otherwise feasible to split the licensed beds between the two locations, it elected to proceed with constructing a replacement facility in Iowa Falls and filed its request for a non-reviewability determination for the replacement facility.

After Grand JiVanté filed its request for a non-reviewability determination, it and the Department’s staff were literally inundated with questions, comments and opposition. To ensure that it had adequate, and accurate, facts upon which to base a determination, the Department requested and received written clarification from Grand JiVanté on three occasions: April 15, 2015 with a response from Grand JiVanté on April 20, 2015; April 22, 2015, with a response from Grand JiVanté on April 24, 2015; and April 30, 2015, with a response from Grand JiVanté on May 1, 2015. Grand JiVanté offered to meet with Department staff, if necessary, to provide

any additional or clarifying information the Department would require to make a determination, and requested that the non-reviewability determination be placed on the May 6, 2015 Council agenda. The Department's staff indicated that due to the large amount of information it had received, it would not be possible to place the item on the May agenda, and indicated it would be on the September 22, 2015 scheduled Council meeting. Ultimately, the issue was placed on the agenda for the meeting of the Council on August 4, 2015.

On June 29, 2015, Grand JiVanté received written determination that the proposed replacement of the nursing facility from its current location in Ackley to the location in Iowa Falls was not reviewable. (Attached Letter from Department Stating Project Not Reviewable). The Department set forth its basis for concluding the proposed replacement did not require Council review. The Department's review was thorough, and its conclusion was drawn after requesting and receiving additional information and clarification from Grand JiVanté in writing.

The Council's Decision.

Although not its typical practice for a non-reviewability determination, the Council scheduled time for presentations from Grand JiVanté and from the opposition. The opposition was a group of citizens in Ackley represented by Doug Gross, and Heritage Care Center represented by Ken Watkins. Grand JiVanté made its presentation. Council members asked questions and the Chair of the Council made a statement related to his impression of how Grand JiVanté had mismanaged its communications and that it was not acting charitably toward its community. Following his statement, the opposition groups were permitted to give their presentations. Following those presentations, the Council discussed the matter. Questions were asked by Council members concerning areas of focus, and the Department reiterated its analysis that the proposed replacement facility was not subject to review under Iowa Code Section 135.63(2)(1). The Assistant Attorney General, Heather Adams, also responded to questions concerning the scope of the Council's inquiry, and reiterated that the relevant questions were related to the statutory criteria, not anything else. Ultimately, the Council voted to reject the Department's determination that the project was not reviewable, by a vote of 3-2. The Council's Decision was received by Grand JiVanté on August 21, 2015.

Basis for Reconsideration.

As the Decision noted, Iowa Code Section 135.63(2)(1) provides a replacement facility must meet four criteria to be exempt from Council review. Specifically, the replacement facility: 1) must be located in the same county as the existing facility; 2) must not add additional beds from the number contained at the existing facility; 3) must not add new health services; and 4) the existing facility must close and no longer be used as a nursing facility.

The information provided to the Department prior to the non-reviewability determination letter and the testimony provided by Grand JiVanté at the August 4 meeting establishes that Grand JiVanté met the four criteria described above. Each statutory requirement is addressed below:

1) **Located in the Same County.** The current nursing facility is located in Ackley, Iowa in Hardin County. The proposed replacement facility will be located in Iowa Falls, Iowa, also in Hardin County. This was established in Grand JiVanté's March 24 request for a non-reviewability determination and was confirmed at the August 4 meeting.

One of the clarifications requested by the Department prior to issuing the non-reviewability determination letter was related to a potential change in location for the replacement facility due to an Ackley City Council determination concerning the availability of tax-increment financing for the proposed replacement facility. Grand JiVanté confirmed to the Department on May 1 that the City Council's determination had no effect on the location of the project. Therefore this statutory requirement was and is met.

2) **No Additional Beds.** The current nursing facility in Ackley is licensed for 70 beds. Of those 70 licensed beds, 11 are designated for residents with Chronic Confusion and Dementing Illness (CCDI). The Decision cites inconsistent and confusing statements concerning the number of beds to be offered at the replacement facility. Grand JiVanté has stated that it intends to replace the 70 beds at the Iowa Falls location, and the non-reviewability letter from the Department confirms this intent. Grand JiVanté intends to organize the replacement facility as a cottage style facility. The plans are to construct four (4) cottages, with each cottage designed to house 16 private (64 beds). The rooms are large enough that each room could house another bed. If necessary, Grand JiVanté plans to have at least one room in each cottage that will have two beds, to permit spouses to reside in the same room. Those beds would raise the total by 4, to 68 beds, within the 70-bed licensure at the existing facility. Simply stated, Grand JiVanté has never stated in any communications a plan to *add* beds, which is the relevant inquiry for purposes of the replacement exception.

However, to address the opposition's reference to the "Department's 2007 guidance" (Letter from Doug Gross to Department dated July 29, 2015) on the replacement exception, to the extent the statutory exception does in fact require the bed complement in the replacement facility to be identical to the complement in the existing facility, Grand JiVanté will timely file the appropriate forms with the Department to delete the two beds, so that the number of beds at the existing facility will be identical to the number of beds on opening day at the new facility. Therefore, this statutory requirement was and is met.

3) **No New Health Services.** Grand JiVanté established it will not offer new health services at the replacement nursing facility. The Decision notes Grand JiVanté has made references to the project being an expansion of services, and has indicated that residents in Iowa Falls will have access to "even MORE services" than they do in Ackley.

It is true that Grand JiVanté will be expanding its services as an organization to a new location-Iowa Falls. It is also true that Grand JiVanté believes residents in Iowa Falls will have access to even more services than they do in Ackley, as a result of greater access to physician clinics, the hospital in Iowa Falls and other similar services offered by other providers in Iowa Falls. However, the services to be provided at the replacement nursing facility will be the same as those in the existing nursing facility, which was confirmed to the Department in writing on

April 24 and at the Council's meeting on August 4. Therefore, this statutory requirement was and is met.

4) **The Existing Nursing Facility Will Close.** Grand JiVanté will close the existing nursing facility and it will no longer be used as a nursing facility upon the opening of the replacement nursing facility. The Department requested information from Grand JiVanté concerning its plan regarding future use of the existing nursing facility space in Ackley, and Grand JiVanté made clear that while it had made no definite plans for how it would use the space, it would not be used to operate a nursing facility. That is the relevant inquiry for purposes of determining compliance with the statutory replacement exception.

Many organizations have requested and received non-reviewability determinations without disclosing specific plans for the vacated space in the facility being closed. The Department and Council have only required that the organization make clear that it will close the existing facility upon opening of the replacement facility, and that the organization represent that the vacated space will not be used in the operation of a nursing facility. The emphasis on what Grand JiVanté will do with the vacated space in the future despite its confirmation that it will close the nursing facility in Ackley is inconsistent with the Department's and Council's prior decisions.

However, to address the specific items listed in the Decision:

- April 2015 Newsletter: "There are also rumors out there that we are closing the Ackley location. Nothing could be further from the truth. We remain committed to providing quality housing and services for all of our residents and to continue serving this community as we have in the past for many, many years to come"
 - Due to the persistent campaign of misinformation by the opposition, Grand JiVanté was faced with a number of questions concerning the Ackley location. Because Grand JiVanté provides a continuum of services in Ackley, including independent and assisted living in addition to the nursing facility, this communication was referring to independent and assisted living services remaining at the Ackley location, not the nursing facility. This is supported by the reference to Grand JiVanté's intent to continue to provide "quality housing and services" in Ackley.
- Letter from Hinders, April 20: "Despite all the information and rumors floating around this issue, the board has not made any final decisions as to the use of the space that will be vacated by the nursing home portion of our services...I cannot stress enough that no final decisions have been made in this regard".
 - Grand JiVanté addressed this communication in its April 24 correspondence in response to the Department's request for clarification dated April 22. In its April 24 letter, Grand JiVanté made clear that while no decisions for the vacated space had been made, the space would not be used for operation of a nursing facility.

- With respect to the use of the space, that is the relevant inquiry, and is consistent with the Department's and Council's prior inquiries and decisions concerning the replacement exception.
- Iowa Falls Project Update: "One option is applying for a new license for a smaller long term care unit in Ackley"; Times Citizen, April 3 & 11, 2015: "Grand JiVanté will apply for a new state license for a smaller long term care unit in Ackley."
 - Despite assertions to the contrary from the opposition, Grand JiVanté carefully considered options for the existing nursing facility prior to its decision to pursue a replacement nursing facility in Iowa Falls. As has been publicly stated, the current nursing facility space is outdated, and the Department of Inspections and Appeals has warned the organization that improvements to the physical plant would need to be made in order to avoid fines. However, because Grand JiVanté wanted to explore any and all options to determine whether it could keep any nursing facility beds in Ackley, particularly with respect to the current nursing facility residents, the board was interested in how the existing space could be used and specifically in determining whether the existing licensed beds could be split between the Iowa Falls and Ackley location.
 - These reports may also be due to requests Grand JiVanté received to build a small cottage for nursing facility services to be located near the physician clinic in Ackley. Grand JiVanté has consistently told members of the community that any future beds in Ackley would require a new certificate of need.
 - The board's exploration of options concerning the existing facility and potential to split the beds was appropriate; however, once it was determined that splitting the beds was not possible under the replacement exception, and it would do nothing to address the current issues with the aging building, the board decided it would not pursue that option.
- Letter, Mr. Jones to IDPH: "Grand JiVanté has no intent to seek a Certificate of Need for additional nursing beds to be located at Ackley at any time in the future...Grand JiVanté will continue to use much of the existing physical plant in Ackley for independent and assisted living as well as other existing services. No final decision has been made as to how that portion of the building that will be vacated by moving the licensed nursing beds for Ackley to Iowa Falls will be used, but it is not the intent of the organization to utilize the space for skilled nursing."
 - Mr. Jones confirmed that Grand JiVanté had no intent to seek a Certificate of Need for additional nursing beds to be located at Ackley at any time in the future. That remains true today. Grand JiVanté plans to close the

nursing facility in Ackley when it opens the replacement facility in Iowa Falls, as required by the statutory exception.

- It is true that the board was interested in exploring options that would keep beds in Ackley. However, the age and condition of the building housing the nursing facility, and the costs associated with making necessary repairs and renovation made that option cost prohibitive. In addition, when the board learned that the licensed beds could not be split between the two locations and still qualify as a replacement facility under the statutory exception provided in Iowa Code Section 135.63(2)(1), the board decided to proceed with a replacement facility.
- The board of Grand JiVanté was simply engaging in appropriate exploration of any and all options to determine whether it could keep any nursing facility beds in Ackley.
- Unfortunately, due to the intense opposition to moving the beds out of Ackley, statements made early on in the process have continued to be used against Grand JiVanté, despite its subsequent written confirmation (on more than one occasion) that it does not intend to seek a certificate of need for beds in Ackley, and it intends to close the nursing facility there upon opening of the replacement facility in Iowa Falls.
- As a result of the opposition, the Ackley City Council has been presented with a resolution, which if adopted, would authorize the city council to negotiate the purchase of the Grand JiVanté nursing facility. The nursing facility is not, and has never been, for sale.
- More recently, a resolution was presented to the Ackley City Council that would give Grand JiVanté access to bond financing, but only if the board members of Grand JiVanté that reside outside of Ackley step down. Grand JiVanté is not seeking bond financing for the replacement facility, nor has it sought such financing.
 - Neither the nursing facility, nor Grand JiVanté as an organization, is owned by the city of Ackley, or by any private individuals. These resolutions are tactics by the opposition to take over the nursing facility by fiat.
 - The resolutions are at their core an attempt to distract the Department and the Council from the central issue: the law allows Grand JiVanté to replace its existing nursing facility to a new location within Hardin County, and Grand JiVanté has met the statutory criteria to utilize that exception to Council review.
- Several public references to this project as an “expansion” or “second location”

- Again, this is an example of where the term expansion was not intended to refer to the legal meaning for purposes of the Certificate of Need law, but rather to the ordinary meaning, which is that Iowa Falls is in fact a second location for Grand JiVanté, and that its plans to provide services in Iowa Falls are an expansion of its existing operations to a new location. It is not an “expansion” of services for the nursing facility, which will offer the same services as it does today in Ackley.

Summary.

It is clear that Grand JiVanté’s decision to pursue a replacement nursing facility in Iowa Falls has generated a great deal of attention, and that some of the citizens of Ackley are upset that the nursing facility in Ackley will close upon the opening of the replacement facility in Iowa Falls. It is also clear that despite assertions to the contrary, Grand JiVanté has attempted to be honest and forthcoming in its communications—even when those communications have been twisted and used against it later. As set forth above, Grand JiVanté did explore other options for the project, including the potential to pursue splitting its licensed nursing facility beds between Ackley and Iowa Falls. However, the board of directors ultimately determined that this was not permissible under the replacement exception, and that it would do nothing to solve the problems with the current nursing facility space. This good faith exploration was ultimately used against it, as evidenced by the opposition’s attempt to characterize these early discussions as inconsistencies.

Grand JiVanté’s decision is not popular with some of the citizens of Ackley. However, it doesn’t have to be popular, because that is not the standard by which the Department and Council judge whether a project is subject to Council review. Instead, as the Department rightly stated in its 2007 letter concluding the replacement of Mercy Capitol from its location on the east side of Des Moines to a new location in West Des Moines was not reviewable:

“We therefore recognize the legislature’s clear intent to exempt from CON review the replacement of a hospital, so long as the replacement does not result in new health services or additional bed capacity for existing services. While Wellmark and others have urged the Department and the Council to consider whether the need exists for the proposed hospital...The Department is bound by the legislative dictate that the replacement of an existing hospital is expressly excluded from Council review if certain criteria are satisfied...”

(Attached Letter, January 12, 2007 from Barb Nervig to Edwin McIntosh, Counsel for Mercy Capitol).

The same standard applies to the proposed replacement of Grand JiVanté’s nursing facility. Grand JiVanté has established its proposed replacement project meets the statutory criteria, all of which were confirmed in writing to the Department and presented to the Council at the August 4 meeting. Therefore, as Ms. Nervig so clearly stated, the Department and Council are bound by the legislative dictate of Iowa Code Section 135.63(2)(1).

August 31, 2015

Page 8

Further, as the non-reviewability determination letter itself provides, the Department (and by extension, the Council) reserves the right to “re-review” the determination if it receives information that any of the factors upon which it relied to make the determination have changed. None have changed; but if they did change, the Department and the Council would have recourse against Grand JiVanté. Assistant Attorney General Heather Adams also advised the Council of this at the August 4 Council meeting.

Accordingly, Grand JiVanté respectfully requests the Council reconsider its Decision because it is inconsistent with the legislative dictate that such projects are not reviewable, it is inconsistent with the non-reviewability determination of the Department’s staff, after seeking and receiving clarification of the facts, and it is inconsistent with all prior precedent concerning non-reviewability determinations. Upon reconsideration, Grand JiVanté requests the Council issue a determination consistent with the Department’s conclusion that the project is not reviewable under Iowa Code Section 135.63(2)(1).

Should you have questions or require additional information, please contact me.

Sincerely,



Heather L. Campbell

HLC/



March 24, 2015

Kala Shipley, Iowa Dept of Public Health
Lucas State Office Bldg.
321 E 12th St.
Des Moines, IA 50319-0075

RE: Replacement & Modernization Project

Chapter 135.63 L.

The replacement or modernization of any institutional health facility if the replacement or modernization does not add new health services or additional bed capacity for existing health services, notwithstanding any provision in this division to the contrary. With respect to a nursing facility, replacement means establishing a new facility within the same county as the prior closed facility.

Please accept this as our request for a determination of reviewability related to an upcoming replacement and modernization project for Presbyterian Village, dba Grand JiVanté. Grand JiVanté is currently located in Ackley, Iowa which is located in Hardin County. The replacement project would remain in Hardin County but will be built approximately 12 miles west in Iowa Falls. We would not be adding additional bed capacity and would request our current 70-bed licensure to remain intact at the replacement facility.

Background Information

Organization

Grand JiVanté, began providing services in Ackley, Iowa in 1936 and is currently one of the only private non-profit senior services providers in the Hardin County region. Over the years, Grand JiVanté has experienced significant growth in both the services offered and the size of the facility. Grand JiVanté is now a full service Continuing Care Retirement Community (CCRC), which includes Independent and Assisted Living apartments, as well as a 70-bed nursing home licensure. Part of the 70-bed licensure includes a CCDI unit.

In addition to providing campus based services, Grand JiVanté provides a number of home and community based services throughout Hardin County and surrounding communities. Those services include programs such as home delivered meals, community transportation, home health, and outpatient therapy services. In the last calendar year, Grand JiVanté served well over 500 people in all the various service areas and throughout Hardin County.

Project Planning

With an aging building and changing customer demands, the board of directors began making plans for renovations of the Ackley facility. An architect firm was hired in August of 2013 to develop a master plan for the Ackley facility that would provide the new household concept, along with amenities such as a full-service Wellness Center. Master planning was plagued with challenges due to the current facility being landlocked and the restrictions of the building layout. The space available severely restricted the ability to move fully to a household model. In addition to being landlocked, the architects expressed concerns with the existing building related to implementing the needed technologies that are now common in today's service delivery system. Initial costs to renovate the building also encroached on \$20 million, which was significantly over the anticipated budget.

The reason for the cost-creep stemmed primarily from the fact that the building structure was old and the various systems were antiquated. Just to address simple code issues, costs were projected to exceed \$1 million dollars. Upgrading the outdated HVAC system was estimated to exceed \$4 million, and the proposed renovations also included substantial costs for demolition of some portions of the building. Before anything was done cosmetically to increase resident satisfaction, over \$5 million would have to be expended just solely for basic functionality purposes of the building.

It was determined that in order to be prudent with agency resources, other options needed to be explored. After further exploration and careful consideration, it was determined that constructing a new building would be much more efficient and would allow the space to be designed as truly desired, including the ability to incorporate new equipment and technologies.

Due to being landlocked it was necessary to look for alternative locations offering ample space for new construction. Various options were explored in Hardin County to ensure we remained within regulations regarding the nursing home licensure. After months of exploration, it was determined the best locale was in Iowa Falls, which is only 12 miles west of the current facility.

Some of the main reasons this location was selected include:

1. Sufficient acres available for current project and future growth.
2. Close proximity to newly constructed state of the art hospital. The Iowa Falls Hospital is the only hospital in Hardin County.
3. Greater physician choices for residents. The Ackley Medical Clinic used to have four physicians offering residents a choice of providers. However, as with many rural healthcare providers, the Clinic has struggled to recruit new physicians and has had only one physician on staff for much of the past two years. This has greatly limited physician options for current residents and is often voiced as a concern by residents and families. Physicians in the surrounding communities will often not round at our facility due to the commute time, which limits admissions.
4. Due to strained City budgets, concern has been expressed about the long term viability of being able to maintain ambulance services in Ackley. A loss of ambulance services would be detrimental to our residents and our business.

5. As the census continues to decline in Ackley, now down to approximately 1500 people, workforce challenges have become a greater concern. While we enjoy turnover rates below the industry average, with a workforce of approximately 100, we like almost all healthcare providers are constantly working to recruit new employees. Recruiting licensed/certified and specialized positions has become especially difficult. Iowa Falls offers a larger workforce, as well as a community college with a Nursing program.
6. Grand Jivanté is already providing community based services in the Iowa Falls market. This along with the fact that Iowa Falls is a progressive, growing, and business-friendly climate made the community a nice fit for the project.

New Construction

The new location offers 23 acres of land and provides sufficient space for the current project as well as ample space for growth. Customer demand will dictate how quickly the land is developed. The first phase of the new project includes plans for Villa Homes that will be built as sold, and a blend of independent and assisted living apartments with flexible service plans and rental options. Various amenities will also be available such as a Main Street concept and a full-service Wellness Center. Amenities are an important part of services when many customers living on campus no longer drive. It allows seniors to maintain a greater level of independence and to have access to services they are accustomed to frequenting in their communities.

We are very excited to introduce the cottage household model to Hardin County for the extended nursing home portion of the project. Currently plans include four cottages each with their own front door, garage, kitchen, living room, front porch and courtyard. Resident rooms are designed to be private with private bathrooms and showers. However, each cottage will have the capacity for a couple of shared rooms for situations such as a husband and wife. Each cottage is expected to serve approximately 16-18 residents thus remaining within our current 70 bed licensure.

We believe this replacement and modernization project is critical to our future. It will not only allow us to replace an outdated building in poor physical condition but it will enable us to bring a new model of care to seniors in Hardin County. The household model mirrors a traditional family home versus the institutional hospital design of our current location. As noted earlier, some aspects of the project will be built as demand dictates. However, it is our hope to begin site work on the land in May of 2015 with project completion, including the four nursing home cottages, in summer/fall of 2016.

The goal is to provide seniors with innovative services that will allow them to remain in the communities they consider home rather than being forced to relocate to unfamiliar locations for services not often available in rural areas. Grand Jivanté's core belief is that seniors deserve to lead full active lives in all stages of life.

Sincerely,



Julie Hunders, CEO
Grand Jivanté



Iowa Department of Public Health
Promoting and Protecting the Health of Iowans

Gerd W. Clabaugh, MPA
Director

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

June 29, 2015

Julie Hinders, CEO
Grand JiVante'
502 Butler Street
Ackley, Iowa 50601

RE: Grand JiVante' Replacement Project

Dear Ms. Hinders:

The Department is in receipt of your request dated March 24, 2015 for a reviewability determination regarding the replacement of a 70-bed nursing facility in Ackley, Iowa with a facility to be constructed in Iowa Falls, Iowa.

It is understood from your letter dated March 24, 2015 and the additional information you provided on April 20, 2015, and your attorney provided on April 24, 2015 and May 4, 2015, that Presbyterian Village dba Grand JiVante' is a 70-bed nursing facility located at 502 Butler Street in Ackley (Hardin County). Presbyterian Village dba Grand JiVante' is contemplating replacing the current nursing facility with a 70-bed nursing facility to be constructed in Iowa Falls, Hardin County. It is also understood the 11 licensed Chronic Confusion or Dementing Illness beds that are included as part of the current 70 licensed nursing facility beds will be included in the replacement project in Iowa Falls. It is further understood the independent living and assisted living facilities will remain in Ackley. Finally, it is understood that once the new building in Iowa Falls is completed the existing nursing facility located at 502 Butler Street in Ackley would be closed and the space will no longer be used for nursing facility beds. You and your legal counsel have indicated that the space in Ackley will not house skilled nursing beds in the future and the Ackley facility will no longer be used as a nursing facility. Finally, you and your counsel have indicated that the Iowa Falls nursing facility will not offer any health services which are not currently offered in Ackley.

The proposal as described is not reviewable under Iowa Code section 135.63(2)"I" which provides that a Certificate of Need is not required for a replacement of an "institutional health facility if the replacement...does not add new health services or additional bed capacity for existing health services." With respect to a nursing facility a replacement "means establishing a new facility within the same county as the prior facility to be closed." This determination is made based on your assertions (1) that the new facility in Iowa Falls will not add new health services or bed capacity, and (2) that the current nursing facility in Ackley will be closed and will no longer operate as a nursing facility following the opening of the new nursing facility in Iowa Falls.

The Department reserves the right to re-review this determination if it receives information that any of the factors upon which it relied to make this determination have changed.

This determination of non-reviewability will be considered by the State Health Facilities Council at their meeting on August 4, 2015. Please advise should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kala Shipley".

Kala Shipley
Certificate of Need Program



Iowa Department of Public Health

Advancing Health Through the Generations

Chester J. Culver
Governor

Patty Judge
Lt. Governor

Mary Mincer Hansen, R.N., Ph.D.
Director

January 12, 2007

Edwin N. McIntosh
Dorsey & Whitney LLP
801 Grand, Suite 3900
Des Moines, IA 50309

RE: Catholic Health Initiatives-Iowa, Corp. Request for Non-Reviewability Determination

Dear Mr. McIntosh:

The Iowa Department of Public Health (Department) is in receipt of your request for a non-reviewability determination regarding the replacement of Mercy Capitol Hospital in Des Moines with a hospital in West Des Moines. For the following reasons, the Department determines that the proposal as described is exempt from review under Iowa Code Section 135.63(2)“1” as it constitutes the replacement of a hospital which does not add new health services or additional bed capacity for existing services.

Background

Catholic Health Initiatives-Iowa, Corp (CHI or Mercy) submitted a request for a non-reviewability determination for a proposed hospital replacement project on November 30, 2006. (Attachment 1). CHI is proposing to replace Mercy Capitol, an acute care hospital located at 603 East 12th St., Des Moines, Iowa, with an acute care hospital to be called Mercy West Lakes at 59th Place and University Avenue, West Des Moines, Iowa, at a projected cost of ninety million dollars. On December 21, 2006, the Department requested a more detailed description of the patient population currently served by Mercy Capitol, including the number of admissions and the number of outpatients by county of residence, and a description of the same information for the proposed Mercy West Lakes facility. (Attachment 2). Mercy responded with a letter dated December 29, 2006. (Attachment 3). On January 5, 2007, the Department requested additional clarification regarding the services offered at Mercy Capitol and the services proposed to be offered at Mercy West Lakes. Specifically, the Department completed a detailed table summarizing the services indicated on Mercy Capitol’s annual surveys as provided to the Iowa Hospital Association (IHA) and the services proposed to be offered at the new facility, and requested that Mercy provide an explanation regarding the discrepancies between the two columns. (Attachment 4). Mercy responded on January 9, 2007. (Attachment 5).

On December 14, 2006, Wellmark, Inc. d/b/a Wellmark Blue Cross and Blue Shield of Iowa (Wellmark) filed a resistance to Mercy’s request. (Attachment 6). Wellmark provided a supplement to its resistance on December 29, 2006. (Attachment 7). The Department has received two other letters resisting Mercy’s request. (Attachment 8).

Relevant Facts

The following facts are understood from the above filings. The factual findings contained below are based solely upon assertions made by Mercy. Should material factual circumstances change from those asserted prior to the actual replacement of Mercy Capitol in 2009, the Department reserves the right to reexamine its determination.

Geographic Location and Facility. Mercy Capitol is located in Des Moines, Polk County and the proposed replacement location is in West Des Moines, Polk County, approximately 10 miles from the current location. Mercy Capitol will cease operating simultaneously with the opening of Mercy West Lakes, and the Mercy Capitol facility will not be used to provide licensed health services following the replacement.

Health Services. Mercy Capitol currently offers the following health care services:

- ~ general medical-surgical
- ~ obstetrics-newborn services
- ~ medical surgical intensive care
- ~ physical rehabilitation
- ~ airborne infection isolation
- ~ ambulance services
- ~ auxillary services
- ~ bariatric/weight control services
- ~ breast cancer screening/mammograms
- ~ cardiology and cardiac surgery services; adult diagnostic/invasive catheterization
- ~ adult interventional cardiac catheterization
- ~ case management
- ~ chaplaincy/ pastoral care services
- ~ emergency services; emergency department
- ~ trauma center
- ~ enabling services
- ~ enrollment assistant services
- ~ fitness center services
- ~ geriatric services
- ~ HIV-AIDS services
- ~ home health services
- ~ hospital-based outpatient care center services
- ~ linguistic/translation services
- ~ nutrition programs
- ~ occupational health services
- ~ orthopedic services
- ~ outpatient surgery
- ~ patient controlled analgesia
- ~ patient education services
- ~ patient representative services

January 12, 2007

Page 3

- ~ physical rehabilitation outpatient services
- ~ radiology, diagnostic and medical imaging services, including
 - ~ CT scanner,
 - ~ diagnostic radioisotope facility,
 - ~ multi-slice CT<64,
 - ~ SPECT, and
 - ~ ultrasound
- ~ social work services
- ~ support groups
- ~ tobacco treatment/cessation program
- ~ transportation to health facilities
- ~ volunteer services department
- ~ endoscopy
- ~ infusion services
- ~ non-invasive testing
- ~ pathology
- ~ pharmacy
- ~ respiratory therapy
- ~ vascular studies

Mercy West Lakes will offer the same complement of health care services as listed above under the same hospital license.

Bed Capacity. Mercy Capitol is currently licensed as an acute care hospital with 226 acute care beds divided into the following categories: 194 general medical/surgical beds, 10 obstetric beds, 8 ICU beds, and 14 inpatient rehabilitation beds. At least six months prior to closing Mercy Capitol, a total of 80 beds will be deleted, including deletion of the 14 inpatient rehabilitation beds and 66 medical/surgical beds. The number and categories of beds at Mercy Capitol prior to closing will be 146 total beds, divided into the following categories: 128 general medical/surgical beds, 10 obstetric beds, and 8 ICU beds.

Mercy West Lakes will also have a total of 146 beds, likewise divided into the following categories: 128 general medical/surgical beds, 10 obstetric beds and 8 ICU beds. Mercy West Lakes will have the same bed capacity as Mercy Capitol at the time of the replacement and the replacement will not add additional bed capacity.

Patient population. Mercy Capitol currently serves Polk County residents as its primary patient population. Specifically, for fiscal year 2006, 71 % of inpatients discharged and 81 % of outpatients discharged resided in Polk County. Mercy Capitol also serves a number of residents from Warren, Dallas and other nearby counties. Specifically, for fiscal year 2006, approximately 10 % of inpatients discharged resided in Warren County and 3 % resided in Dallas County; and approximately 8 % of outpatients discharged resided in Warren County and 2 % resided in Dallas County.

Mercy Capitol has projected that the primary patient population served by Mercy West Lakes will remain Polk County residents. Specifically, Mercy projects that for fiscal year 2010, 69 % of inpatients

discharged and 79 % of outpatients discharged will reside in Polk County. The remaining discharges will be approximately equally divided between Warren, Dallas, and other counties. Mercy makes this projection primarily due to the fact that the vast majority of the population in this service area lives in Polk County and because the proposed hospital will be located in Polk County.

Relevant Law

The Certificate of Need (CON) statute generally requires that a new or changed institutional health service may not be offered in the state without receipt of a certificate of need from the State Health Facilities Council (Council). Iowa Code section 135.63(1). As would otherwise be relevant here, a new or changed institutional health service is defined to include the “construction, development, or other establishment of a new institutional health facility;” the “relocation of an institutional health facility;” and “any capital expenditure by or on behalf of an institutional health facility in excess of one million five hundred thousand dollars within a twelve-month period.” Iowa Code sections 135.61(18)”a,” “b,” and “c.” The definition of institutional health facility expressly includes a hospital. Iowa Code section 135.61(14)”a”.

However, the law also provides for sixteen exceptions to the general provisions requiring CON. The exception relevant to this review exempts the following projects from the requirements of chapter 135:

The replacement or modernization of any institutional health facility if the replacement or modernization does not add new health services¹ or additional bed capacity for existing health services, notwithstanding any provision in this division to the contrary. 135.63(2)”1”

We therefore recognize the legislature’s clear intent to exempt from CON review the replacement of a hospital, so long as the replacement does not result in new health services or additional bed capacity for existing services. While Wellmark and others have urged the Department and the Council to consider whether the need exists for the proposed hospital, especially in light of the Council’s Decision in April of 2004 that a need did *not* exist at that time for an 83 bed hospital in West Des Moines, the Department is bound by the legislative dictate that the replacement of an existing hospital is expressly excluded from Council review if certain criteria are satisfied. Section 135.63(2)”1” clearly states that the CON law is not applicable to a hospital replacement which does not add health services or bed capacity, “notwithstanding any provision in this division to the contrary.” Hence while the Council would typically, and has previously, considered the twenty-two need-related criteria detailed in section 135.64 prior to the development of a new hospital, the legislature has shielded the proposed project from measurement against those criteria and excised the proposal from the Council’s close scrutiny.

¹ “Health services” have been defined to include “clinically related diagnostic, curative, or rehabilitative services[.]” Iowa Code section 135.61(12).

Conclusion

In determining that Mercy West Lakes is a replacement of Mercy Capitol pursuant to section 135.63(2)"1", the Department concludes that the following factors are relevant:

- (1) Mercy Capitol will cease operations as a hospital simultaneous with the opening of Mercy West Lakes. The existing Mercy Capitol campus will not be used to provide any licensed health care services after the opening of Mercy West Lakes. Catholic Health Initiatives-Iowa, Corp intends to sell the Mercy Capitol building to an independent third party.
- (2) Mercy West Lakes will offer the same complement of health services currently offered by Mercy Capitol under the same hospital license. The replacement will not result in the addition of new health services.
- (3) Mercy Capitol plans to reduce its total licensed bed capacity by 80 beds at least six months prior to Mercy West Lakes opening. Mercy Capitol will then have 128 general medical/surgical beds, 10 obstetric beds and 8 ICU beds. Mercy West Lakes will have the same bed capacity as Mercy Capitol at the time of the replacement. The replacement will not result in additional bed capacity, and will in fact result in decreased bed capacity in the county.
- (4) Mercy Capitol and the proposed site for Mercy West Lakes are both in Polk County, Iowa and are located approximately 10 miles apart.
- (5) Mercy Capitol currently serves Polk County residents as its primary patient population. Mercy Capitol also serves a number of residents from Warren, Dallas and other nearby counties. Mercy Capitol has projected that the primary patient population served by Mercy West Lakes will remain Polk County residents. Mercy makes this projection primarily due to the fact that Polk County is where the vast majority of the population lives.

In sum, the proposal as described is not reviewable under Iowa Code section 135.63(2)"1" as it is a replacement of an existing hospital which does not add new health services or additional bed capacity for existing services.

This determination of non-reviewability will appear on the agenda of the next State Health Facilities Council meeting for their consideration. This meeting is scheduled for Tuesday, January 16, 2007, at 1:00 p.m. Please advise should you have any questions.

Sincerely,

Barb Nervig
Certificate of Need Program

January 12, 2007

Page 6

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