

**MINUTES OF THE MEETING
HEALTH SERVICES COUNCIL**

DATE: 29 March 2005

TIME: 3:00 PM

LOCATION: Health Policy Forum

ATTENDANCE:

Council: Present: Edward F. Almon, Robert L. Bernstein, Joseph V. Centofanti, MD, Raymond Coia, John W. Flynn, Maria R. Gil, Catherine E. Graziano, RN, Ph.D., Marvin Greenberg, John Keimig, Robert J. Quigley DC, (Chair), Robert Ricci, Larry Ross, Reverend David Shire, Robert Whiteside

Not Present: Victoria Almeida (Vice Chair), James Daley, Rosemary Booth Gallogly, Wallace Gernt, Robert S.L. Kinder, MD, Denise Panichas, John Young

Staff: Valentina D. Adamova, Michael K. Dexter, Joseph G. Miller, Donald C. Williams

Public: (see attached)

1. Call to Order, Approval of Minutes, Time Extension for the Minutes Availability, Conflict of Interest Forms, and Election of Health Services Council Officers.

The meeting was called to order at 3:00 PM. The Chairman noted that conflict of interest forms are available to any member who may have a potential conflict. The minutes of the 22 February 2005 meeting of the Health Services Council were approved as submitted. The Chairman stated that due to the Open Meetings Act the minutes of the meetings have to be available to the public by the next meeting date or within thirty-five days, whichever is sooner. The Chairman stated that because the next meeting might not occur within thirty-five days or the minutes might not be available, he would ask the Committee members to vote to extend the availability of minutes beyond time frame provided to remain in compliance with the Open Meetings Act. A motion was made, seconded and passed by a vote of fourteen in favor and none opposed (14-0) that the availability of the minutes for this meeting be extended beyond the time frame provided for under the Open Meetings Act. Those members voting in favor were: Almon, Bernstein, Centofanti, Coia, Flynn, Gil, Graziano, Greenberg, Keimig, Quigley, Ricci, Ross, Shire, Whiteside.

The next item on the agenda was the Election of Health Services Council Officers. The nominations for the Health Services Council

Officers were as follows: Chairman - Robert J. Quigley, Vice Chairman - Victoria Almeida, Secretary – Reverend David Shire. There being no other nominations from the floor, the nominations were closed. The Council Members cast their ballots. The results of the election were as follows: Chairman – Robert J. Quigley (14 votes); Vice Chairman – Victoria Almeida (14 votes); Secretary – Reverend David Shire (14 votes).

2. General Order of Business

The next item on the agenda was an introduction of David R. Gifford, MD, MPH, Acting Director of Rhode Island Department of Health. Dr. Gifford thanked the Health Services Council (“HSC”) for their job and discussed incorporating health disparities into the Certificate of Need program. The Chairman extended an invitation to Dr. Gifford to attend future meetings of the HSC.

The next item on the agenda was the request for expeditious review by Kent Regency Center/Genesis HealthCare Corporation for facility improvements. Richard Licht, legal counsel to the applicant, introduced, Susan DeBlazio, legal counsel to the applicant, Ms. Morran, Administrator of Kent Nursing Center, and Ms. Marcotte, Director of Nursing. He stated that Kent Nursing Center (“Kent”) is owned by Genesis Eldercare (“Genesis”) and introduced Mr. St. Hilaire, VP of Environment Services, and Mr. Farnan, VP of Reimbursement. He stated that in the \$4 million project for upgrading

Kent there are things that are needed for fire safety purposes. He noted that specifically the ceiling tiles need to be replaced and that this is a 41-year old facility and needs better furniture and equipment for the residents. He stated that the applicant would like to complete the entire renovation project at the same time. He noted that the fire safety issues can be address without exceeding the \$2 million threshold for a Certificate of Need (“CON”) but that wouldn’t make economic sense. He stated that as part of the expeditious review, the applicant is still required to go through the formal approval process but the review of the project would start earlier.

The Chairman noted that the applicant represents that this is a health and safety issues as well as quality of life issue for the residents and that the applicant would like to do everything at once. The applicant agreed with that statement. In response to a question, the applicant stated that the project would be financed by 100% equity.

Mr. Ross inquired why the CON was not filed in the previous cycle in January and why this is coming before the HSC now. Mr. Licht stated that there are now random federal inspections regarding the structure and fire code. Mr. Ross stated that the applicant could proceed with the fire code changes without the CON since the other items are unrelated to the health and safety. Mr. Licht agreed but stated that it makes economic sense to do everything at once. Mr. St. Hilaire stated that it is easier, better, quicker and less expensive for the applicant to do everything at one time. He stated that this would disrupt the

residents less.

Mr. Ross inquired if in their request, the applicant specified the difference in the cost between the two methods. Mr. St. Hilaire stated that all the estimates are based on completing the project all at once. He stated that there would be redundancies if the project was done in pieces.

Mr. Miller, legal counsel to the Department, stated that the case is more compelling for expeditious review because there is a Unified Plan aspect to this proposal.

Mr. Ross stated that he doesn't understand the timing of this project and why it wasn't proposed during the review cycle two months ago. The applicant stated that part of this is due to the recent federal survey that was conducted which identified issues at Kent. Mr. Ross stated that he has a concern about granting an expeditious review. He stated that there is a process in place and the Council needs to be careful in granting an expeditious review. He stated that he is not addressing the merits of the case. He noted that the Council previously approved expeditious reviews only to discover that the applicants didn't file timely applications.

Mr. Greenberg stated that the expeditious review does not obligate the Council to take action. He stated that he would be in favor of approval and made a motion to approve the request for an expeditious review. Mr. Bernstein seconded the motion.

Dr. Gifford stated that Genesis is undertaking an effort to do culture change and asked how the applicant plans on incorporating this program into this project. The applicant stated that the company is studying culture change and has undertaken an effort to find the proper settings for the residents but that Kent is not involved.

Mr. Whiteside stated that he doesn't believe the proposal currently meets the criteria for expeditious review and stated that the criteria for an expeditious review is for emergency needs. The applicant stated that the building has no storage capacity, and has about 287 sq. ft. per bed whereas a brand new building would have about 435 sq. ft. The applicant stated that Kent is deficient in terms of size with respect to storage and activity space and the proposal would provide a better quality of life for the residents.

Mr. Whiteside stated that these concerns are not of immediate danger or emergency needs and an expeditious review places constraints on the staff and Council. He stated that he is not convinced that this proposal qualifies for an expeditious review under the criteria. The applicant stated that in a similar building in Connecticut the ceiling tiles were replaced after they've caused a fire. The applicant stated that this would be less disruptive to the residents if it were done all at once.

Mr. Miller stated that the word emergency does not appear in Section

11.1 (d), instead the section is talking about an urgency. He stated that the applicant doesn't have to prove emergency in this case. He stated that he is concerned that with all the problems involving nursing homes, and in this case involving a two-hour rating for the electrical panels and the stairwell, its encumbered upon the Council not to refuse an immediate addressing of these issues.

Mr. Whiteside stated that the sense of urgency can be construed in many ways and questioned if it outweighs the time constraints placed upon the Council and staff. He stated that he is looking at the required criteria.

Mr. Ross stated that the safety issues can be address under \$2 million threshold and that there are other things that the applicant wants to pursue at the same time. He stated that only 40% of this project deals with those issues. He stated that dealing with safety can be done today and if that's not the case then there should be more documentation regarding this proposal.

Mr. Miller stated that he doesn't believe the applicant can pursue a piece of the project today without violating the Unified Plan. He stated that the Department has come down in the past on people who have tried to implements things in piecemeal.

Mr. Ross stated that the issue before the HSC is granting an expeditious review versus a normal review.

Mr. Licht stated that the ceiling heating panels have been identified by Genesis as a fire safety risk and the Town Marshal of Connecticut has ordered the removal of the heating panels. He noted that these are immediate needs that can't wait until the normal process. He stated that the applicant could argue that they have segmented pieces but this would undermine the Unified Plan.

Mr. Greenberg asked what would be the time difference between the expeditious review and the regular process. Staff stated that the next cycle is on June 10th and the review will not begin until July 10th. Staff stated that the review process is 120 days. Staff noted that if the applicant were approved for expeditious review they would be required to file an application within 30 days and there is a shorter comment period however the review process is still 120 days. Staff noted that advisories would still be requested from Medicaid and it would save several months of time.

Sen. Graziano inquired how long it would take to implement the proposal. The applicant stated it would take about 9 months. Sen. Graziano inquired how the residents would be accommodated. The applicant stated that the residents would be maintained in their current rooms and Kent's census would either be decreased or work would be performed on the rooms during the day.

The Chairman stated that there is a motion on the floor to approve a

request for an expeditious review and requested for a vote to be taken. Staff noted that approval of an expeditious review would require 2/3 of the vote. The motion was passed by a vote of twelve in favor, and two opposed (12-2) to recommend that the application be approved for an expeditious review. Those members voting in favor of the motion were: Almon, Bernstein, Coia, Centofanti, Flynn, Gil, Graziano, Greenberg, Keimig, Quigley, Ricci, Shire. Ross and Whiteside opposed.

The next item on the agenda was the presentation by Jason Gramitt from the Ethics Commission. Council members were provided a copy of the presentation (Attached). Mr. Gramitt discussed the issues regarding recusal and changes in the thresholds for gift regulations. He noted that the members can contact the ethics commissions for informal advice over the phone. He noted that additionally members can request formal written advisories from the commission.

The next Health Services Council meeting was tentatively scheduled for 26 April 2005.

3. Adjournment

There being no further business the meeting was adjourned at 4:30 PM.

Respectfully submitted,

Valentina D. Adamova