

Minutes of Meeting

Health Services Council

DATE: December 18, 2007 TIME: 2:30 PM

LOCATION: Conference Room 401

Department of Health, Canon Building

ATTENDANCE:

Committee I: Present: Victoria Almeida, Esq. (Vice Chair), Edward F. Almon, Raymond C. Coia, Esq., John W. Flynn, Gary Gaube, Wallace Gernt, Maria Gil, Amy Lapierre, Thomas M. Madden, Esq., Denise Panichas, Robert J. Quigley, DC, (Chair), Robert Ricci, Larry Ross, Reverend David Shire

Not Present: Joseph V. Centofanti, M.D., Robert Whiteside

Excused Absences: Robert S. Kinder, M.D.

Staff: Valentina Adamova, Michael K. Dexter, Joseph G. Miller, Esq.

Public: (see attached)

1. Call to Order, Approval of Minutes, Conflict of Interest Forms and Time Extension for the Minutes Availability

The meeting was called to order at 2:30 PM. The Chairman noted that conflict of interest forms are available to any member who may have a conflict. The Chairman requested a motion for the extension of time for the availability of minutes pursuant to 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 voting in favor of the motion were: Almeida, Almon, Coia, Flynn, Gaube, Gernt, Gil, Lapierre, Madden, Panichas, Quigley, Ricci, Ross, Shire

2. General Order of Business

The first item on the agenda was the application of Rhode Island Specialty Hospital, LLC to establish a 40-bed long term care hospital in North Smithfield. Ms. Almeida and Mr. Gaube stated that they were recusing from this application.

Staff noted two letters were received relating to the current application: a response letter from Mr. Sandberg addressing questions the committee had on 11 December 2007 with respect to four items; and a letter received on 17 December 2007 from Gerry

Goulet, Esq. for the applicant addressing the issue of whether or not the sale-leaseback where the hospital will be located needs any attention/action by Attorney General's Office with respect to their review of charitable trust, etc. Staff noted that he wished to receive a statement from the applicant and that this information was then forwarded to the Attorney General's Office for review. Staff noted that the sale-leaseback was not the primary financing option as the applicant noted additional options. Staff summarized the application and the deliberations of the committee on these matters.

The Chairman asked the applicant why time was of the essences on this application. The applicant stated that Congress has a Medicare bill before the Senate to make adjustments to a variety of payment programs and structures for both post acute and acute care hospital services which would include changes for long term acute care hospitals. This facility would have to apply for certification under these changes once it had completed its eligibility period for Medicare. Within those provisions the Secretary of Health and Human Services has been asked to look at the function and structure for how a LTAC hospital would be designated. Changes in the structure and delivery of healthcare has prompted Congress to have the Centers for Medicare and Medicaid Services (CMS) evaluate and consider a diagnostic and structure-based approach similar to other services that CMS currently pays for. Additionally, there is a provision that would put a moratorium on Medicare for certifying new LTAC facilities during this study period. The applicant indicated that

the sense of urgency was due to the fact that if the passed, the enactment would be anticipated to take effect on passage. One of the exceptions to this moratorium would be for those holding a CON prior to enactment.

Mr. Ross indicated that he believed there was another exception such as if the Secretary determines the facility a need notwithstanding a CON. The applicant acknowledged that the Secretary might take an appeal from any provider to say that there is a need for a long-term acute care hospital in a particular market or service area.

Mr. Gernt inquired as to why there was not a condition of approval regarding approval of the sale-leaseback agreement by the Attorney General's Office. Mr. Goulet, attorney for the applicant, responded that this has no bearing on the project as the leaseback transaction is a separate transaction that would be reviewed separately if needed. The reason the issue arose was due to question of Landmark's future financial viability. If Landmark was unable to fund the amount needed for operating costs due to various factors, several options for financing were discussed. An alternative provision in the operating agreement was to allow Landmark to make no more capital contributions and to dilute its interest. Essentially, Landmark's ownership could decrease from 20% to 15%, 10% or lower. As a third fall back it was said a sale-leaseback arrangement would be entered for certain land that this building is on. When the money is acquired Landmark would have seven million in the bottom line. This was when the question arose as to whether or not this was reviewable.

Mr. Ross asked that in the event the Attorney General's Office determines the sale-leaseback requires additional review or cannot be done, what assurance there was that \$750,000 is going to come from other equity sources so the present condition of 100% equity on the part of both parties is not violated. Mr. Charest noted that when the board reviewed this transaction they understood the obligation for approximately \$700,000 of working capital needed to fund the initial contribution required for construction and renovation. He indicated that they were aware this would be provided through working capital without regard to the impending transaction relative to the sale-leaseback and that the transaction could proceed regardless of the outcome of the proposed sale-leaseback.

Mr. Ross indicated his intention to support the proposal but wished to share his reservation around the request of 40 beds due to his understanding of both Rhode Island and CMS data. He shared his concern that if utilization did not reach those levels it would extend the length of time which losses are experienced. This in turn would increase the time to realization of profits, impacting operations and having an adverse effect on recovery as opposed to aiding it. He suggested 30 beds was a more realistic goal, but indicated he was not going to propose any changes at this time.

Mr. Flynn stated that this concern was addressed in a subcommittee and the Committee felt comfortable with the projections of the

applicant after the consultant walked through three different methods utilized for projections. All methods utilized by the consultant produced higher numbers than those the applicant projected.

Mr. Ross noted that he respected the decision of the subcommittee but wanted to share his reservation. Mr. Almon asked how imminent the sale lease back agreement was. Mr. Goulet indicated 15 January 2008 was a realistic date.

Chairman Quigley entertained a motion to approve the project. A motion was made, seconded and passed by a unanimous vote (12-0-2). Those members voting in favor were: Almon, Coia, Flynn, Gernt, Gil, Lapierre, Madden, Panichas, Quigley, Ricci, Ross, Shire. Almeida and Gaube recused. Chairman Quigley asked the applicant if the conditions of approval were acceptable, with the change in the number of beds as mentioned by staff in the reading of the report. The applicant affirmed the conditions were acceptable.

Staff requested ratification of the minutes as there was not a quorum at the beginning of the meeting. Minutes of the 11 December 2007 meeting of the Health Services Council were approved. Mr. Madden requested that names be included where a member of the council was referenced.

Members requested an expected timeline of receipt and processing for the upcoming hospital conversions application. The Chairman

requested legal counsel to draft a statement for the Council.

There being no further comments the meeting was adjourned at 3:15 P.M.

Respectfully submitted,

Michael K. Dexter