GENERAL COUNSEL'S REPORT
September 23, 2015

A. Select Specialty Hospital-Memphis, Memphis (Shelby County), TN – CN1212-062A

On 5/22/13, the Agency unanimously approved this application for the addition of 28 long-term acute care beds to its current 39 bed LTACH, located within St Francis Hospital, 5959 Park Avenue, Memphis (Shelby County), TN. The applicant was also in the process of adding 10 beds pursuant to TCA 68-11-1607(8)(g), which permits a hospital with fewer than 100 beds to increase its total number of licensed beds by 10 beds over any 1 year period without requiring a Certificate of Need. The final bed count for the facility will be 77 LTACH beds. The estimated project cost was $6,898,392.00.

Select Specialty Hospital-Memphis requests a 4 year extension of the expiration date, from 8/1/016 to 8/1/20. While more than $180,000 has been spent in architectural and engineering expenses thus far, the project cannot be implemented at this time due to federal regulations interpreting the federal moratorium on new LTACHs and LTACH beds. The moratorium is to expire on 9/30/17, at which time Select Specialty Hospital-Memphis could proceed with the implimentation of this project if the moratorium is not extended.

At the time of the hearing on this project in May of 2013, the Congress had enacted a moratorium on new LTACHs and LTACH beds. That moratorium did not apply, however, if a certificate of need had been issued prior to enactment of the statute. As a result, Select believed that the additional thirty-eight beds contemplated by this project would not be subject to the moratorium.

Select has made a significant investment in architectural and engineering work on the project. To date, we have expended more than one hundred eighty thousand dollars ($180,000) in architectural and engineering expenses on the project.

In April 2014, however, the Centers for Medicare and Medicaid issued regulations interpreting the moratorium statute such that the "grandfathering" exceptions would apply only to projects to establish new LTACH facilities, and not to the expansion of existing LTACHs. As a result, Select's proposed addition of thirty-eight beds is subject to the moratorium, and Select cannot add the beds that were originally part of this project until the moratorium expires. Although Congress is presently considering a corrective statute to address this regulatory interpretation (the "LTCH Technical Correction Act of 2015," H.R. 2580), the future of that bill is uncertain. It does not make sense to incur the expense of extensive renovations until we are confident that we will be able to utilize all of the space and expand the LTACH as originally planned.

The moratorium is currently scheduled to expire on September 30, 2017. At that time, we will be able to move forward with the project.

We realize that it is unusual to request a four-year extension of the CON, but the three and one-half year delay (from April of 2014 until October of 2017) is one over which Select has absolutely no control. We have rounded the request up to four years in order to take into account the possibility of collateral delays occasioned by the moratorium and the unusually long interruption in the implementation of the project.

Enclosed is a check in the amount of twenty thousand six hundred forty-nine dollars and thirty-three cents ($20,649.33) in payment of the extension fee.

Very truly yours,

Byron R. Trauger

BRT:kmn

Enclosure

cc: John Wellborn
Robert J. Bein, Esquire

STATE OF TENNESSEE

Health Services and Development Agency

Certificate of Need No. **CN1212-062A** is hereby granted under the provisions of T.C.A. § 68-11-1601, *et seq.*, and rules and regulations issued thereunder by this Agency.

To: Select Specialty Hospital-Memphis, Inc.
5959 Park Avenue
Memphis, TN 38119

For: Select Specialty Hospital-Memphis

This Certificate is issued for: The addition of twenty-eight (28) long term acute beds to the existing thirty-nine (39) bed facility, located in leased space at St. Francis Hospital, 5959 Park Avenue, Memphis (Shelby County), TN. Select Specialty will also add ten (10) beds under the statutory exemption available to hospitals with less than 100 beds found at TCA § 68-11-107(g) for a total licensed bed complement of seventy-seven (77) long term acute care beds. St. Francis Hospital will reduce its license by thirty-eight (38) beds.

On the premises located at: 5959 Park Avenue
Memphis (Shelby County), TN 38119

For an estimated project cost of: $6,898,392.00

The Expiration Date for this Certificate of Need is

August 1, 2016

or upon completion of the action for which the Certificate of Need was granted, whichever occurs first. After the expiration date, this Certificate of Need is null and void.

Date Approved: May 22, 2013 — Chairman

Date Issued: June 26, 2013 — Executive Director

HF-0022 (Rev.1/04)

STATE OF TENNESSEE