

# HEALTH SERVICES AND DEVELOPMENT AGENCY

## MINUTES

FEBRUARY 28, 2018

### AGENCY MEMBERS PRESENT

Grandy, Joe, Chair  
Korth, Paul, Vice-Chair  
Alsup, Thomas  
Mills, Thom  
Patric, Kenneth, M.D.  
Ridgway, Corey  
Taylor, Todd  
Scarboro, Douglas  
Jordan, Lisa, Designee for the Commissioner of Commerce and Insurance  
Gaither, Keith, Designee for TennCare  
Harding, Jaclyn, Designee for the Comptroller of the Treasury

### AGENCY STAFF PRESENT

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

### COURT REPORTER

Daniel, April

### GUESTS PRESENT

Akers, Steve, Director, Integrous Architecture  
Armistead, Cindy, Campbell Clinic  
Barnes, Emma, Master Student, Vanderbilt University  
Basham-Saif, Angela, ACNO, Erlanger  
Benson, Dr. Sandy, Professor, MTSU  
Brent, Michael, Esq., Bradley Arant Boult Cummings, LLP  
Brown, Dere, Health Planning Assistant, NHC  
Brown, Richard, Director, Integra Resources  
Bubearich, Elizabeth, Student, MTSU  
DeLozier, Joe, M.D., DeLozier Surgery Center  
Duncan, Bruce, Assistant V.P., NHC  
Elliott, Winn, Business Manager, Plastic Surgery Clinic  
Elrod, Dan, Esq., Butler Snow  
Felts, Ginna, Business Development, Vanderbilt University Medical Center  
Hernandez, G, Campbell Clinic  
Jackson, Leslye, Student, MTSU  
Looney, Kim, Esq., Waller Lansden  
Moore, John, M.D., Cool Springs Plastic Surgery  
Papillion, Paul, M.D., Cool Springs Plastic Surgery  
Parker, Ayda, Student, MTSU  
Phillips, Brant, Esq., Bass Berry Sims  
Powers, Eric, Director, The Innovations Group  
Reed, Ann, R., RN., BSN, MBA, Director of Licensure, TDH, Division of Health Care Facilities  
Reyes, Yasmin, Student, MTSU  
Smart, Shantena, Student, MTSU  
Smith, Bert, M.D., IHT, PLLC  
Stevens, George, CEO, Open Arms Care Corporation  
Swearingen, Travis, Esq., Butler Snow  
Taylor, Jerry W., Esq., Burr & Forman  
Trauger, Byron, Esq., Trauger and Tuke

Umar, Talha, Student, MTSU  
Wellborn, John, Consultant, DSG Consulting  
West, William, Esq., Baker Donelson  
Williams, Tyler, Administrator, NHC Healthcare  
Winick, Joe, SVP, Erlanger  
Winkler, Daniel, AVP Operations, HCA Healthcare  
Wood, Tracy, CEO, Hospice of Chattanooga  
Young, Laura, CNO, TDMHSAS

### **ROLL CALL TO ESTABLISH QUORUM**

Mr. Grandy requested a roll call to establish a quorum.

PRESENT: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy

Ten members were present.

*Mr. Ridgway arrived at 8:32 a.m. after roll call.*

### **DIRECTOR'S ANNOUNCEMENTS**

- Douglas Scarboro has been appointed to the consumer position by Governor Haslam.
- The remaining 2018 HSDA meetings are tentatively scheduled for April 25; June 27; August 22; October 24; and December 12 at the Cordell Hull Building.

### **APPROVAL OF MINUTES**

Mr. Grandy presented the December 13, 2017 minutes for approval.

Dr. Patric moved for approval of the minutes as presented. Ms. Harding seconded the motion. The motion CARRIED [11-0-0] unanimously by voice vote. **APPROVED**

### **STATE HEALTH PLAN UPDATE**

TDH Division of Health Planning Director Jeff Ockerman reported the following:

- Nonresidential substitution-based opioid treatment center standards had been finalized.
- Acute care inpatient bed standards were to be final within the next week.
- The final draft of the State Health Plan should be submitted to Governor Haslam within the next month or so.

### **CONSENT CALENDAR**

*Melanie Hill summarized the following Consent Calendar Applications:*

#### **Open Arms Care Corporation d/b/a Shelby County #1 Old Brownsville (West), Bartlett (Shelby County), TN CN1710-030**

The relocation of an 8 bed ICF/IID home from 1457 Greendale Avenue, Memphis (Shelby County), TN to an unaddressed site located on the southwest corner of the intersection of Old Brownsville Road and Oak Road, Bartlett (Shelby County), TN 38002. The proposed site is the west half of the parcel described as Parcel B0148 00061 in the records of the Shelby County Tax Assessor. The estimated project cost is \$3,370,000.

Ms. Hill noted at the time the application entered the review cycle, it was unopposed and that it continued to be unopposed.

Ms. Hill recommended approval of the certificate of need because it met the statutory criteria and provided the following justification:

**Need** – Need is met, as this will transition eight residents from a 30-year old facility in a declining neighborhood to a new facility which will be constructed to meet current life safety codes and designed with floorplans, technologies and materials to meet higher acuity levels. Relocation rather than renovation is the much better option.

**Economic Feasibility** – The project is economically feasible based upon a lease agreement between Open Arms and Facilities Development Group (FDG) who will obtain a loan to construct the facility and lease it to Open Arms. The State of Tennessee through the Medicaid program is the primary payor for ICF/IID service with rates being set by the Comptroller's Office. Revenue payor mix is projected to be 96% TennCare and 4% Supplemental Security Income (SSI).

**Healthcare that Meets Appropriate Quality Standards** - As a long-standing provider of ICF/IID services in Tennessee, Open Arms has a proven track record of providing services that meet appropriate quality standards. It is familiar with both state and federal regulations as well the TDIDD Protection from Harm System and is in good standing with all regulatory requirements.

**Contribution to the Orderly Development of Healthcare** – Orderly development is met as Open Arms has existing contractual relationships with both TennCare and the Department, and a broad understanding of both the intellectual disability population and the intellectual disability system in Tennessee. This does not duplicate existing services; it simply relocates them to a newly constructed facility that will better meet the needs of residents.

Dr. Patric moved for approval based upon the following:

**Need** –There is a need. The current facility is the only facility in a declining neighborhood. The new facility would also allow for upgrading to codes.

**Economic Feasibility** – In terms of financial feasibility, they have the potential loans secured and ongoing revenues. Those ongoing revenues are based on their current contracting.

**Healthcare that Meets Appropriate Quality Standards** -With regards to quality standards, they have a track record of both state and federal qualifications, which are in good standing.

**Contribution to the Orderly Development of Healthcare** – With regards to orderly development, again, there are existing contracts,there's no opposition, and this is not duplicative. It is simply a relocation to a nearby area.

Ms. Jordan seconded the motion. The motion CARRIED [11-0-0]. **APPROVED**

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy, Ridgway  
NAY: None

**Open Arms Care Corporation d/b/a Shelby County #2 Old Brownsville (East), Bartlett (Shelby County), TN CN1710-031**

The relocation of an 8 bed ICF/IID home from 1445 Greendale Avenue, Memphis (Shelby County), TN to an unaddressed site located on the southwest corner of the intersection of Old Brownsville Road and Oak Road, Bartlett (Shelby County), TN 38002. The proposed site is the east half of the parcel described as Parcel B0148 00061 in the records of the Shelby County Tax Assessor. The estimated project cost is \$3,370,000.

Ms. Hill noted at the time the application entered the review cycle, it was unopposed and that it continued to be unopposed.

Ms. Hill recommended approval of the certificate of need because it met the statutory criteria and provided the following justification:

**Need** – Need is met, as this will transition eight residents from a 30-year old facility in a declining neighborhood to a new facility which will be constructed to meet current life safety codes and designed with floorplans, technologies and materials to meet higher acuity levels. Relocation rather than renovation is the much better option.

**Economic Feasibility** – The project is economically feasible based upon a lease agreement between Open Arms and Facilities Development Group (FDG) who will obtain a loan to construct the facility and lease it to Open Arms. The State of Tennessee through the Medicaid program is the primary payor for ICF/IID service with rates being set by the Comptroller's Office. The payor mix is projected to be 96% TennCare and 4% Supplemental Security Income (SSI).

**Healthcare that Meets Appropriate Quality Standards** - As a long-standing provider of ICF/IID services in Tennessee, Open Arms has a proven track record of providing services that meet appropriate quality standards. It is familiar with both state and federal regulations as well the TDIDD Protection from Harm System and is in good standing with all regulatory requirements.

**Contribution to the Orderly Development of Healthcare** – Orderly development is met as Open Arms has existing contractual relationships with both TennCare and the Department, and a broad understanding of both the intellectual disability population and the intellectual disability system in Tennessee. This project does not duplicate existing services; it simply relocates them to a newly constructed facility that will better meet the needs of residents.

Ms. Jordan moved for approval of the project based upon Ms. Hill's justification with Mr. Ridgway seconding the motion. The motion CARRIED [11-0-0]. **APPROVED**

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy, Ridgway  
NAY: None

**Open Arms Care Corporation d/b/a Shelby County #3 Cordova (Shelby County), TN CN1711-034**

The relocation of an 8 bed ICF/IID home from 5350 Benjestown Road, Memphis (Shelby County), TN to an unaddressed site located on an 8.2 acre parcel located on the southwest corner of the intersection of Dexter Road and Dexter Lane, Cordova (Shelby County), TN 38002. The proposed site is the south half of the parcel described as Parcel 096507 00307C in the records of the Shelby County Tax Assessor. The applicant is owned by Open Arms Care Corporation. The estimated project cost is \$5,130,000.

Ms. Hill noted at the time the application entered the review cycle, it was unopposed and that it continued to be unopposed.

Ms. Hill recommended approval of the certificate of need because it met the statutory criteria and provided the following justification:

**Need** – Need is met, as this will transition eight residents from a 30-year old facility in an increasingly commercialized neighborhood to a new facility which will be constructed to meet current life safety codes and designed with floorplans, technologies and materials to meet higher acuity levels. Relocation rather than renovation is the much better option.

**Economic Feasibility** – The project is economically feasible based upon a lease agreement between Open Arms and Facilities Development Group (FDG) who will obtain a loan to construct the facility and lease it to Open Arms. The State of Tennessee through the Medicaid program is the primary payor for ICF/IID service with rates being set by the Comptroller's Office. Revenue payor mix is projected to be 96% TennCare and 4% Supplemental Security Income (SSI).

**Healthcare that Meets Appropriate Quality Standards** - As a long-standing provider of ICF/IID services in Tennessee, Open Arms has a proven track record of providing services that meet appropriate quality standards. It is familiar with both state and federal regulations as well the TDIDD Protection from Harm System and is in good standing with all regulatory requirements.

**Contribution to the Orderly Development of Healthcare** – Orderly development is met as Open Arms has existing contractual relationships with both TennCare and the Department, and a broad understanding of both the intellectual disability population and the intellectual disability system in Tennessee. This does not duplicate existing services; it simply relocates them to a newly constructed facility that will better meet the needs of residents.

Mr. Ridgway moved for approval of the project based upon Ms. Hill's justification with Ms. Harding seconding the motion. The motion CARRIED [11-0-0]. **APPROVED**

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy, Ridgway  
NAY: None

**Campbell Clinic Surgery Center, Germantown (Shelby County), TN CN1711-038**

*Mr. Ridgway recused.*

The relocation of Campbell Clinic Surgery Center currently located at 1410 Brierbrook Road, Germantown (Shelby County), TN to a new facility to be located at an unaddressed site on the south side of Wolf River Boulevard, 525 feet east of its intersection with Germantown Road, Germantown (Shelby County), TN. If approved, this application will replace the applicant's unimplemented CON (CN1208-040A) which was approved to expand the present facility at its current location from 4 operating rooms and 1 procedure room to 8 operating rooms and 2 procedure rooms. The applicant is owned by Campbell Clinic Surgery Center, LLC. The estimated project cost is \$21,485,200.

Ms. Hill noted at the time the application entered the review cycle, it was unopposed and that it continued to be unopposed.

Ms. Hill recommended approval of the certificate of need because it met the statutory criteria and noted that the project would **continue to be limited to orthopedic and pain management procedures and Campbell Clinic physicians**. The following justification for approval was provided:

**Need** – Need for the replacement facility was previously demonstrated by the approval of CN1208-040AEE. This relocation better meets the needs of the physician group that owns the surgery center, to which it is limited, provides for a better operational design, better utilizes the campus, and will eliminate service interruptions that would have been required by constructing an addition to an existing building.

**Economic Feasibility** – The relocated project can be economically accomplished and maintained just as well as the original project. The project will be funded by lease payments from operating capital to owner and lessor, Campbell Clinic, P.C., and a \$6.9 million loan from First Tennessee with which it will equip and begin operating the facility. The project is projected to breakeven in its first year of operation. Over 28% of its revenue will come from the Medicare and Medicaid (TennCare) programs.

**Healthcare that Meets Appropriate Quality Standards** - The applicant is licensed and in good standing with the Tennessee Department of Health, is Medicare/Medicaid certified and accredited by the Accreditation Association for Ambulatory Health Care, Inc. The applicant achieved substantial compliance on its last accreditation survey and was found to have corrected life safety code deficiencies on its last inspection by the Tennessee Department of Health.

**Contribution to the Orderly Development of Healthcare** – Orderly development was found to be met in the 2012 application and continues to be met since transfer agreements continue to be in place and surgical capacity will not increase. While a significant delay has occurred since the expansion project was approved, it was done with the Agency's understanding and approval. This replacement facility will better serve the needs of the patients and physicians who utilize it without the disruption of services that would be caused by renovation in place. It will also better serve as training and teaching facility for residents, Fellows, and visiting surgeons.

Ms. Harding moved for approval of the project based upon Ms. Hill's justification with Mr. Mills seconding the motion. The motion CARRIED [10-0-0]. **APPROVED** with **CONDITION: Limited to orthopedic and pain management procedures and Campbell Clinic physicians**.

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy  
NAY: None

### **CERTIFICATE OF NEED APPLICATIONS**

*Mark Farber summarized the following CON Applications:*

#### **DeLozier Surgery Center, Nashville (Davidson County), TN CN1711-032**

*Mr. Ridgway and Ms. Harding recused.*

The conversion of an existing single specialty ambulatory surgical treatment center (ASTC) to a multi-specialty ASTC which is currently limited to plastic surgery procedures. The ASTC is located at 209 23rd Avenue North, Nashville (Davidson County), TN 37203. The applicant is owned by DeLozier Surgery Center, LLC. The estimated project cost is \$50,000.

#### **OPPOSITION: Centennial Surgery Center.**

Kim Looney, Esq., addressed the Agency on behalf of the applicant. Bryan White was present in support as was owner Dr. Joe DeLozier who briefly addressed the Agency. Ms. Looney noted that Centennial Surgery Center had withdrawn its opposition based upon the applicant's willingness to accept a condition limiting the facility to its current specialty, plastic surgery, and the additional specialties of pain management and podiatry. Jerry Taylor, Esq., representing Centennial Surgery Center, verified the withdrawal of the opposition based upon the limitation.

Ms. Looney and Dr. DeLozier responded to questions. Summation was waived.

Dr. Patric moved for approval of the project based on it being **limited to the additional specialties of pain management and podiatry:**

**Need** – The applicant is projecting 1,000 cases per operating room in year one, which is 2018, and two, in 2019. In year one, the applicant will meet the above minimum requirement of 884 cases per operating room, based on the average of 40 minutes per operating room case plus 15 minutes for turnover, operating room prep projected surgical hours, and the approved 3.1 hours per week or 1,720 hours in year two so it appears that criteria has been met;

**Economic Feasibility** – The cost is minimal. It's basically just converting and adding a procedure room and then using the operating room for additional physician specialties. So there's very little cost and it will be paid out of existing reserves as described by the applicant;

**Healthcare that Meets Appropriate Quality Standards** – The current facility is approved by the ambulatory surgical accreditation agency;

**Contribution to the Orderly Development of Healthcare** – There's no current opposition because of the restriction agreement to only perform plastic surgery, podiatry, and pain management. Therefore, no other provider would be adversely affected by approving this CON.

Mr. Taylor seconded the motion. The motion CARRIED [9-0-0]. **APPROVED with CONDITION: Limited to plastic surgery, pain management and podiatry**

AYE: Jordan, Mills, Alsup, Patric, Taylor, Grandy, Korth, Scarboro, Gaither  
NAY: None

#### **NHC Healthcare Johnson City, Johnson City (Washington County), TN CN1711-033**

The addition of 7 Medicare-certified skilled nursing facility (SNF) beds to NHC Healthcare Johnson City, a 160-bed dually certified nursing home at 3209 Bristol Highway, Johnson City (Washington County) TN. If approved, all 167

beds will be dually certified. The applicant is owned by NHC Healthcare Johnson City, LLC. The estimated project cost is \$474,000.

Travis Swearingen, Esq., addressed the Agency on behalf of the applicant. Present on behalf of the applicant were Dan Elrod, Bruce Duncan, NHC Administrator Tyler Williams, Dr. Bert J. Smith, and Dere Brown.

Mr. Swearingen and Mr. Williams responded to questions. Summation was waived.

Mr. Taylor moved for approval of the project based on the following:

**Need** – According to the bed need calculation in Washington County, there's a need for 349 additional beds, and the applicant is requesting only seven additional beds;

**Economic Feasibility** – The cost of the project is \$474,000, which is \$147.62 per square foot, which is just above the third quartile for renovating construction costs for statewide nursing home projects in the years 2014 through 2016, and the project will be financed through cash reserves of National Healthcare Corporation;

**Healthcare that Meets Appropriate Quality Standards** – The facility is licensed by the State of Tennessee and is in good standing. The facility is dually certified for participation in both Medicaid and Medicare programs, and the facility currently carries a five-star rating from CMS;

**Contribution to the Orderly Development of Healthcare** – The facility has transfer agreements with the four major hospitals in the service area and multiple other service agreements for the provision of services needed by the facility's resident population .

Dr. Patric seconded the motion. The motion CARRIED [11-0-0]. **APPROVED.**

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy, Ridgway  
NAY: None

**The Plastic Surgery Center of Brentwood, Brentwood (Davidson County), TN – CN1711-035**

*Mr. Ridgway recused.*

The establishment of a single specialty ambulatory surgical treatment center (ASTC) limited to plastic surgery by physicians who are owners or employees of The Plastic Surgery Clinic, PLLC d/b/a Cool Springs Plastic Surgery. The ASTC will have two operating rooms and one procedure room and will be located at 620 Church Street East, Brentwood (Davidson County), TN. The applicant is owned by The Plastic Surgery Center of Brentwood, LLC. The estimated project cost is \$4,524,636.

Bill West, Esq., addressed the Agency on behalf of the applicant. Present in support were Business Manager Winn Elliott and Architect Steve Akers as were the the owners of the project, Doctors John Moore and Dr. Paul Papillion, who spoke in support.

Summation was waived.

Ms. Jordan moved for approval of the project **limited to plastic surgery by the physicians who are owners or employees of The Plastic Surgery Center Clinic, PLLC d/b/a Cool Springs Plastic Surgery** based on the following:

**Need** – The project is needed to address the decreased access for elective plastic surgery at other facilities and to accommodate the expansion of the physician's practice;

**Economic Feasibility** – Financing for the project will be provided by commercial loans and cash flow, and the applicant estimates the ASTC will be profitable in the first year of operations;

HEALTH SERVICES AND DEVELOPMENT AGENCY

FEBRUARY 28, 2018 MEETING

- PAGE 7 -

**Healthcare that Meets Appropriate Quality Standards** – The applicant intends to obtain and maintain Department of Health licensure, Medicare certification and accreditation from the Accreditation Association For Ambulatory Healthcare. The current physicians are board certified in plastic surgery, and the applicant intends to use anesthesiologists from Vanderbilt University Medical Center for anesthesia;

**Contribution to the Orderly Development of Healthcare** – The applicant plans to have a transfer agreement with Williamson Medical Center where the physician members of the ASTC are on the medical staff. It is not expected that other ASTCs in the service area will be significantly impacted since this will be a single specialty ASTC limited to plastic surgery.

Dr. Patric seconded the motion. The motion CARRIED [10-0-0]. **APPROVED** with **CONDITION: Limited to plastic surgery by the physicians who are owners or employees of The Plastic Surgery Center Clinic, PLLC d/b/a Cool Springs Plastic Surgery.**

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy  
NAY: None

### **GENERAL COUNSEL'S REPORT**

#### **Erlanger Behavioral Health, LLC – CN1603-012A**

Unanimously approved on 8/24/2016 for the establishment of a new 88 bed mental health hospital and initiation of inpatient psychiatric and substance abuse services. Erlanger Behavioral Health, LLC, is 51% majority owned by Erlanger Health System, and 49% owned by Acadia Healthcare.

Request for change of control, with 80% of the membership interests in the LLC allocated to Acadia, and 20% to Erlanger Health System. The Acadia interests have been assigned by Acadia Healthcare Company to its wholly-owned subsidiary, Acadia Chattanooga Holdings, LLC.

The applicant provided project updates to Agency members on June 23, 2010 and June 23, 2011 and Agency members determined that no modifications were needed.

On January 22, 2014, the Agency granted a four year extension from March 1, 2014 to March 1, 2018 and a modification to downsize the project from 372,140 SF to 210,000 SF and from \$248,326,286 to \$120,000,000.

Request for a 32 month extension, from 3/1/2018 to 11/1/2020.

Bill West, Esq., addressed the Agency on behalf of Erlanger Behavioral Health.

Joe Winick, Senior Vice President of Erlanger Health System responded to questions.

Mr. Ridgway moved to approve the request for a change of control with 80 percent membership interest in the LLC allocated to Acadia and 20 percent to Erlanger Health System. Mr. Ridgway noted that Erlanger had disclosed that a change of control would occur in the initial application and this approval was a necessity to make the Medicare certification process more efficient.

Ms. Jordan seconded the motion. The motion CARRIED [11-0-0]. **APPROVED**

AYE: Scarboro, Jordan, Gaither, Mills, Korth, Harding, Alsup, Patric, Taylor, Grandy, Ridgway  
NAY: None

### **Contested Case Update**

Mr. Christoffersen referenced the Contested Case Log and briefly discussed two cases.

HEALTH SERVICES AND DEVELOPMENT AGENCY

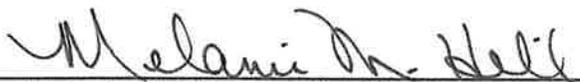
FEBRUARY 28, 2018 MEETING

- PAGE 8 -

Legislative Update

Mr. Christoffersen provided a status update on bills relating to the certificate of need program regarding reduction of fees for essential access and critical access hospitals; addition of beds to neonatal intensive care units; the exemption of ASTCs limited to ophthalmology as well as a number of caption bills.

There being no further business the meeting adjourned.



Melanie M. Hill, Executive Director

*Minutes provide only a brief staff summary of the meeting and are not intended to be an all-inclusive report. The HSDA maintains a detailed record of each meeting (recording and transcript) that is available upon request by contacting the HSDA office at 615-741-2364.*

