



HEALTH SERVICES PLANNING AND REVIEW

July 21, 2011
9:30 a.m.
Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Mr. James Tollner, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- Approve June 16, 2011 Board Meeting Minutes
- Approve Findings of Fact – Mt. Carmel Nursing Home, LTC 11-01, \$4,200,000
- Sullivan County Nursing Home, NSR Request for Air Conditioner Project, \$675,000

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. She provided a brief explanation of the items, and indicated that all are eligible for approval. Chair Vailas then asked if any of the Board members had an issue with any items on the consent agenda, as it would require removal from the consent agenda.

Ms. Underwood then made a motion to approve the consent agenda items. Mr. Martin seconded the motion. All Board members voted in favor of the motion unanimously approving the consent agenda.

2. Determine Issuance of August 1, 2011 Acute Care RFA (He-Hea 1005.01)

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. Ms. Thibeault stated that in order to support a finding of need to issue this RFA, letters of intent must be

received by providers indicating potential submission of an application for construction/renovation projects in excess of \$2,780,012. HSPR staff mailed a notice to all hospital administrators requesting a Letter of Intent for any contemplated acute care projects. She stated that a notice was sent to the HSPR electronic mailing list, and is posted on eStudio. To date, one letter from Mary Hitchcock Memorial Hospital and one letter from St. Joseph Hospital have been received expressing interest/need in issuing this RFA. Ms. Thibeault let the Board know that based on these letters of intent they can make a finding of need to issue this RFA effective August 1, 2011.

Mr. Wallace then made a motion to issue the acute care RFA effective August 1, 2011. Ms. Underwood seconded the motion and this agenda item was unanimously approved.

3. Northeast Rehabilitation Hospital/Elliot Hospital – Notice to Relocate 15 beds from Salem to Manchester (Elliot Hospital)

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier explained this agenda item to the Board. She stated that Northeast Rehabilitation has 2 items on the agenda; item 3 is a notice to relocate beds to Manchester and item 4 is an NSR request relative to the cost.

Attorney John Malmberg, legal counsel for Northeast Rehab came forward at this time. He briefly explained the request to the Board and stated that based upon the submission of the NSR request to relocate beds, this particular agenda item is no longer necessary and can be withdrawn. Board discussion ensued. Mr. Wallace stated that there is no provision in the rule for the term “relocate” and explained that it should be stated as a “transfer”. Ms. Underwood stated that the rehabilitation subcommittee is discussing the interpretation of “relocation” versus “transfer”. Mr. Wallace stated that the Supreme Court ruled that the Nashua case was a relocation and not a transfer to a new owner. He stated that the most expeditious thing to do is drop the notice and move forward with the NSR.

At this time, Mr. Wallace made a motion to approve the request to withdraw this notice. Mr. Chase seconded the motion. All Board members voted in favor of the motion and this agenda item was unanimously approved.

4. Northeast Rehabilitation Hospital/Elliot Hospital – NSR Request to Relocate 15 Beds from Salem to Manchester, \$359,510

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that Northeast Rehabilitation Hospital (NRH) has submitted an NSR request for the relocation of 15 beds from Salem to Elliot Hospital in Manchester. She stated that the beds to be transferred will remain within the same rehab region and bed licenses will be revised by NRH to reflect the location change and will be supplied to HSPR before operation of the unit. NRH has also stated that it will notify the Board should these beds be removed to any other Elliot campus in the future. The estimated cost falls below the statutory threshold. Based upon the information received, the proposal is not subject to review. HSPR staff recommends that Elliot Hospital, as a party to this transaction, supply the Board with the costs if any fit up is required for operation of this unit. She informed the Board that this transaction potentially impacts the NRH CON application to be heard next. She also informed the Board that a petition to intervene has been submitted by CMC and the Board must hear this first.

At this time, Mr. Andrew Eills, Legal Counsel for CMC and Ms. Lisa Drouse, Director of Planning, CMC, came forward to provide testimony.

Mr. Tollner arrived at this time, approximately 9:40.

Attorney Eills stated that CMC requests to intervene on both the Northeast Rehab Hospital NSR and CON application. He stated that the petitions to intervene do not apply to the renovation project itself in Salem, NH as that project has merit. Instead, there is a question as to whether the CON application is accurate now that 15 beds are being moved to Manchester. He believes the projects are connected as the CON application has always addressed 82 beds in Salem; only during the response to the HSPR checklist did NRH address the reduction in beds. He stated that in 2008, NRH requested to submit the CON application under the life safety exception but didn't actually submit the application until 2011, and never stated their anticipation of a 67-bed facility while the application was pending. He stated that NRH could have submitted an amended application up to 45 days into the formal review process. He explained that he believes the NSR is inexplicably linked to the CON. He feels that NRH needs to re-submit the application to specifically address the facility as it is intended. He then reminded the Board that He-Hea 702.10 requires a report demonstrating the impact on other rehab facilities. He stated that NRH should address this standard within the CON application. Finally, Attorney Eills explained that CMC is a provider of inpatient rehab in Manchester and has been for many years. The proposed transfer will have a detrimental impact on CMC, and the Board has the authority to review such impact.

Mr. Wallace stated that the Board's first decision would be to grant intervenor status for the NSR. Chair Vailas asked Ms. Carrier to explain the intervenor process for the Board. She cited He-Hea 208.07, which explains the criteria a party must meet. Chair Vailas stated that he believed the NSR and CON are tied together, and Mr. Wallace stated he felt that they are distinct actions.

Chair Vailas asked representatives from NRH to come forward at this time. Mr. John Malmberg, Esq. and Mr. Gene Van Loan, Esq., legal counsel came forward. Attorney Van Loan stated that NRH filed a response to the petition and does not object to intervention as long as the NSR and CON are both heard today. He stated that there is no link whatsoever between the 2 items. He continued to state that the NSR is entitled to stand on its own regardless of what happens with the CON application. Attorney Van Loan explained that when NRH first moved beds to Southern NH Medical Center the action was challenged by St. Joseph Hospital. The NH Supreme Court found the relocation of beds had no effect on the original CON. He stated that this situation is exactly the same as that one. He clarified that NRH did not have a business deal with Elliot when the application was filed and so it was addressed as part of completeness review. Attorney Van Loan added that NRH isn't objecting to the motion to intervene.

Chair Vailas asked about the connection between the 2 projects. Attorney Eills stated that the application is for construction and renovation and was based on 82 beds. He stated that it is fair to address whether the renovation will accommodate 15 less beds. He stated that He-Hea 702.10 (e) requires the applicant to provide a report relative to the impact the CON will have and this wasn't addressed by NRH.

Mr. Wallace then made a motion to approve the intervenor status request made by CMC. Mr. Chase seconded the motion and all Board members voted in favor of the motion. Therefore, the intervenor status was approved.

Mr. John Prochilo, CEO and Mr. John Malmberg, Esq., Legal Counsel and Mr. Gene Van Loan, Esq., Legal Counsel representing Northeast Rehab then came forward to present their NSR request for the relocation of 15 beds from Salem to Manchester. Mr. Prochilo thanked staff for their time and continued to explain the NSR request. He stated that the beds would be relocated from the Salem facility to the Manchester location at Elliot Hospital. This request is appropriate for approval as the Board approved similar requests in 2004 and 2010, and in both instances there was a reduction in beds at the Salem location. He stated that this transaction would not increase or decrease the number of overall licensed beds in the region. Mr. Martin asked if the number of licensed beds would stay the same. Mr. Prochilo explained that the locations have separate license but NRH still owns the same total number of licensed beds (102). Ms. Grabowski asked the current occupancy in Salem and Mr. Prochilo responded that it is about 75%. Ms. Grabowski then asked how many patients come from Manchester. Mr. Prochilo stated that in 2010 they received 137 referrals and admitted 39 patients.

Attorney Eills came forward again to represent CMC as the intervenor. He stated that the 2004 and 2010 requests were different as they were separate and distinct, and in this case the CON application is also involved. He requested that the Board stay a decision on the NSR until the CON application is discussed.

Attorney Malmberg then clarified the reduction to the dollar amount of the CON application; this was reduced by \$110,000 for equipment going into the Manchester facility and that it is now part of the \$359,510 cost of the NSR. Attorney Van Loan reiterated that there is no connection between the NSR and the CON.

Mr. Wallace then made a motion to approve the Northeast Rehab Hospital NSR request for the relocation of 15 beds from Salem to Manchester, totaling \$359,510. Mr. Chase seconded the motion. Ms. Underwood abstained from the vote and Ms. Grabowski voted against the motion. Thus, this agenda item was approved with a vote of 5 to 1.

5. Public Hearing – Northeast Rehabilitation Hospital, Salem, NH, REHAB 11-02, \$4,762,440

Discussion: CMC's motion to intervene on this application was heard at this time. For the record Attorney Van Loan stated that NRH does not object to the motion. Mr. Wallace asked what CMC's interest is regarding the CON standing separate from the NSR. Attorney Eills explained that the CON as filed spoke to an 82-bed facility and CMC believes that the removal of 15 beds from that facility makes the application inaccurate. He stated that the removal of beds raises questions as to the full project considered at NRH. He stated that this relocation of beds is detrimental to CMC as a current provider of rehabilitation beds.

Mr. Martin made a motion to grant intervenor status to CMC on the CON application. Mr. Chase seconded the motion. Mr. Wallace and Mr. Tollner voted against the motion; thus CMC was granted intervenor status with a vote of 5 in favor and 2 against the motion.

At this time, Chair Vailas allowed time for a 10-minute break.

At 10:50 a.m., Chair Vailas opened the public hearing and asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the renovation application proposed by Northeast Rehabilitation Hospital of Salem, NH would be heard at this time. He explained that this application is submitted under the exemption provision of the moratorium found in RSA151-C:4, III (a) to allow facility corrections due to life safety threats and deficiencies. As part of NRH's

response to the HSPR staff analysis checklist, the project cost was reduced by \$109,560 to \$4,762,440 due to some equipment costs being removed as a result of relocating 15 beds from Salem to Manchester per an NSR request. He stated that Staff recommends approval with the condition that NRH submit the financial statements for Pease Rehab, LLC.

Ms. Susan Palmer Terry, Consultant to NRH, Mr. John Prochilo, CEO, Mr. Jim Murphy, CFO, Ms. Donna Beaudoin and Mr. Todd Hansen, Architect came forward at this time. Ms. Palmer Terry explained that the project is to address life safety issues and upgrade the 26-year old facility to make it friendly to outpatients. The facility was not built to ADA standards and has a tired appearance. Mr. Prochilo stated that when the facility was constructed in 1984 there was no inpatient rehab prototype upon which to model it. He stated that changes are required for increased outpatient care. Most rooms are semi-private and can result in a fifty percent occupancy rate due to gender and infection issues. He also stated that the facility did not contemplate the shift to outpatient care. Infrastructure issues exist with walls and flooring, wiring and size. The goal is to create central registration and separate outpatient entrances. Each room must be renovated to upgrade bathrooms, walls, floors, etc. The town of Salem prohibits expansion of the building footprint so all work must be done by renovation. He apologized for the delay in submitting the application and explained that the timing was put off due to the Pease project. He stated that a Joint Commission 2010 survey performed at NRH indicates the facility issues remain. He stated that there would be no additional construction costs and no additional unoccupied space as a result of relocating 15 beds to Elliot Hospital; however the facility will have more private rooms.

Mr. Wallace asked about the restrictions made by the town of Salem. Mr. Prochilo stated that this is a verbal agreement and the facility is located in a residential area. Mr. Wallace asked for an explanation of the floor issues. Mr. Hansen explained that there are leaks and that the slab will need to be removed to get to the plumbing, which will result in a phased project. Further Board discussion ensued regarding bed numbers and patient volume, as well as length of stay and patient type. Mr. Prochilo explained that Medicare sets rates regardless of cost structure and that NRH will not change who is served by the facility.

At this time CMC was asked to come forward and speak to its opposition to the project. Attorney Eills stated that the application should be amended as a matter of process to accommodate the reduction of beds due to the NSR. Also, at a minimum NRH should address He-Hea 702.10 to discuss the impact of bed relocation on other providers. He stated that he does not believe the statute allows for any last minute changes to the application. Mr. Martin asked what would be gained by a CON amendment. Attorney Eills stated that more definitive information would be obtained and that this would also be made known to the public. Board discussion ensued on the issue of bed relocation as it relates to the CON application.

There was no public testimony on the CON application.

Chair Vailas allowed NRH to rebut CMC's testimony. Attorney Malmberg stated that the issue of the beds is in fact discussed in the application and was addressed with HSPR staff via completeness review. He stated that this renovation is not affected substantially by the bed relocations since a total of 102 beds are maintained per the original CON. NRH relied on the NH Supreme Court decision relative to the relocation of the beds as the basis for its reasoning not to amend the application. Chair Vailas then closed the public hearing at 11:45.

Board discussion ensued. Mr. Wallace stated that he believes this project is essential and that there is no benefit to delaying a decision. Mr. Tollner asked staff if there were any additional conditions recommended for the CON. Ms. Carrier stated no, just the requirement of the

financial statements for Pease Rehab, LLC. Chair Vailas stated that he concurs with Mr. Wallace and that the NH Supreme Court has ruled on the relocation issue. Mr. Wallace then made a motion to approve Northeast Rehabilitation Hospital, CON REHAB 11-02, for a total of \$4,762,440 with the condition that NRH submit financial statements for Pease Rehab, LLC. Mr. Chase seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

6. Board Discussion – Physical Rehabilitation Rules (He-Hea 700)

Discussion: Ms. Underwood gave an update on the Rehab Subcommittee and reviewed the report included in the Board packet. She stated that the subcommittee discussed what would happen if the current rule expires. Chair Vailas asked if there was any suggestion to eliminate the rule. Ms. Underwood responded that there was not. Mr. Wallace asked if utilization was looked at. Ms. Underwood stated it was for all providers. She added that the utilization would translate to 14 beds per 100,000 population but that the state is currently 80% over bedded. She added that the moratorium is in place through June of 2012 and there is no substantial need to change the bed need number. Mr. Wallace explained that the legislature has assigned CON to regulate this service and therefore he feels obligated to do so. Ms. Underwood stated that the Board could let the rule expire. Some Board discussion ensued regarding this rule. Ms. Carrier explained to the Board the JLCAR process.

Mr. Tollner left the meeting at this time, approximately 12:05 pm.

Chair Vailas suggested adding this topic to the agenda for the next meeting of the Board to discuss the next steps. Staff agreed to do so. There was no further action taken on this agenda item.

7. Board Discussion - Not Subject to Review (NSR) Process

Discussion: Mr. Wallace stated that the staff came up with a new NSR form and that from a DHHS standpoint the form works. It provides a simpler process. A brief Board discussion took place regarding licensing requirements.

There was no action taken on this agenda item.

8. Other Administrative Business

- Mr. Peck informed the Board that the next meeting of the Board is scheduled for Thursday, August 18, 2011; however, there are no items for the agenda and the August meeting could be cancelled.
- The Rehab Subcommittee had planned to meet immediately following the Board meeting but will meet sometime in August due to the length of today's Board meeting.
- HSPR staff presents a CON Project Status report on all open CON projects, and provides cost data on such. It is our intention to provide this information biannually (July and January) as a way to keep the Board updated on these projects and the dollars spent as they progress.

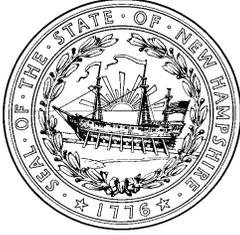
Mr. Wallace made a motion to adjourn the Board meeting at this time. Ms. Underwood seconded the motion and the meeting was adjourned at approximately 12:20 p.m.

Signature:

Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date



HEALTH SERVICES PLANNING AND REVIEW

September 15, 2011

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Lori Underwood,
Mr. Nicholas Vailas and Mr. John Wallace

Excused: Mr. Robert Chase and Mr. James Tollner

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and
Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. **Consent Agenda**

- **Approve July 21, 2011 Board Meeting Minutes**
- **Approve Findings of Fact – Northeast Rehab Hospital, REHAB 11-02, \$4,762,440**

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. She provided a brief explanation of the items, and indicated that all are eligible for approval. Chair Vailas then asked if any of the Board members had an issue with any items on the consent agenda, as it would require removal from the consent agenda.

Mr. Wallace then made a motion to approve the consent agenda items. Ms. Underwood seconded the motion. All Board members voted in favor of the motion unanimously approving the consent agenda.

2. Determine Issuance of October 1, 2011 Ambulatory Surgical Centers RFA (He-Hea 1900)

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. Ms. Thibeault stated that in order to support a finding of need for this RFA, a notice was mailed to all hospital and ASC administrators requesting a Letter of Intent for any contemplated Ambulatory Surgical Center projects exceeding the current statutory threshold of \$1,853,341. A notice was also sent to the electronic mailing list and a posting was made to eStudio. She stated that no letters of intent have been received, nor any other need expressed in support of this RFA. Therefore, HSPR staff requests that the Board affirm that no RFA for ASC services will be issued at this time unless notice is received by 9/27/11 which will allow time for posting.

Mr. Wallace then made a motion to not issue the ASC RFA effective October 1, 2011 as stated by HSPR staff. Ms. Underwood seconded the motion. All Board members voted in favor of the motion.

3. Portsmouth Regional Hospital, Change of Scope AC 06-07, \$597,209

Discussion: Chair Vailas asked representatives from Portsmouth Regional Hospital to come forward at this time. Ms. Maureen Smith, VP of Planning and Development and Mr. Stuart Hemming, COO, for Portsmouth Regional Hospital came forward to present to the Board. Ms. Smith briefly described the request. She stated that deficiencies in the Clinical Lab have prompted Portsmouth to renovate the space and locate the Blood Bank adjacent to the clinical lab rather than moving it to another floor as originally proposed. Reallocating costs that had already been allocated to the expansion and relocation of the Blood Bank has allowed Portsmouth to minimize the increased project cost. The total net increase in the project cost is estimated at \$597,209 (\$352,462 for construction and \$244,747 for equipment), an increase of less than one percent.

Mr. Wallace asked at what point it becomes a new project rather than a change of scope. Ms. Carrier replied that it is not defined as it's determined on a case by case basis. Mr. Wallace asked what the space that would have housed the blood bank is being used for. Mr. Bill Duffy, VP of Engineering and Facilities Management, answered that the space was never constructed. Ms. Underwood asked if the approval would affect the deadline to complete the CON. Ms. Carrier answered that it would not. Mr. Duffy added that the construction is in its final phases.

At this time, Mr. Wallace made a motion to approve the request for a change of scope to CON AC 06-07 made by Portsmouth Regional Hospital. Ms. Underwood seconded the motion. All Board members voted in favor of the motion and this agenda item was unanimously approved.

4. Discussion – Physical Rehabilitation Rules (He-Hea 700)

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that at this time the Board's Rehabilitation Subcommittee will provide the Board an update on its continued work relative to this rule. She stated that the subcommittee's August report was enclosed in the Board packet. She noted that this group met on August 25, 2011 and that resulting discussion concerning deregulation of this service prompted a request for an Attorney General's opinion relative to such. She explained that the AG stated that the Board cannot deregulate a statutorily named service, such as physical rehabilitation. She also explained that because of this, the subcommittee recommends that the Board approve an interim He-Hea 700

rule which is addressed in the agenda item below, and further requests Board guidance on those sections of the rule where consensus is not met.

Chair Vailas asked what services were not named. Ms. Carrier responded that equipment, including MRI, PET and RT were not. Mr. Wallace asked for the rationale for a regional versus statewide need formula. Ms. Underwood replied that the state is overbedded and with regions there is an opportunity to add beds in the North Country. Mr. Wallace asked what the argument was for adopting a statewide need formula. Ms. Underwood stated that the subcommittee had found no compelling reason to change it at this time. Chair Vailas stated that it's impossible to develop regulations for quality, price, etc. Mr. Wallace stated that there are various ways that the need is being met. Transfers and relocations should be reviewed in some way, because it does affect the dynamics within a region. Ms. Grabowski stated that the Joint Commission refers to itself differently now. Ms. Underwood agreed and stated that the rule needs to reflect that.

Ms. Carrier offered to provide a mark up copy of the rule for the next meeting showing potential changes where language will need revision, in order to pinpoint issues with the rule.

No Board action was taken on this agenda item.

5. Approve Interim Rule He-Hea 700

Discussion: Based on the discussion from the agenda item above the Board proceeded to take up the matter of adopting an interim rule for Physical Rehab He-Hea 700 in order to maintain the rule while the subcommittee worked on re-adoption language for the permanent rule. A motion was made by Mr. Wallace and seconded by Ms. Underwood to approve the Physical Rehab Interim Rule He-Hea 700. All Board members voted in favor of the motion and this agenda item was unanimously approved.

6. Board Discussion – MRI Rules (He-Hea 600)

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that at this time the Board will discuss the MRI rule, He-Hea 600, and whether there is any need or desire on the part of the Board to continue regulating such service. She explained that the rule is effective and expires on 9-13-2016. Should the Board choose to deregulate MRI from CON review, then the rule must be repealed and replaced with a statement of competition pursuant to RSA 151-C:6. Ms. Carrier noted that this deregulation has been successfully accomplished with CT and Lithotripsy equipment and services. She also explained that it does not appear that such deregulation violates any Board responsibility to regulate other specific named services and facilities in the enabling statute as per the Physical Rehabilitation discussion and AG's opinion discussed in the above agenda items. Ms. Carrier stated that based upon the discussion heard at this meeting, the rule can be accordingly amended.

Chair Vailas stated that people are selling subpar equipment and patients need a pre-authorization from their insurance company to get a scan. He added that insurance companies must approve all facilities. Mr. Wallace stated that he wasn't sure which equipment the Board should regulate as there is some proliferation that does increase costs. Ms. Grabowski asked how deregulating MRI would avoid subpar equipment from being used. Ms. Underwood asked what the process is to deregulate a service. Ms. Carrier explained the process to the Board. She stated that the Board must file a rule to repeal the existing rule and it would go through the

full rulemaking process. Chair Vailas suggested waiting until Mr. Tollner, the Board's insurance representative, can speak to the issue. Ms. Grabowski asked if the Board had information on existing providers. Ms. Carrier answered that there is an annual report that is produced from the data submitted by providers. Ms. Grabowski asked if it included the age of the equipment. Ms. Carrier explained that it does not but that staff can check with the Bureau of Radiological Health. She then offered to provide more information and data to the Board at the next meeting.

No Board action was taken on this agenda item.

7. Board Discussion - Not Subject to Review (NSR) Process

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that time is allotted to further discuss this issue with the Board. She stated that HSPR staff included a discussion document in the Board packet that may aid in determining how to proceed and that if the process is changed, then the rule should be changed accordingly. She informed the Board that representatives from the licensing agency will be on hand to discuss this issue with the Board.

Mr. John Martin, Manager, Licensing and Regulatory Services and Ms. Wendy Smigelski, Supervisor, Health Facilities Administration came forward at this time. Mr. Wallace stated that he would like to reduce the burden on those filing for an NSR. He added that in the past Licensing has supported the NSR process and licenses were not issued until a requester went through the NSR process. He cited RSA 151-C:14, Enforcement, stating that the state shall not issue a license for a new institutional health service without a CON. He added that bed increases are also included. He outlined a 2 step process for the Board: (1) the Board could use a 1 page form to facilitate the process; and (2) Licensing could change its policy such that unless it looks like a new service or additional beds they will not require review by the CON Board.

Mr. Martin stated that he has assumed that BHFA has been doing what HSPR wants it to do. Ms. Smigelski stated that there is a "cheat sheet" that shows what falls under CON review. She added that BHFA does not deal with financials and added that currently BHFA holds up all licenses until an NSR or CON is obtained but sometimes license applicants are not caught until the end of the process.

Mr. Wallace re-stated that there are two things that could happen. He outlined them as: (1) develop a new simplified form; and (2), from a licensing standpoint not require anything from CON unless it is for a new institutional health service or increase in beds. Further, if licensing sees anything that appears to require CON review they should notify HSPR.

Mr. Wallace made a motion at this time to approve the proposed short form as provided by HSPR staff. Mr. Martin seconded the motion. All Board members voted in favor of the motion and the form was unanimously approved.

8. Other Administrative Business

- Mr. Peck informed the Board that the next meeting of the Board is scheduled for Thursday, October 20, 2011.
- He informed the Board of LSR 2012-H-2486-R, repealing the certificate of need law, filed by Rep. Frank Holden. Staff will monitor the progress of this LSR.

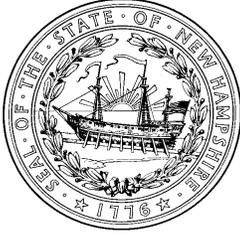
Mr. Wallace made a motion to adjourn the Board meeting at this time. Mr. Martin seconded the motion and the meeting was adjourned at approximately 10:35 a.m.

Signature:

Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date



HEALTH SERVICES PLANNING AND REVIEW

October 20, 2011

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Absent: Mr. James Tollner

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:35 a.m.

Mr. Peck then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve September 15, 2011 Board Meeting Minutes**
- **Cheshire Medical Center, Keene, NH, NSR Request to Replace RT equipment, \$227,000**

Discussion: Before this Agenda item was introduced, Ms. Grabowski made a motion to remove the American Health Centers NSR request to Establish an Open MRI Center off of the consent agenda. Mr. Wallace seconded the motion. The Board voted unanimously and this item was moved to agenda item 2. Chair Vailas then asked Mr. Peck to introduce the consent agenda as it now stands. Mr. Peck provided a brief explanation of the items, and indicated that all are eligible for approval. Chair Vailas then asked if any of the Board members had an issue with any of the other items on the consent agenda, as it would require removal from the consent agenda.

Ms. Grabowski then made a motion to approve the remaining consent agenda items. Mr. Wallace seconded the motion. All Board members voted in favor of the motion unanimously approving the consent agenda.

2. American Health Centers, NSR Request to Establish Open MRI Center, Portsmouth, NH, \$559,307/\$374,999 (equipment)

Discussion: Chair Vailas asked representatives from American Health Centers to come forward at this time. Ms. AnnMarie Nolin, Director of Operations and Mr. Don Sweet, President and COO introduced themselves and stated that they would answer any questions the Board may have. Ms. Grabowski asked how the price of the proposed MRI machine could be so low. Mr. Sweet explained that it is used equipment that was traded in and reconditioned for resale. Mr. Wallace asked how long the life span is of this particular unit. Mr. Sweet stated 5 years. Mr. Wallace asked if AHC would be coming before the Board for an approval for the replacement of the machine at some point. Mr. Sweet stated that it would depend on how business proceeds and whether there would be a need for replacement or upgrade.

Chair Vailas asked AHC for its intention of the project. Mr. Sweet responded that they looked at properties in different areas, and that the option of Open MRI gives those who are obese or claustrophobic access to these services. Mr. Wallace asked what the trade in value is on the unit. Ms. Nolin stated that this was asked but that she isn't sure but could look into this. Ms. Grabowski asked if there is a higher level of technology available. Ms. Nolin stated that the 1.5T open magnet is less strength but the design and software allows a full range of exams. Ms. Grabowski questioned the reimbursement level for this unit compared to others. Ms. Nolin stated that reimbursement is the same regardless of the magnet size.

At this time, Chair Vailas invited any interested parties to come forward to speak to this agenda item. Ms. Maureen Smith, VP Planning and Development for Portsmouth Regional Hospital came forward. She introduced herself and stated that PRH has 2 MRI's, 1 fixed open and 1 mobile and they have an NSR to add another fixed unit. She added that this proposed unit from AHC was a "sneak peak" into what deregulation would look like should the Board repeal the He-Hea 600 rule. Ms. Smith also stated that the radiologists at PRH do not view this new machine favorably. Chair Vailas stated that this unit would be less costly for payors. Ms. Smith responded that it was an issue of quality.

Ms. Sharon Worsham, Consultant to Imaging Resource Alternatives, came forward next. She stated that many of the coils, etc. were line itemed out on the AHC proposal and explained that these would cost around \$300,000. She is interested in clarification on the rules and wants to assure that everyone is playing by the same rules as she feels that not all of the costs were included for the Board.

Ms. Nolin responded that a magnet cannot be purchased without the coils as it comes as a package. She stated that PRH's "open scanner" is actually a wide bore unit which still has a tube. She added that the proposed AHC unit will truly be an open magnet.

Attorney John Malmberg came forward with a few questions. He asked if the unit has shielding and stated that there are various ways to negotiate price. He also questioned whether a maintenance contract was included with the proposed unit.

Ms. Nolin responded that shielding is included and that the service agreement is an operating cost and is a separate agreement than the equipment. Ms. Grabowski asked if the Board had authority to review if the cost of the project is below the threshold. Mr. Wallace stated that the Board could ask them to submit a proposal. Ms. Carrier reminded the Board that MRI is reviewed under both statutory thresholds (equipment cost and construction cost) per a NH

Supreme Court opinion. AHC's costs fall below both thresholds; therefore, the project is not subject to CON review, and the Board has little authority to review the project any further. Chair Vailas stated that the \$400,000 threshold hasn't been updated in years and could encourage people to purchase subpar equipment. Mr. Wallace stated that he felt the price provided by AHC is in good faith but that he has concerns with what might happen down the road if they want to replace the unit.

Attorney Andrew Eills came forward as representation to American Health Centers. He apologized for not presenting with AHC at the start of the meeting but didn't think he was needed. He stated that they don't have a salesperson here today but they do have an affidavit relative to the unit cost. He then provided the affidavit to staff for the record.

At this time, Mr. Martin made a motion to approve the NSR request for American Health Centers to establish an Open MRI Center in Portsmouth, NH with a cost of \$559,307, and \$374,999 for equipment. Mr. Chase seconded the motion. The Board voted unanimously to approve this agenda item.

3. Board Discussion – Physical Rehabilitation Rules (He-Hea 700)

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the Board will continue its discussion on the He-Hea 700 physical rehabilitation rules. He stated that a HSPR staff memo explaining the color-coded rule was enclosed in the Board packet for review. He stated that staff requests that the focus remain on the yellow-highlighted section, namely He-Hea 702.06, relative to bed transfers and relocations. He added that the Board's rehab subcommittee seeks guidance on language appropriate to this section.

Ms. Lori Underwood, Chair of the Rehab Subcommittee gave an update on the subcommittee's work and explained that the area the subcommittee hasn't reached consensus on the transfer section. She stated that the subcommittee is seeking input from the Board on this issue.

Mr. Wallace stated that the movement of beds has implications and should be reviewed by the Board and the Department feels this way as well. Mr. Steve Marion from the audience stated that he agreed that the relocation of beds should be reviewed.

Mr. John Prochilo, CEO of Northeast Rehabilitation Hospital came forward to speak at this time. He stated that he understands the Board's dilemma. He explained that when NRH received its first CON in the 1980's the rule was statewide; regions came later. He voiced his concern that the Board is now looking to go to community level planning and questioned whether the Board would need to consider this for nursing homes, too, as they have the ability to transfer beds within a region without CON review.

Attorney Lucy Hodder stated that the subcommittee needs direction as to the level of review. Ms. Carrier added that the rule also needs a section for a transfer of ownership within a region. She asked the Board to clarify the remaining two areas of concern in the rule relative to transfer of ownership of beds within the region to a current provider, and transfer within the region to a new provider. Mr. Wallace stated that they should be handled the same way with full CON review. Mr. Marion stated that he thinks regions should be maintained with the hope that the North Country can someday have a small rehab unit.

No Board action was taken on this agenda item.

The Board's rehab subcommittee will continue to work on the rule with this guidance

4. Board Discussion – MRI Rules (He-Hea 600)

Discussion: Chair Vailas referred to the request from American Health Centers that the Board had heard earlier and stated that the Board is encouraging low quality and less competitive equipment. He added that the Board deregulated CT equipment and didn't see a flurry of new CT services. He stated that the Board does not allow for fair competition, as in the American Health Centers example earlier. Mr. Wallace stated that he did not have enough information yet to determine whether or not to deregulate MRI. He said there could be issues with the proliferation of equipment and the over utilization of procedures. He stated that he would like to hear from others such as insurers, other state agencies and providers. From the audience, Mr. Steve Marion stated that MRI is a high profit center for hospitals and that while revenue is positive, this is a necessary service at hospitals. If the service is deregulated then there could be more "street corner" facilities resulting in smaller hospital margins. Hospitals will then have to stay in the MRI business but the dollars will shift. He stated that the system is fragmented and that the service is now a benefit to hospitals. Mr. John Malmberg, from the audience reminded the Board that the rule was first established in 1986 and is pro-competitive and prohibits exclusivity. As a result access to services has expanded.

Discussion ensued on whether the rule has contributed to the increased cost of MRI. Mr. Malmberg argued that there is no other regulation of MRI but for CON. Chair Vailas responded that checks and balances are in place by insurance companies. Mr. Malmberg pointed out that there are no requirements for quality or location from the insurance companies. From the audience, Ms. Sharon Worsham stated that accreditation standards do exist from the ACR with regard to staffing, training and image quality. Further discussion ensued on access and price as it relates to the CON threshold.

Ms. Grabowski stated that the discussion should continue with more information and that there should be specific factors considered that impact the Board's decision as to whether to repeal the MRI rule. She agreed with Mr. Wallace and could not support repealing the rule without additional information. Ms. Underwood pointed out that there is a shift to seek lower cost alternatives due to higher deductibles, but that cheaper may not be better.

Mr. Wallace suggested that the discussion be continued at the next meeting and that other providers and interested parties be invited to provide additional information on the topic. Ms. Carrier stated that she would coordinate.

No other action was required by the Board on this agenda item.

5. Other Administrative Business

- Ms. Carrier stated that the next meeting of the Board is scheduled for Thursday, November 17, 2011.
- The Rehab Subcommittee will meet directly after the Board meeting.
- She informed the Board that JLCAR had today approved the interim He-Hea 700 rehab rule for adoption for 150 days.
- She also stated that 2 LSRs concerning CON have been filed: 2486 relative to the repeal of the CON law, and now 2789 relative to destination cancer hospitals.

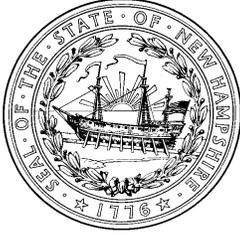
The meeting was adjourned at approximately 10:55 a.m.

Signature:

Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date



HEALTH SERVICES PLANNING AND REVIEW

November 17, 2011

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Absent: Mr. James Tollner

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve October 20, 2011 Board Meeting Minutes**
- **Rochester Manor, NSR Request for Renovations, \$957,000**
- **St. Francis Rehabilitation and Nursing Center, Laconia, NH, NSR Request for Renovations, \$416,853**

Discussion: Chair Vailas introduced this agenda item. He asked if the Board had any questions regarding these items. Mr. Wallace noted that the Rochester Manor request was rather large. Ms. Carrier stated that they had completed their request before the new short form was implemented.

Mr. Wallace then made a motion to approve the consent agenda items. Ms. Underwood seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. Adopt He-Hea 700 Physical Rehabilitation Interim Rule

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the interim rule was approved by JLCAR at its October 20, 2011 meeting. She explained that the Board must now vote to adopt this rule for filing and it will then be effective for a period of 150 days, thereby “tiding us over” while the Board’s Rehab Subcommittee continues its work on developing a permanent rule.

At this time, Mr. Chase made a motion to approve the adoption of the He-Hea 700 Physical Rehab interim rule. Ms. Underwood seconded the motion. The Board voted unanimously to approve this agenda item.

3. Board Discussion – Physical Rehabilitation Rules (He-Hea 700)

Discussion: Ms. Underwood opened this discussion by giving an update on the subcommittee work. She stated that the subcommittee made some progress but have questions on the review process for the transfer of beds. Ms. Carrier then added that there could be snags with statutory authority and JLCAR regarding any limited CON review process and suggested moving the discussion to the next subcommittee meeting scheduled for 12/6/11. She stated that the interim rule may expire 30 days before the new rule is on the books but that it shouldn’t create any problems. Ms. Carrier explained that the rule could be adopted without the transfer section and subcommittee review could continue on that section. She added that staff would not support a specific intervention process in the rehab rule.

No Board action was taken on this agenda item.

The Board’s rehab subcommittee will continue to work on the rule with this guidance.

4. Informational Hearing – MRI Rules (He-Hea 600)

Discussion: Chair Vailas introduced this agenda item. He stated that the Board would hear testimony on whether or not to deregulate MRI services. He then asked if there was anyone present to speak to this issue and opened the meeting for discussion.

At this time, Mr. John Malmberg, Legal Counsel for NH Imaging Services and Mr. Kevin Stone, Management Partner, NH Imaging Services came forward to provide testimony. Attorney Malmberg started out by stating that the MRI rule is very pro-competitive. He stated that there is no other state regulation of this equipment, where it is operated or by whom. He added that the charity care obligation is a very important requirement for providers.

Mr. Stone spoke regarding the cost burden on patients, and stated that the state of NH has 3 Mobile MRI vendors currently. He stated that the average cost of a scan is about \$300. He stated that used equipment can be purchased under the \$400,000 threshold and that in his opinion the CON process is not a barrier as it takes no more than 6 months to complete and can be done without a consultant. He added that consultants cost \$10 – \$15, 000 which is a small percentage of the cost of the equipment. Finally, he explained that in his opinion CON does not keep the higher costing equipment out of the state.

Mr. Wallace stated that literature indicates that technological developments happen quickly and asked what NHIS meant by old equipment. Mr. Mike Degnan of NHIS stated that equipment that is 5 - 8 years old can be upgraded on a regular basis. Attorney Malmberg stated that NHIS is a big purchaser from Alliance Imaging which gives them leverage to obtain equipment inexpensively.

At this time, Attorney Lucy Hodder came forward representing Bedford Ambulatory Surgical Center (BASC). Attorney Hodder provided a handout to the Board from the Health Cost website showing different facility charges for MRI costs. She showed that Access Sports Medicine was listed as the lowest cost and BASC came close to the lowest. She stated that keeping the service just at hospitals was no longer economical as there is constant pressure for low cost free standing MRI service. Attorney Hodder stated that if not looked at by CON then the market place will. She pointed out that the anti-kickback (Stark law) law limits self-referrals for physicians. She stated that Mobile vendors have done an excellent job making services available at low costs.

Attorney Hodder then spoke to a few options: 1. Under 151-C:6, a request could be made of the Board to review its rules; this would have to be done within 120 days; 2. Suggest a legislative change as the threshold is \$400,000 and is old and outdated, not updated since 1985. No other state has such a low threshold; this encourages people to buy old and lower quality equipment. She added that the Board should apply an inflation factor or change the threshold to at least \$1million 3. Referral standards in the current rule are too high as currently one needs 1,500 referrals per year, or to demonstrate the ability to perform 1,000 scans per year. She stated that this should be changed to 750 – 500 scans, respectively.

Mr. Wallace stated that he is concerned about proliferation, incentives to over-utilize the service. Attorney Hodder stated that MRI is a profitable service but not over-utilized by any particular provider. She added that Medicare is watching this and suggested letting payors handle this issue. Mr. Wallace then explained that he reviewed the reimbursement rates and they don't vary based on the age of the equipment, quality, etc. He asked whether the Board should be doing anything to improve oversight of MRI. Attorney Hodder responded that if the Board didn't regulate MRI, payors would crack down and may end up with provider networks that would be difficult to penetrate. Chair Vailas stated that the other component is the reading of the MRI; this professional fee can be greater than the technical fee.

Attorney Hodder then re-reviewed the options she had listed for the Board stating that the Board could deregulate completely, make it cheaper to get a CON, or raise the thresholds. Ms. Grabowski stated that she is concerned about the North Country. Attorney Hodder then stated that communities in the North Country have the same need for low cost services but they are hard to make available currently and it's hard to meet referral numbers.

At this time, Ms. Kelli Monahan, representing Harvard Pilgrim Health Care (HPHC) came forward. She stated that HPHC is trying to watch utilization to ensure MRI service is not over utilized. She stated that the necessity for choice is coming into play today like lab services; there are freestanding labs that people can go to at a lower cost.

Mr. Martin stated that his company, which is a small employer, went to a point-of-service plan. He explained that the plan encourages people to travel to an ASC in order to lower their deductible. Ms. Monahan replied that freestanding facilities do cost far less than hospitals. Mr. Wallace asked why the rate is the same regardless of the age of the equipment, etc. Ms. Monahan replied that the rates do vary. Mr. Wallace asked if the insurance company cares who

is providing the service or if they look at quality or cost. Ms. Monahan responded that yes it is reviewed.

At this time, Mr. Bill Karhan, Director of Radiology, Monadnock Community Hospital came forward to state his opinion. He clarified that he was stating his own opinion and not that of the hospital. He stated that if the Board were to deregulate he didn't think there would be a huge increase in scanners everywhere and stated that ACR accreditation is required by Medicare and Medicaid.

Ms. Leslie Melby, representing NH Hospital Association came forward at this time. She stated that NHHA supports the continuation of regulation of MRI services. She stated that growth of health care services needs to be managed, and that the current CON process does not impair the purchase of MRI units. She added that the Board should not introduce major changes until the impact of healthcare reform is seen.

Dr. Robert Jaros, representing Imaging Resource Alternatives came forward at this time. Dr. Jaros stated that imaging facilities need to be accredited to receive reimbursement. He stated that in terms of utilization, CT did not proliferate when it was deregulated. He stated that there has been a shift away from CT toward MRI as there is less radiation and better images and not because of profit motives. He stated that the uninsured should not pay more than the insured. And finally, he stated that he is in favor of deregulating MRI.

At this time, Mr. Peter Wright, COO for Littleton Regional Hospital came forward. Mr. Wright stated that the charge of the CON Board is to assure rational distribution of healthcare services in a region. He stated that collaboration and not competition is what works in the North Country. He stated that services are shared and assets are deployed strategically but plenty of people have beat the threshold with subpar equipment.

Attorney Andrew Eills came forward on behalf of himself. He stated that with Healthcare Reform bundled payments will move us away from fees for specific services. He stated that it would make less need to look at actual costs.

Ms. Leslie Melby came forward to clarify; she stated that ACA requires that charges are not billed to the uninsured, they take the 3 largest carrier payment rates and charge the average.

The public hearing was closed at 10:50 am.

Board discussion then took place. Mr. Wallace stated that he needed to process the information that was presented and look at quality standards and utilization. Chair Vailas stated that the threshold would need to be changed. Mr. Wallace stated that there would be time to discuss this change during the legislative session. Chair Vailas suggested discussing this at the next Board meeting.

No other action was required by the Board on this agenda item.

5. Other Administrative Business

- Ms. Carrier stated that the next meeting of the Board is scheduled for Thursday, December 15, 2011.

- Chair Vailas asked if there was any news on the proposed LSR's and Ms. Carrier responded that there was no new information regarding them.

A motion to adjourn the meeting was made by Mr. Chase and seconded by Ms. Underwood, thus, the meeting was adjourned at approximately 10:55 a.m.

Signature: _____ /S/ 12/15/11
Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board: _____
Date



HEALTH SERVICES PLANNING AND REVIEW

December 15, 2011

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Absent: Mr. James Tollner

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. **Consent Agenda**

- **Approve November 17, 2011 Board Meeting Minutes**

Discussion: Chair Vailas introduced this agenda item. He asked if the Board had any questions regarding this item.

Mr. Wallace then made a motion to approve the consent agenda. Ms. Underwood seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. **Cottage Hospital, Request to Develop a Standard for Inpatient Psychiatric Beds and Services (RSA 151-C:6, II)**

Discussion: Chair Vailas requested that the Board change Agenda item #3 to Agenda item #2. Hearing no objection, he then introduced this agenda item, stating that Cottage Hospital has made a request for the Board to develop a standard for inpatient psychiatric beds and services under RSA 151-C:6, II. He invited representatives from Cottage Hospital to come forward at this time.

Ms. Maria Ryan, CEO, Cottage Hospital, Mr. Peter Ulasewicz, Senior Vice President of Development, Psychiatric Resource Partners (PRP) and Ms. Barbara Bayma, Senior Vice President of Clinical Services, PRP came forward to testify.

Mr. Ulasewicz provided the Board with a brief background on PRP. He explained that PRP partners with community based acute care hospitals for provision of psychiatric services. He stated that they are based in Nashville Tennessee, its parent company is named Acadia. He stated that Acadia manages 2,200 psychiatric beds in the U.S.

Ms. Ryan explained that Cottage Hospital is a 25 bed critical access hospital with a majority of the patients being over 65. She added that per a needs assessment there is a need for mental health services and Geriatric Psych is an unmet need. She stated that they are proposing a 10 bed exempt unit and that Cottage is looking for a partnership since it has no psychiatric experience.

Mr. Ulasewicz added that PRP's staff has much experience with former organizations. Mr. Wallace asked the distance to the nearest facility. Ms. Ryan stated that Dartmouth Hitchcock Medical Center (DHMC) is 35 miles away and Littleton Regional Hospital (LRH) is 35 miles away but has no psych unit. Mr. Steve Marion from the audience stated that DHMC's unit is not a geriatric psych unit. Ms. Grabowski asked if Vermont offered anything. Ms. Ryan responded that Fletcher Allen Hospital is 70 miles away in Burlington, Vermont.

Ms. Ryan stated that the elderly population is the only growing age group in the service area. Mr. Wallace asked how Cottage Hospital currently handles psych patients. Ms. Ryan stated that they stay in the emergency department, get evaluated by telemedicine and the hospital calls NH Hospital and other facilities to try and find them a bed. Mr. Wallace asked how many psych patients comprise the younger population. Ms. Ryan responded that there are some but not nearly as many. Mr. Ulasewicz stated that the unit must be an exempt psychiatric unit per the hospital conditions of participation. Ms. Ryan added that the only way to be financially feasible is to serve the Medicare population. Mr. Wallace asked how the unit will be staffed. Ms. Ryan explained that there will be an ADC of 8 or 9 with 2 nurses and 1 psychiatrist.

Mr. Wallace stated that the State is interested in having more psych beds developed as many hospitals have dropped their psych units. He added that the State supports the 10 beds at Cottage Hospital; however the rule development and CON review is a lengthy process. Mr. Wallace then stated that he would work on a rule and bring it back to the Board for review. Mr. Wallace stated that the need formula in the old rule was 35 beds per 100,000 population; there may or may not be a need to look at geriatric psych separately.

At this time, Mr. Wallace made a motion to approve the request made by Cottage Hospital to develop a standard for inpatient psychiatric beds and services. Ms. Grabowski seconded the motion. The Board voted unanimously to approve this agenda item.

3. Board Discussion – MRI Rules (He-Hea 600)

Discussion: Chair Vailas opened the meeting for Board discussion on this agenda item. Mr. Wallace stated that there is a bill in the legislature to repeal the CON program completely as well as a bill relating to cancer hospitals. He then suggested letting the legislature determine what services to regulate and review the thresholds. The Board agreed with this suggestion.

No Board action was taken on this agenda item.

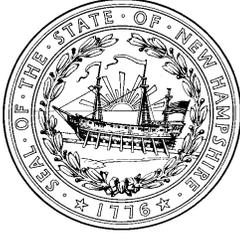
4. Other Administrative Business

- Ms. Carrier stated that the next meeting of the Board is scheduled for Thursday, January 19, 2012.

A motion to adjourn the meeting was made by Mr. Chase and seconded by Mr. Martin; thus, the meeting was adjourned at approximately 10:05 a.m.

Signature: _____ /S/ 1/19/12
Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board: _____
Date



HEALTH SERVICES PLANNING AND REVIEW

January 19, 2012

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Mr. Christopher Martin, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Excused: Ms. Deb Grabowski

Absent: Mr. James Tollner

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:34 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve December 15, 2011 Board Meeting Minutes**

Discussion: Chair Vailas introduced this agenda item. He then asked if any of the Board members had an issue with the item on the consent agenda, as it would require removal from the consent agenda.

Mr. Chase then made a motion to approve the consent agenda. Ms. Underwood seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. Approval of the Initial Proposal of He-Hea 700 Physical Rehabilitation rules

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the Board's Rehabilitation Subcommittee has completed its work on the initial proposal of the He-Hea 700 Physical Rehabilitation rule, and request, that the Board approve the initial

proposal, which will then be forwarded to JLCAR. She explained that a public hearing on this rule will take place at an upcoming Board meeting.

Ms. Underwood thanked HSPR staff and the members of the subcommittee for their hard work on the development of the rule.

Ms. Underwood, Subcommittee Chair, then made a motion to approve the initial proposal of the He-Hea 700 Physical Rehabilitation rules. Mr. Chase seconded the motion. The Board voted unanimously to approve this agenda item.

3. Approval of the Initial Proposal of the He-Hea 800 Psychiatric rules

Discussion: Mr. Peter Ulasewicz, Senior Vice President of Development, Psychiatric Resource Partners (PRP) thanked the Board and staff for their hard work on the rule.

Chair Vailas then asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that at the December 15, 2011 meeting, the Board approved the request made by Cottage Hospital to develop a standard for inpatient psychiatric beds and services. She explained that at that meeting, Board member Wallace stated that he would work on a rule and bring it back to the board for review and approval. Ms. Carrier pointed out that the initial proposal of the rule is now ready to be approved.

Mr. Wallace explained that the old rule was 35 beds per 100,000 population and the state was including the state hospital in the inventory count; it is not included in the new rule. The new rule includes a provision to allow a new unit to open outside the bed need if such unit is being proposed to handle any reduction in State beds. Also, within the rule there is an unserved or underserved population, then the Board could make an exception and the Department would have to support this. He explained that the Department's biggest concern is for those who would have to travel long distances. Finally, the rule gives the Board the authority to give preference to units in acute care hospitals as a means for better coordinating patient care.

At this time, Mr. Chase made a motion to accept the Initial proposal of the He-Hea 800 Psychiatric rules. Mr. Wallace seconded the motion. The Board voted unanimously to approve this agenda item.

4. Other Administrative Business

- Ms. Carrier stated that the next meeting of the Board is scheduled for Thursday, February 16, 2012
- She stated that HSPR staff included a CON Project Status report for all open CON projects, which includes cost data on such. The report is as of 12/31/11, and it is staff's intention to provide this information semi-annually as a way to keep the Board updated on these projects as they progress.
- Ms. Carrier gave an update on HB1642 – relative to destination cancer hospitals (exempting such from CON review). She stated that a hearing is scheduled for 2/7/2012 10:30 AM LOB, Room 205.
- She also gave an update on HB1617 – repealing the CON law. She stated that a hearing is scheduled for 2/14/2012, 10:00 AM, LOB Room 205.

A motion to adjourn the meeting was made by Mr. Chase and seconded by Ms. Underwood; thus, the meeting was adjourned at approximately 9:45 a.m.

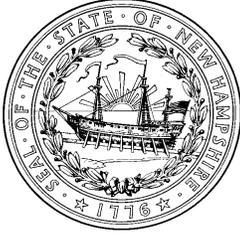
Signature:

/S/ 2/16/12

Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date



HEALTH SERVICES PLANNING AND REVIEW

February 16, 2012

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Mr. Christopher Martin, Mr. James Tollner, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Excused: Ms. Deb Grabowski

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve January 19, 2012 Board Meeting Minutes**
- **NSR 12-01, Webster At Rye, Bed Conversion, \$545,000**
- **NSR 12-02, Mary-Hitchcock Memorial Hospital, Bio-Mass Project – Replacement of Boiler, \$5,000,000**

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. Ms. Thibeault stated that the minutes from the January 19, 2012 Board meeting needed to be approved as well as two NSR's, one from Webster at Rye for a Bed Conversion for \$545,000 and one from Mary Hitchcock Memorial Hospital for a Bio Mass project for \$5,000,000. Chair Vailas then asked if any of the Board members had an issue with the items on the consent agenda, as they would require removal from the consent agenda.

Mr. Wallace then made a motion to approve the consent agenda. Mr. Chase seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. NSR 12-03, Parkland Medical Center, NSR request for Physician Offices/Urgent Care/Laboratory/Imaging in Salem, NH, \$1,127,640

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that Parkland Medical Center submitted an NSR request for the establishment of space for physician offices, urgent care, a laboratory collecting station and imaging. She stated that the space will be leased and fit up of the space has been allocated by size and cost as appropriate. She added that the total overall cost of fitting up the space for these services is \$1,127,640. Ms. Carrier informed the Board that HSPR staff concludes that this request is eligible for an NSR determination as costs fall below the threshold and the proposal applies to outpatient space, which is exempt from review pursuant to RSA 151-C:13, I(f).

Mr. Jeff Scionti, Chief Operations Officer, Parkland Medical Center, came forward at this time to answer any Board questions. Mr. Tollner asked if there would be changes in the way these services are billed. Mr. Scionti stated that the lab is a relocation of an existing service but would be a hospital based service. Urgent care will be billed as an ER service. Imaging is stand alone and separate.

Mr. Chase then made a motion to approve the NSR request made by Parkland Medical Center. Mr. Martin seconded the motion. Mr. Tollner voted against the motion and the remaining Board members voted in favor; thus, this agenda item was approved with a vote of 5 to 1.

3. Request for Severance, 8/1/2011 RFA Acute Care Applications, Mary Hitchcock Memorial Hospital AC 11-04 and St. Joseph Hospital AC 11-05

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that Mary Hitchcock Memorial Hospital submitted a request to sever its application from St. Joseph Hospital, the other applicant participating in the 8/1/11 Acute Care RFA. Ms. Carrier explained that if severance is approved, each application can be heard on its own merits; otherwise, as required by statute, applications must remain batched and hearings held before the Board can vote on either of them. She stated that as a party to this process, St. Joseph Hospital has verbally agreed to severance. Ms. Carrier further explained that due to timing issues, MHMH has requested that its hearing be held at the March 2012 Board meeting. She stated that HSPR staff is now preparing its staff analysis and recommendation with this date in mind.

Mr. Steve Marion, Consultant, Mary Hitchcock Memorial Hospital, spoke briefly from the audience. He stated that several key people cannot be at the April Board meeting and therefore MHMH requested that the public hearing be scheduled in March.

At this time, Mr. Wallace made a motion to approve severance for Mary Hitchcock Memorial Hospital AC 11-04 and St. Joseph Hospital AC 11-05. Ms. Underwood seconded the motion. The Board voted unanimously to approve this agenda item.

4. 2012 Nursing Home Bed Need Calculation

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that HSPR staff provided the annual Nursing Home Bed Need determination for informational purposes. Although some regions do show a need for additional beds, the nursing home moratorium remains in place through June 30, 2012. He also mentioned that there are some

bills now working their way through the legislature that affect the moratorium (HB1553 to repeal, and HB1617, amended to extend) that staff will monitor for change.

Ms. Carrier also pointed out that the data has some limitations due to lack of population projections no longer supplied by the NH Office of Energy and Planning (OEP).

Mr. Wallace requested that the staff run the need formula as developed by the Board's subcommittee in 2010 and compare it to the existing statutory need formula. Mr. Peck responded that HSPR staff could provide this at the March Board meeting. Mr. Chase asked if the Department still has occupancy data. Mr. Wallace replied that occupancy has been running close to 90% for a long time and added that there is no significant change anticipated.

No Board action was taken on this agenda item.

5. Other Administrative Business

- Mr. Peck stated that the next meeting of the Board is scheduled for Thursday, March 15, 2012.

A motion to adjourn the meeting was made by Mr. Wallace and seconded by Mr. Martin; thus, the meeting was adjourned at approximately 9:45 a.m.

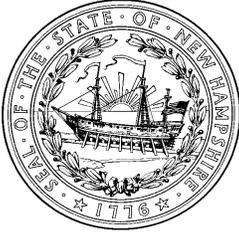
Signature:

/S/ 3/15/12
Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date

HEALTH SERVICES PLANNING AND REVIEW



March 15, 2012

9:30 a.m.

Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Excused: Mr. James Tollner

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:46 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve February 16, 2012 Board Meeting Minutes**
- **Portsmouth Regional Hospital, CON AC 06-07 – Request for 6-month Extension**
- **NSR 12-04 Harris Hill Nursing Home, Concord, NH – Renovations for 2 beds transferred from Pleasant View, \$7,400**
- **NSR 12-05 Harris Hill Nursing Home, Concord, NH – Minor Renovations to Dining Room and Nurses Station, \$100,431**

Discussion: Chair Vailas introduced the consent agenda. He then asked if any of the Board members had an issue with the items on the consent agenda, as they would require removal from the consent agenda.

Mr. Chase then made a motion to approve the consent agenda. Mr. Martin seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. NSR 12-06 Southern NH Medical Center, St. Joseph Hospital, Dartmouth-Hitchcock Nashua – NSR Request for Joint Venture ASC, Nashua, NH \$1,927,237

Discussion: Chair Vailas recused himself from this agenda item, and asked Mr. Martin to Chair this agenda item. Mr. Martin then asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that an NSR petition was filed on behalf of Southern NH Medical Center, St. Joseph Hospital and Dartmouth Hitchcock Nashua for a joint venture to establish a 3-OR ASC in Nashua. She stated that the total cost is estimated at \$1,927,237 (\$869,450 equipment). The ASC will be established at 10 Prospect Street in an existing building owned by Southern NH Medical Center. She explained that because the costs are over 75% of the current threshold, the applicants have completed the requisite Marshall and Swift evaluation. HSPR staff does conclude that the proposal is eligible for an NSR determination due to cost, but recommends that this be contingent upon conditions requiring that the applicants supply the following on or before operation of the facility: 1. the name of the LLC once formed (already agreed to); 2. A copy of the lease once executed, and 3. Documentation of final cost of the project to ensure it does not exceed the stated project amount/threshold amount.

Ms. Carrier then explained that a petition to intervene has been submitted by Nashua Ambulatory Surgical Center, and an objection to the petition for intervention was submitted this morning. She stated that the petition did arrive after the deadline but this could be waived if no prejudice was found.

After the intervention process was clarified by Ms. Carrier, Ms. Lucy Hodder, Esquire, Ms. Sue Majewski, NASC and Mr. Nicholas Vailas, NASC came forward to present the petition for intervention. Attorney Hodder stated that they filed the petition to intervene to establish party status. She stated that the Joint Venture NSR request is within \$50,000 of the current threshold and if a project is over 75% of the threshold additional information is required and it was not provided in this case. She added that NASC received an NSR last year for a Nashua based ASC and through intervention they can ensure that all questions are answered and necessary documentation is provided for this proposal. Attorney Hodder added that intervention will serve and help the integrity of the Board. She stated that NASC does not seek to disrupt or delay the proceeding.

Ms. Grabowski cited RSA 541 A:32 that a petition must be in writing and asked if this has come up before. She added that she is hesitant to deny the petition just because the electronic submission didn't meet the 3-day requirement.

Ms. Carrier reminded the Board that the deadline could be waived. Mr. Wallace asked if intervenor status would protect the right to contest the decision moving forward. Attorney Hodder stated yes.

At this time, Ms. Melissa Sears, VP Business Development, SJH and Attorney Andrew Eills, Legal Counsel, came forward to present its objection to the petition to intervene. Attorney Eills stated that the petition to intervene was filed late and the Board does not have to except it. He stated that the rule is there for a purpose and regardless of it being late the Board must decide: 1. Will it impair the interests of justice; or 2. Will it cause delay in the orderly manner of the proceeding. He stated that the Board must look at the global interest of the party requesting the NSR. He stated that NASC has a right to participate as a member of the public. He added that the hearing was properly noticed. Attorney Eills then stated that the answer to the 2 questions is no as they would require a prehearing conference and he stated that his client would like to present the NSR request today.

Mr. Wallace stated that RSA 541-A:32, I(b) Intervention lists 3 criteria: 1. Submitted 3 days in advance; 2. Demonstrate that the petitioner has an interest in the proceeding and 3. It won't delay or disrupt the proceedings. Attorney Eills stated that NASC did not file timely and that it does have an interest in the proceeding. He stated that if intervention is granted the petitioners would like to proceed today; they have all the required information for the hearing.

Ms. Underwood stated that she understands that if the Board didn't grant intervention the process continues but questioned the process if they do grant intervention. Ms. Carrier explained that the Board would proceed today and the intervenor takes it as it comes, or a prehearing conference would take place prior to the hearing (to be held at a later time). The prehearing conference requirements could, however, be waived.

Mr. Wallace cited He-Hea 208.07(a) and noted that it states "shall meet" 541-A:32 I(b), or 32:2 that the Board "may grant" intervention if determined that it won't disrupt the interest of justice or timelines of proceeding. Attorney Eills stated that in the interest of justice, they would like to proceed today. Ms. Sears added that she didn't understand why NASC could not have met the timeline. In rebuttal, Attorney Hodder stated that there is absolute discretion of the Board to grant the petition to intervene. She added that NASC intervened because the doctors that will serve NASC are interested. She stated that not enough information was provided. She added that there was no lease provided, no ownership, no architect information and no information on services. She added that they would waive the prehearing conference. Mr. Vailas added that it is about fairness.

Board discussion ensued at this time. Mr. Wallace stated that the timing failure is not substantial and did not cause detriment but the rule is what it is. Mr. Chase stated that he is inclined to agree with Mr. Wallace and added that the interested party can request reconsideration but it would be easier to grant the intervenor status and proceed.

Mr. Wallace then made a motion to approve intervenor status, waive the pre-hearing conference and proceed today. Mr. Chase seconded the motion and Ms. Underwood voted against the motion. The motion passed with a vote of 4 in favor and 1 against.

At this time, Ms. Melissa Sears, Mr. Scott Coté, VP Facilities, Mr. Jeffrey Luter, Construction Manager, Fulcrum Associates and Mr. Andrew Eills, Esq., legal counsel came forward to present the NSR request. Attorney Eills stated that the NSR request is a collaborative effort encouraged by the statute and explained that it will be a corporate organization owned jointly by MHMH, SNHMC and SJH. He stated that it will be a tax exempt corporation under 501 (c) (3) and will have its own Medicare and tax ID number, and added that it mirrors the Nashua Regional Cancer Center. Attorney Eills stated that 3 conditions are acceptable and listed them as 1: the name and Secretary of State Documents, 2: executed lease and 3: documentation of the cost at the completion of the project. He added that the project did benefit from the recently increased threshold.

Ms. Sears spoke at this time. She stated that the entities involved have a common desire to provide ASC services. She stated that the hospitals have not been hiring or recruiting orthopedic physicians and insurance companies are encouraging lower cost options; Mr. Tollner if available, could attest to this. Ms. Sears stated finally that they will take all patients including the uninsured, underinsured and Medicaid patients.

Mr. Scott Coté spoke next. He explained to the Board that the entities have been collaborating for some time and a consideration was to use space in DHMC's new building at exit 8 or the former facility at SJH and that they settled for the Health and Education center at SNHMC at 10 NHDHHS, DPHS, Health Services Planning and Review

Prospect Street which freed up when Lamprey Health Care moved. He stated that it was constructed in 1999 as a MOB; Lavallee did a construction analysis and Fulcrum did the cost analysis. He added that the construction costs are favorable.

Mr. Wallace asked the location of the building. Mr. Coté explained the location for the Board. Mr. Wallace stated that the cost is critical and asked how the cost was determined. Mr. Luter responded that they used Marshall and Swift and used the cost of similar structures to back out the cost of the core and shell. A handout of the construction values was provided to the Board and staff at this time. Mr. Wallace asked if the estimate was specific to the site. Mr. Luter stated that it was and that he was familiar with the building from past projects.

Ms. Grabowski asked what services will be provided by the physicians. Ms. Sears stated that it will be multispecialty. Ms. Grabowski then asked if the other parties have orthopedic surgeons. Ms. Sears responded that DHMC does but that it always has and that SNHMC has a spine surgeon, and has had an orthopedic surgeon for the past 6 months.

At this time, Nashua ASC came forward to oppose the project. Attorney Hodder stated that the project cost submitted today is unsure. She stated that NASC went through the requirements of He-Hea 301.01, and questions whether the name of the organization, the affiliates, if real estate should be part of the project, and more information on the lease should be provided. She stated that the project cost is not documented and signed off on, the rates and how they will bill is unknown and was unsure if any equipment should be included under the construction costs. Mr. Vailas added that the NSR request is the most incomplete request he has ever seen. Ms. Grabowski questioned the NSR request by Nashua ASC that was approved in June 2011 and when the facility would be open. Attorney Hodder stated that it will open in June 2012.

Attorney Eills, Ms. Sears and Mr. Coté came forward at this time to respond. Attorney Eills stated that they would now address the concerns of Attorney Hodder. He stated that they did submit an outline of costs and an equipment list, there will be an operating lease, there will be a NH Voluntary Corporation composed of the 3 hospitals and the Corporate documents would be filed shortly. Mr. Coté spoke regarding the cost issues. He stated that the difference from the threshold is \$34,667. He added that they did provide a Marshall and Swift analysis, a validation was done and the costs went down.

Mr. Wallace stated that the construction cost is \$1.6 million and he questioned where the rest of the costs are provided. Mr. Luter stated that the architectural costs were not included. Mr. Chase asked Ms. Carrier what would happen if the cost exceeded the threshold. Ms. Carrier stated they would have to return to the Board and fill out a CON application. She added that ASC RFA requirements would also have to be considered and there would be no license to operate until CON requirements are met, and they could be fined for violation of the chapter.

Ms. Underwood asked if the Board could add a condition for the submission of the contracts. Ms. Carrier responded that such a condition could be included. Attorney Eills stated that they would agree to provide monthly updates to the staff. Ms. Grabowski stated that if any piece of equipment became a capital cost it could put the cost over the threshold. Ms. Carrier stated that costs are looked at separately and that the staff saw nothing over \$400,000.

Attorney Hodder, Mr. Vailas and Ms. Majewski came forward at this time to respond. Ms. Majewski pointed out that there was no cost information on a generator or steam generators. Attorney Hodder stated that there was no information on affiliates either. Mr. Vailas stated that there is no architectural design yet. Attorney Hodder stated that Board should take more time to make a decision.

Mr. Coté clarified that there are 3 equal partners and no affiliates. He stated that an architect was hired to do cost estimates and that drawings won't be done until the NSR is approved. He added that the sterilization equipment exists in the hospital.

Mr. Wallace pointed out that the NSR petition is for an entity that does not exist and added that if approved there is no entity to hold accountable if they are non compliant.

At this time, Mr. Wallace made a motion to deny NSR 12-06 from Southern NH Medical Center, St. Joseph Hospital and Dartmouth-Hitchcock Nashua for a Joint Venture ASC in Nashua, NH for the cost of \$1,927,237. Mr. Chase seconded the motion, all Board members voted in favor of the motion and this agenda item was unanimously denied.

Mr. Vailas returned to chair the rest of the meeting at this time.

A 10-minute break took place at this time.

3. Public Hearing – He-Hea 800 Inpatient Psychiatric Services

Discussion: Chair Vailas asked if there was anyone in the audience present to provide testimony on this rule. Ms. Maria Ryan, CEO, Cottage Hospital came forward. She stated that she was overall supportive of the rule but had a question about “location of services” on page 3. She stated that it stated “only at psychiatric inpatient hospitals” and questioned what this meant for Cottage Hospital. Ms. Carrier stated that this is covered in the definition as it refers to the licensing rule. She pointed out that Cottage Hospital fits this definition.

The public hearing for this rule closed at this time as no other testimony was provided.

Mr. Vailas asked if the Board needed to vote to approve this rule. Ms. Carrier clarified to the Board that testimony must be kept open for 5 days and that the final proposal will be brought to the Board for approval in April. She added that JLCAR may have comments as well.

No Board action was taken on this agenda item.

4. Public Hearing – Mary Hitchcock Memorial Hospital CON AC 11-04, \$16,668,750

Discussion: At this time, Chair Vailas invited representatives from MHMH to come forward. Ms. Wendy Fielding, VP of Finance, Mr. Gail Dahlstrom, VP of Facilities Management, Ms. Deanna Orfanidis, Administrative Director, Critical Care & Surgical Specialties, Dr. Edward Merrens, Section Chief, Hospital Medicine and Attorney Neil Castaldo, Legal Counsel all approached the Board at this time. Attorney Castaldo gave an overview of the project. He stated that they changed the project slightly to keep the 9 psych beds and brought the cost down a little. He added that the project was focused on patient need, the hospital is running at a 93% occupancy rate which is the highest in the state. He added that MHMH cares for the sickest patients in the state.

Dr. Merrens stated that MHMH has the lowest length of stay for comparable hospitals. He added that gridlock creates staffing issues and it is not the best care for the patients. A chart that shows the hospital at gridlock was displayed for the Board. Chair Vailas stated that technology is pushing more care to an outpatient setting and asked what is different at MHMH.

Dr. Merrens stated that MHMH takes the sickest patients. Attorney Castaldo added that the critical access hospitals take less critical patients.

Ms. Dahlstrom reviewed the site plan and floor plans for the Board. Ms. Fielding spoke next. She stated that discussion continues over sources and uses of funds, and MHMH is still determining whether to issue bonds or fund the project from operations. She added that they will comply with the documentation condition. Attorney Castaldo added that the adult critical care unit was at 94% yesterday.

Mr. Wallace pointed out that the projected occupancy levels with the additional beds will still be tight. Ms. Dahlstrom stated that they chose not to close the 9 psych beds and this left the occupancy higher for Medical Surgical beds. Mr. Wallace then asked why the psych beds are on 2 separate units. Ms. Dahlstrom stated that the cost is prohibitive to combine them; it would add \$2 million and 6 – 9 months to the project. She added that there are some efficiencies but had to do the project at a reasonable cost.

Mr. Wallace stated that this project has a clear demonstration of need. Chair Vailas stated that he agreed. He added that the original hospital was 1 million square feet and in the past 20 years has almost doubled. He then asked if there was any thought about creating a new campus to regionalize services. Attorney Castaldo stated that continuous thought is being given to this as they are trying to decentralize care.

Chair Vailas opened the meeting up for public testimony. Mr. Steve Marion spoke from the audience. He stated that there were many letters of support for this project and many of them wanted the psych beds retained.

Board discussion ensued on the project. Ms. Grabowski stated that the need is not a question. She then asked if there was any idea of the occupancy in the community hospitals. Dr. Merrens stated that many critical access hospitals don't fill all of the beds and many of their services are outpatient/ancillary and MHMH is trying to support them. Ms. Grabowski asked if there would be jobs created. Ms. Orfanidis responded that there will be 74 new nursing positions added as a result.

At this time, Mr. Wallace made a motion to approve the CON for Mary Hitchcock Memorial Hospital AC 11-04 for \$16,668,750 with the condition that MHMH (1) document the financed amount, rate of interest and term of debt prior to project commencement; and (2) provide actual financial statements and ratios annually until the project is complete. Ms. Grabowski seconded the motion and this agenda item was unanimously approved.

5. Public Hearing – He-Hea 700 Physical Rehabilitation Rule

Discussion: Chair Vailas invited anyone from the audience that wanted to provide public testimony on this rule to come forward. There was no public testimony.

No Board action was taken on this agenda item.

6. Determine April 1, 2012 Ambulatory Surgical Centers RFA Issuance

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. Ms. Thibeault stated that to date, no letters of interest were received, nor any other support expressed, in support of this RFA. HSPR staff requests that the Board not issue this RFA for ASC services, unless notice is received by March 28, 2012 to allow sufficient time for posting of the public notice on 4/2/12.

Mr. Wallace made a motion to not issue the April 1, 2012 Ambulatory Surgical Centers RFA. Ms. Underwood seconded the motion. All Board members voted in favor of the motion.

7. Presentation of MRI Data Analysis

Discussion: Chair Vailas invited Mr. David Navaroli from InSight Imaging to come forward. Mr. Navaroli introduced himself and stated that InSight owns fixed centers in Massachusetts. He went on to say that most of the MRI machines in NH are closed MRI systems. He pointed out that Alice Peck Day's cost is closest to what it actually costs to provide this service. Chair Vailas stated that he wasn't sure this is accurate. Mr. Navaroli stated that over the border in Chelmsford MA they see a lot of NH patients. He stated that open MRI is becoming more popular.

Ms. Lucy Hodder from the audience pointed out that the list does not include machines that were approved by NSR as the Board doesn't regulate them. She stated that there are a lot more MRI machines out there than what is listed. Chair Vailas stated that these should not be separated. Mr. Wallace asked Ms. Carrier to clarify the RFA process for the Board. Ms. Carrier stated that this RFA is date driven and there needs to be an interest in order for the MRI RFA to be issued. She added that letters need to be submitted by March 28, 2012.

No Board action was taken on this agenda item.

8. Determine April 1, 2012 Mobile MRI Services RFA Issuance

Discussion: Chair Vailas stated that he felt the Board should not regulate MRI services. Mr. Wallace then stated that the Board should wait and see if the Board will continue to exist before deciding what to regulate due to pending legislation to repeal CON.

Mr. Wallace made a motion to not issue the April 1, 2012 Mobile MRI RFA unless a letter of intent is received by March 28, 2012. Ms. Grabowski seconded the motion. All Board members voted in favor of the motion.

9. Presentation of PET Data Analysis

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. Ms. Thibeault presented her analysis of the Positron Emission Tomography (PET) data annually collected from vendors and hospitals.

Mr. Wallace made a motion to accept the PET data analysis as presented. Mr. Martin seconded the motion. All Board members voted in favor and this agenda item was passed unanimously.

10. Presentation of RT Data Analysis

Discussion: Chair Vailas asked Ms. Thibeault to introduce this agenda item. Ms. Thibeault asked that the Board accept her analysis of the Radiation Therapy (RT) data annually collected from hospitals.

Mr. Wallace made a motion to accept the RT data analysis as presented. Mr. Martin seconded the motion. All Board members voted in favor and this agenda item was passed unanimously.

11. 2012 Nursing Home Bed Need Calculation

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that as follow-up from the February Board meeting, HSPR staff presents an updated nursing home bed need calculation displaying both the existing statutory formula, and that formula proposed by the Board's Long Term Care Subcommittee in 2010.

Mr. Wallace stated that the results are different than anticipated.

No Board action was taken on this agenda item.

12. Other Administrative Business

- The next meeting of the Board is scheduled for Thursday, April 19, 2012. The St. Joseph Hospital CON application will be heard at this meeting.
- The 2012 Updated Statutory Threshold figures are enclosed for your review.
- HB1617: Passed without Amendment
- HB1642: Passed with Amendment

A motion to adjourn the meeting was made by Mr. Chase and seconded by Mr. Martin; thus, the meeting was adjourned at approximately 12:07 p.m.

Signature:

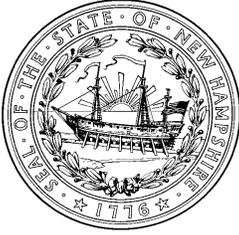
/S/ 4/19/12

Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date

HEALTH SERVICES PLANNING AND REVIEW



April 19, 2012
9:30 a.m.
Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Maria Proulx, Esq., Ms. Lori Underwood, Mr. Nicholas Vailas and Mr. John Wallace

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge and Mr. Jeffery Peck

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting and welcomed new Board member Ms. Maria Proulx, Esq. who replaced Mr. Jim Tollner as the Insurer's Representative.

1. Consent Agenda

- **Approve March 15, 2012 Board Meeting Minutes**
- **Findings of Fact – Mary Hitchcock Memorial Hospital AC 11-04, \$16,668,750**

Discussion: Chair Vailas asked Mr. Peck to introduce the consent agenda. Mr. Peck stated that the minutes from the March 15, 2012 Board meeting had a minor revision to page 6. He then asked if any of the Board members had an issue with the items on the consent agenda, as they would require removal from the consent agenda.

Mr. Chase then made a motion to approve the consent agenda. Ms. Underwood seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. Public Hearing – St. Joseph Hospital, CON AC 11-05, \$7,531,000

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the Board will now hear the acute care application proposed by St. Joseph Hospital of Nashua, NH for a renovation project to address needs in its Emergency Department. He stated that the HSPR staff analysis and checklist were enclosed in the Board packet for the Board's review and

consideration. He explained that the HSPR staff concludes that the proposal is eligible for a CON with the condition that SJH provide documentation from its lender, underwriter or other source of capital as to the financed amount, rate of interest and term of debt prior to commencement of the project.

At this time, Attorney Andrew Eills, Legal Counsel to SJH, Ms. Melissa Sears, VP Strategy and Business Development Planning, Dr. James Martin, Medical Director, SJH Emergency Services, Mr. Steve Clayman, VP, Lavallee Brensinger Architects and Ms. Kathy Cowette, Director of Planning came forward to present their project. Ms. Sears briefly introduced the project. Dr. Martin then described the project for the Board. He stated that the Emergency Department is 20 years old and outdated, and that the current configuration will be redesigned with more efficiencies for staff and larger patient rooms with more privacy to better accommodate the patient, family members, staff and nurses. He explained that the current registration area is cramped and poorly configured to triage patients. He stated that the ED volume has increased 7% over the past year to 25,000 visits a year. He added that there has been a large increase in patients with psychiatric and substance abuse issues and the current ED is not equipped to properly care for these patients; thus their lengths of stay are excessive.

Mr. Clayman reviewed the floor plan and showed images of the existing ED for the Board at this time. He then explained the proposed floor plan. He stated that all of the patient rooms are the same size and there are now 2 trauma rooms. Mr. Wallace pointed out that the floor plan had changed a bit since the application was submitted. Ms. Cowette responded that the plans had progressed from a block plan to final drawings. She pointed out the differences and Mr. Clayman explained how the new layout would work for patient flow. Ms. Grabowski asked if the ED will now be able to accommodate the growing patient volumes. Ms. Sears replied that the layout is much more efficient. Mr. Wallace asked how SJH will handle the phasing of the project. Mr. Clayman stated that it will do the project incrementally and use swing space. Mr. Wallace asked the cost per s.f. and Mr. Clayman stated that it is \$250 per s.f. on average. Mr. Wallace asked SJH to explain the funding for the project. Ms. Sears explained that Covenant Health System, as an obligated group issues bonds every 3 years to fund projects at its facilities of which SJH is one. Mr. Wallace then asked what the debt status is now versus after new bonds are issued. Ms. Sears stated that \$7.65 million is allocated to SJH's books. Mr. Wallace asked if SJH foresees any additional projects in the near future. Ms. Sears stated that SJH wants to continue to convert to private rooms and there's additional work needed at the Milford facility but it's minor in comparison to this project. Mr. Wallace asked if there are any plans for the other land the hospital owns and Ms. Sears stated that SJH does not have any plans at this time.

There was no public testimony on this agenda item and Chair Vailas closed the public hearing at this time. Mr. Wallace then made a motion to grant a CON to St. Joseph Hospital AC 11-05 with the condition that SJH provide documentation from its lender, underwriter or other source of capital as to the financed amount, rate of interest and term of debt prior to commencement of the project. Ms. Grabowski seconded the motion. All remaining Board members voted in favor of the motion and this agenda item was unanimously approved.

3. Request for Reconsideration and Rehearing – NSR 12-06 for Joint Venture ASC, Southern NH Medical Center, St. Joseph Hospital, Dartmouth Hitchcock Nashua

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier referred to the request for reconsideration and rehearing submitted by The Surgery Center of Greater Nashua. She explained that the Board denied this request at the March 15, 2012 meeting and NHDHHS, DPMS, Health Services Planning and Review

the requestor submits documentation that it contends is new, significant and not previously considered by the Board. She added that the requestor has submitted all documentation that remained outstanding at the last meeting for Board consideration. She stated that HSPR staff concludes that the information is relevant to warrant the granting of reconsideration and rehearing; both can be granted together and the requestor can re-present its updated proposal to the Board. Ms. Carrier stated that the Intervenor will likely speak to the issue as well. She then explained that if the Board goes forward with rehearing and approves the proposal, HSPR staff recommends 3 conditions to the NSR: 1. A copy of the executed construction contract; 2. Document the final project cost; and 3. A copy of the executed lease.

Chair Vailas then recused himself from this agenda item. He then asked the Board to decide on a Acting Chair. Mr. Vailas appointed member Wallace as Acting Chair for this agenda item. Mr. Martin asked if a vote was needed to approve Mr. Wallace as Acting Chair. Ms. Underwood made a motion to accept Mr. Wallace as the Acting Chair and Mr. Martin seconded the motion. All the remaining Board members voted in favor and therefore Mr. Wallace was the acting Chair for this agenda item.

Attorney Andrew Eills came forward at this time. He stated that Attorney Hodder agreed to go forward with the hearing. Mr. Wallace asked Ms. Carrier if she believed there was a basis for granting reconsideration. Ms. Carrier stated yes. Attorney Hodder stated that she had no objection to a rehearing and hoped the Board would review all the evidence. Ms. Underwood stated that there is substantial new information and then made a motion to approve reconsideration. Mr. Chase seconded the motion. All Board members voted in favor and reconsideration was unanimously approved.

Attorney Eills then reviewed the new evidence for the Board. He stated that at the last meeting they were not a true entity and have now formed themselves as a corporation: they also have costs and signatures from the architect which was included in Exhibit C and signed by Roger Dignard and Jeffery Luter. He stated that they are in agreement to the conditions set by HSPR staff. Mr. Martin stated that the cost is below the threshold and there is now an entity so he feels it is NSR.

Ms. Grabowski made a motion to grant NSR to The Surgery Center of Greater Nashua with the conditions that the requestor shall provide 1. A copy of the executed construction contract; 2. Document the final project cost; and 3. A copy of the executed lease. Mr. Chase seconded the motion. All Board members voted in favor of the motion and this agenda item was unanimously approved.

Mr. Vailas returned to chair the rest of the meeting at this time.

4. NSR 12-07 - Convenient MD, LLC – NSR Request to Establish Outpatient Clinic in Windham, NH, \$980,100 (\$220,000 equipment)

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier explained that the NSR request is for a new entity seeking to establish outpatient clinic services in Windham, NH. She stated that because the cost is below the threshold, the “short form” was used; however, this may not be the best use of this form when a new entity is involved. She stated that the proposal appears to be eligible for a Not Subject to Review determination; however, the Board may want to ensure that the requestor is a legitimate and existing business company before issuing any such decision.

Chair Vailas invited representatives from Convenient MD, LLC to come forward. Mr. Max Puyanic, CEO and Mr. Gareth Dickens, President of Convenient MD, LLC came forward at this time. Mr. Dickens provided some background on their proposed project. He stated that this would be an outpatient center and provide non-emergent care. He added that the project is 38% of the threshold and that no one piece of equipment would exceed \$150,000. He stated that they have secured Mr. Dennis Myers as an architect and that he is working with Ms. Wendy Smigelski from licensing and also that they do have an operating lease for the facility.

Mr. Wallace asked what the lease was for. Mr. Dickens responded that the lease is for the space in Windham, NH. Chair Vailas asked who owns the business. Mr. Dickens responded that he and Mr. Puyanic will manage operations and that there are also other limited partners. He added that Mr. Puyanic is the CEO and he is the president. Ms. Grabowski asked if this is a new entity. Mr. Puyanic replied that it is. Ms. Proulx asked who will staff the center and Mr. Puyanic explained that there will be a full medical team with a physician always on site. Ms. Proulx asked if they would be employees of the company and Mr. Puyanic stated that they will be. Mr. Dickens added that the center will be less than an emergency room but more than a "minute" clinic and if a patient needs emergency care they will send them to an ER and send their records to their PCP. Mr. Wallace asked how far the center is from an existing emergency room. Mr. Puyanic stated that Parkland Medical Center is the nearest.

Chair Vailas asked if there was any public testimony. Ms. Maureen Smith representing HCA stated that she would like to request a condition that they document the construction costs. Mr. Tom Buchanan representing Derry Medical Center wished to speak next. He stated that the Derry Medical Center is 5-6 miles from the proposed site. He informed the Board that he saw in the newspaper that they met with the planning board the previous night and the article stated that Convenient MD will have 20 day wait times. He then stated that DMC patients get seen within 2 hours. He added that DMC is a patient centered facility. He stated that there is no need in the area for this service and feels it is not a cost saver to the system. Mr. Dickens then stated that he agrees that they are not a PCP and not urgent care and that he would like to collaborate. Ms. Smith then stated that the Board recently approved an NSR in Salem just 4 miles from this site.

At this time, Mr. Wallace made a motion to approve NSR 12-07 to Convenient MD LLC to establish outpatient clinic in Windham, NH with the condition that they submit the final project costs. Mr. Martin seconded the motion. Ms. Grabowski voted against the motion and the remaining Board members all voted in favor, thereby passing this agenda item on a vote of 6 to 1 in favor.

5. Determination of May 1, 2012 Radiation Therapy RFA Issuance

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the Board must determine a need in order to issue an RFA for Radiation Therapy Services effective May 1, 2012. She stated that letters of intent were due to the HSPR office by April 1, 2012 and none have been received. She added that the HSPR staff evaluation concerning the need formula for additional units was enclosed in the Board packet for consideration and based upon the data received, and the lack of interest, HSPR staff recommends that this RFA not be issued at this time.

Mr. Wallace made a motion to not issue the May 1, 2012 Radiation Therapy RFA. Ms. Underwood seconded the motion and the motion was unanimously approved.

6. Approve Initial Proposal, He-Hea 208.07 – Intervention Rule Amendment

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier explained that following up on the Board's direction at the March 2012 meeting, rule He-Hea 208.07 Intervention was amended to clarify the requirements for the Board's authority when determining the granting of a request for intervention. She stated that the Board must approve this initial proposal of the rule to pursue rulemaking for adoption.

Mr. Wallace pointed out that the letters in the draft rule were out of order. Ms. Carrier explained that this was done for rulemaking and the final filing will have the correct order.

At this time, Mr. Wallace made a motion to approve the initial proposal for He-Hea 208.07 Intervention. Ms. Proulx seconded the motion. All remaining Board members voted in favor and this agenda item was approved unanimously.

7. Approve Final Proposal, He-Hea 700 - Physical Rehabilitation Rules

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the final proposal for the He-Hea 700 Physical Rehab rules needed to be approved by the Board. He added that the amendments incorporate the recommendations made by JLCAR staff on this rule, and relate mostly to clarifications pertaining to the use of the Marshall and Swift resource. The Board must approve this rule to continue the rulemaking process.

Ms. Underwood stated that she reviewed the rule and the comments from JLCAR and finds the rule complete.

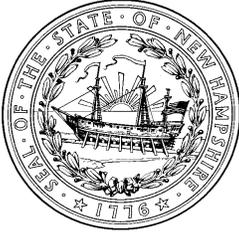
With no further Board discussion, Ms. Underwood made a motion to approve the final proposal of He-Hea 700, Physical Rehabilitation rule. Mr. Martin seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

8. Approve Final Proposal, He-Hea 800 – Inpatient Psychiatric Facilities

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the final proposal of the He-Hea 800 Psychiatric rules was included in the Board packet and the amendments incorporate the recommendations made by JLCAR staff on this rule, and mirror those of the He-Hea 700 rules. He noted the because of the rather pointed JLCAR comment regarding the Fiscal Impact Statement on this rule, HSPR staff has prepared a letter of response to this comment, which it believes will adequately address JLCAR's concerns; it is not possible to amend the FIS at this point. Mr. Peck stated that a draft copy of the HSPR response letter was included in the Board packet as well. He added that the Board must approve this rule to continue the rulemaking process.

With no Board discussion, Mr. Wallace made a motion to approve the final proposal of the He-Hea 800 Inpatient Psychiatric Facilities rules. Ms. Underwood seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

HEALTH SERVICES PLANNING AND REVIEW



May 17, 2012
9:30 a.m.
Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Mr. Christopher Martin, Ms. Maria Proulx, Esq.,
Ms. Lori Underwood and Mr. Nicholas Vailas

Excused: Ms. Deb Grabowski and Mr. John Wallace

Staff Members: Ms. Cindy Carrier and Ms. Angel McFetridge

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve April 19, 2012 Board Meeting Minutes**
- **Findings of Fact – St. Joseph Hospital, AC 11-05, \$7,531,000**
- **Approve NSR 12-08 – Salem Surgery Center, Renovations/Purchase Endoscopy Equipment, \$207,330**

Discussion: Chair Vailas asked Ms. Carrier to introduce the consent agenda. Ms. Carrier stated that the minutes from the April 19, 2012 Board meeting needed to be approved, as well as the findings of fact for St. Joseph Hospital, AC 11-05 and NSR 12-08 for the Salem Surgery Center for renovations and the purchase of endoscopy equipment. He then asked if any of the Board members had an issue with the items on the consent agenda, as they would require removal from the consent agenda.

Mr. Chase then made a motion to approve the consent agenda. Ms. Underwood seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. Determination of June 1, 2012 Mobile PET RFA Issuance

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that to date, no letters of interest have been received relative to this RFA. She stated that HSPR staff recommends that no RFA be issued effective June 1, 2012 unless a request is received by May 25, 2012 (allowing sufficient time for posting of the public notice).

Ms. Underwood made a motion to not issue the June 1, 2012 Mobile PET RFA unless a request is received by May 25, 2012. Mr. Chase seconded the motion. The motion was unanimously approved by all Board members.

3. Determination of June 1, 2012 Acute Care Bed Need

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier referred to the HSPR staff evaluation regarding the need for additional acute care beds and explained that due to data issues, HSPR staff is unable to perform an accurate bed need analysis; staff therefore recommends that the Board take no action at this time. She stated that when the data becomes available staff will bring this matter back before the Board for consideration.

Ms. Proulx made a motion to take no action on the 6/1/12 Acute Care Bed need determination. Ms. Underwood seconded the motion. All Board members voted in favor and the motion was unanimously approved.

4. St. Joseph Hospital – Change of Scope Request CON AC 11-05, \$5,263,000

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that St. Joseph Hospital submitted a change of scope request related to its recently approved CON AC 11-05 as it received additional monies from its parent to be used to convert semi-private rooms. She noted that this change of scope does not directly relate to CON AC 11-05, which was a project for ED renovation; therefore, staff requested that SJH address application standards applicable to need, healthcare system, medically underserved and quality so that the change of scope could be integrated into the original CON. She stated that staff recommends that the same conditions be placed on the change of scope as those on the CON. Ms. Carrier then suggested that the Board consider drafting and adopting rules for the change of scope process so that a standard is in place to uniformly evaluate all applications.

At this time, Mr. Richard Plamondon, CFO, Ms. Kathy Cowette, Director of Planning, Ms. Melissa Sears, VP Strategic Planning, St. Joseph Hospital and Attorney Andrew Eills, Legal Counsel came forward to provide testimony.

Chair Vailas stated that by not doing a new CON and attaching it to the previous one will save costs and expedite the process. Attorney Eills stated that he agreed that the rules are vague but the statute is clear that nature and scope can be different for a CON, it's unusual but allowed.

Ms. Sears stated that the project involves capturing space to make patient rooms; clerical, pharmacy, records and administrative offices have already moved to vacant space. She added that the timing is unusual but the parent company had released additional funds allowing SJH to do this additional project. She stated that the private rooms will allow SJH to house people

separately due to gender and infection issues. Ms. Sears explained that there is no increase in beds as the beds will just be moved and the construction is minimal. Ms. Proulx asked if the rate will stay the same for private and semi-private rooms. Ms. Cowette answered that there will not be a rate increase. Ms. Proulx asked if SJH could supply a list of charges. Ms. Cowette stated that they could. Chair Vailas stated that he is in favor of granting SJH the change of scope request as it will save money, there's no increase in charges, it makes sense. Ms. Proulx stated that she didn't disagree but suggested addressing the Board's change of scope rules. Chair Vailas stated that they could set up a subcommittee.

Mr. Steve Marion, from the audience, stated that Dartmouth Hitchcock gets a CON every few years and asked if they should just do a change of scope instead. Chair Vailas stated that if the decision was his they wouldn't have to come before the Board. Ms. Proulx stated that she is not suggesting a subcommittee but maybe staff could look at the history and do some preliminary research. Chair Vailas stated that staff could bring research before the Board. He added that he doesn't want the Board to stand in the way of hospitals providing better care for their patients. Ms. Proulx stated that the Board is setting a precedent and without a rule to fall back on the process becomes arbitrary. She pointed out that the Board has the ability to set standards. She added that the Board has the ability to change the process. Ms. Underwood asked if the Board approves the change of scope if it changes the timeline for SJH. Ms. Carrier stated that they could ask for extensions but the risk is on the applicant to complete the project.

Mr. Chase then made a motion to approve the change of scope request for St. Joseph Hospital AC 11-05 with the conditions that SJH provide the list of patient room charges and any changes in funding as noted in the original CON. Ms. Underwood seconded the motion. All Board members voted in favor and this agenda item was unanimously approved.

5. Other Administrative Business

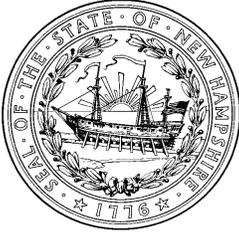
- Ms. Carrier stated that the next meeting of the Board is scheduled for Thursday, June 21, 2012.
- She stated that JLCAR will be meeting Friday, May 18, 2012 to hear the He-Hea 700 and He-Hea 800 rules. Ms. Carrier and Mr. Peck will attend.
- Ms. Carrier provided an update on the current legislation regarding the CON Board. She stated that the Senate has amended HB1617 and that the moratorium was renewed until 2014 and the Board will sunset in 2018.
- She requested that the Board decide which meeting to skip this summer and stated she would not be available for the July 19, 2012 meeting date. The Board will make a determination at its June meeting.

A motion to adjourn the meeting was made by Mr. Martin and seconded by Ms. Underwood; the meeting was adjourned at approximately 10:04 a.m.

Signature: _____ /S/ 6/21/2012
Nicholas Vailas
HSPR Board Chair

Approved by _____
HSPR Board: _____
Date

HEALTH SERVICES PLANNING AND REVIEW



June 21, 2012
9:30 a.m.
Board Meeting

Merrimack County Nursing Home
325 Daniel Webster Hwy
Boscawen, NH 03303

Meeting called by: Mr. Nicholas Vailas, Chair **Note Taker:** HSPR Staff

Type of meeting: Certificate of Need - Board Meeting

Attendees: Mr. Robert Chase, Ms. Deb Grabowski, Mr. Christopher Martin, Ms. Maria Proulx, Esq., Mr. Nicholas Vailas, and Mr. John Wallace

Excused: Ms. Lori Underwood

Staff Members: Ms. Cindy Carrier, Ms. Angel McFetridge, Mr. Jeffery Peck and Ms. Patricia Thibeault

Chair Vailas opened the meeting at 9:30 a.m.

Ms. Carrier then conducted a general swearing-in of audience members planning to testify at the meeting.

1. Consent Agenda

- **Approve May 17, 2012 Board Meeting Minutes**
- **Holton Point Assisted Living (Genesis Healthcare) – NSR Request for Minor Renovations, \$40,000**

Discussion: Chair Vailas introduced this agenda item. Ms. Proulx noted a correction to the minutes. She stated that on the last page her question was whether the charges were the same for private and semi-private rooms, and requested that the correction be made.

Mr. Chase then made a motion to approve the consent agenda with the correction to the minutes. Mr. Martin seconded the motion. All Board members voted in favor of the motion, unanimously approving the consent agenda.

2. Public Hearing –Greenbriar Terrace CON LTC 12-01, \$5,470,508

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that the Board will hear the long term care application proposed by Greenbriar Terrace of Nashua, NH, for a renovation project. She stated that this application was submitted under the

exception to the statutory moratorium that allows a CON to be issued for “construction or renovation as necessary to repair or refurbish an existing facility” (RSA 151-C:4,III(a)). She explained that HSPR staff concludes that while Greenbriar is eligible for a CON at this time, there is concern over the 16-month delay in submission of this application (November 2010 – March 2012); during this time the project continued, and now 73% of the project total has already been expended. Staff respectfully requests that the Board discuss this issue with Greenbriar at the hearing, and determine whether a violation of the statute occurred that could result in a sanction.

Mr. John Getts, Executive Director and Ms. Colleen Flynn, Assistant Executive Director came forward at this time. Mr. Getts explained that Greenbriar began renovations to the rehab area, the lobby and the dining room and this was below the threshold. He stated that more money became available from Kindred and at that time Greenbriar knew the project would be over the threshold. He added that there is no increase in square footage or beds. He explained that the original building was built in 1963.

Chair Vailas asked how New Hampshire’s nursing home costs compare to other states. Mr. Getts responded that the costs are lower compared to Maine, Vermont and Massachusetts. Mr. Wallace stated that he is concerned that Greenbriar proceeded with the project without an approved application, and asked what they understood the process to be. Mr. Getts explained that the project was in process. Ms. Flynn added that they didn’t realize there was a deadline, since Ms. Carrier had informed them that there was no deadline. Mr. Wallace asked them why they thought it was permissible for them to go ahead with the project without submitting an application. Ms. Flynn answered that they ran into unexpected issues such as asbestos abatement.

Ms. Proulx stated that she shared Mr. Wallace’s concerns and feels that Greenbriar should follow the same process as everyone else. Mr. Getts stated that they would’ve stopped the project if they were told to but that they were never advised to stop. Mr. Chase stated that he understands the need for refurbishments but doesn’t understand why it would take a year and a half to submit an application. Mr. Getts responded that no timeframes were given to him. Ms. Grabowski stated that she shares the concern but doesn’t think that they intentionally gamed the system. She added that the Board needs to review its process. Mr. Wallace asked what they thought would happen if the Board ultimately denied the project. Mr. Getts replied that he had no idea. Mr. Martin stated that it might appear that no one was harmed; however, other providers are affected by the increase in Greenbriar’s reimbursement due to budget neutrality. He suggested granting the CON but not allowing the increased reimbursement from the Medicaid system. Mr. Wallace stated that he is conflicted as there was no intent to violate the statute, and staff may not have adequately explained the consequences. Ms. Proulx stated that the staff does not represent the applicant and Greenbriar could have used their own counsel. She added that there is not enough clarity in the rule.

There was no public testimony and the public hearing was closed at approximately 10:17 am.

At this time, Mr. Wallace made a motion to approve the Greenbriar Terrace CON LTC 12-01, in the amount of \$5,470,508, with a fine of \$100,000 for violating the statute. Chair Vailas stated that the fine amount was way out of bounds. Ms. Proulx asked what would be a reasonable fine amount. Chair Vailas suggested a \$10,000 fine, and Mr. Chase suggested the amount it would cost to seek counsel to assist with the application. Ms. Susan Palmer Terry from the audience explained that she charges \$15,000 to write an application and then there would be a \$10,000 charge for other representation. Mr. Wallace revised his motion to set the fine at \$25,000; Mr.

Chase seconded the motion. Chair Vailas and Mr. Martin voted against the motion; thus the motion passed with a vote of 4 to 2.

3. Adopt He-Hea 700 Physical Rehabilitation Rules

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that the Joint Legislative Committee on Administrative Rules (JLCAR) approved the Board's He-Hea 700 rule at its May 18, 2012 meeting. He informed the Board that they must now vote to adopt this rule so that it can be filed and made effective.

Ms. Proulx made a motion to adopt the He-Hea 700 physical rehabilitation rules. Mr. Chase seconded the motion. All Board members voted in favor and the motion was unanimously approved.

4. Adopt He-Hea 800 Inpatient Psychiatric Rules

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that JLCAR also approved the Board's He-Hea 800 rule at the same May 18, 2012 meeting and let the Board know that they must vote to adopt this rule so that it can be filed and made effective. He then noted the letter from Cottage Hospital that was included in the Board packet relating to this rulemaking event. He reminded the Board that Cottage approached the Board in December 2011 seeking the promulgation of an inpatient psychiatric bed rule so that it might participate in an RFA and offer a 10-bed unit to patients of the North Country. He stated that at this time, however, Cottage has determined that it will not move forward with its proposal, due to financial risk. Mr. Peck stated that it will be good to have this rule on the books for future applicants.

Mr. Wallace made a motion to adopt the He-Hea 800 Inpatient Psychiatric Rules at this time. Mr. Chase seconded the motion. All Board members voted in favor and the motion was unanimously approved.

5. Public Hearing – He-Hea 208.07 Intervention Rules

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that at this time, the Board will hear testimony in support of and opposition to the proposed amendment to the Board's Practice and Procedure rule regarding Intervention, He-Hea 208.07. He noted that HSPR has not received any edits or comments from JLCAR, but will address them when they arrive.

At this time, Attorney John Malmberg came forward to provide testimony. He stated that the removal of the 3 day deadline concerns him and is a serious disadvantage. An applicant won't know about an intervenor ahead of time and would be "ambushed" by an intervenor at the hearing. He added that notice is needed ahead of time.

Ms. Carrier stated that RSA 541-A:32 is referenced, just not repeated in the rule. Mr. Wallace added that the 3 day deadline was not intended to change but rather trying to conform the rule to the statute. Ms. Grabowski questioned the issue of email copies or hard copies and specifying deadlines pertaining to such. Attorney Malmberg added that there should be a standard to explain why the submission is late and what relief is available for missing the deadline. Chair Vailas suggested tabling the discussion and bringing back a recommendation to the next Board meeting. Ms. Carrier stated that staff can amend the rule to approve at the

next meeting. Mr. Wallace stated that “days” means calendar days and suggested stepping back and reviewing the rule further.

Ms. Carrier stated that staff would wait 7 days after the hearing to see if any comments come in and will bring suggestions back to the next Board meeting.

The public hearing was closed at 10:30 am.

6. Determine Issuance of August 1, 2012 Acute Care RFA (He-Hea 1005.01)

Discussion: Chair Vailas asked Mr. Peck to introduce this agenda item. Mr. Peck stated that in order to support a finding of need to issue this RFA, letters of intent must be received from acute care hospital providers indicating potential interest in initiating construction/renovation projects in excess of \$2,974,891. He stated that HSPR staff has mailed a notice to all hospital administrators informing them of this process and the deadline for submission. In addition, a notice was sent to the HSPR electronic mailing list, and is also posted on eStudio. Mr. Peck explained that because the Board may not meet in July 2012, this RFA is being addressed at this time, staff anticipates sending a reminder notice during July to ensure interested parties will not miss the submission deadline of July 26, 2012 (to allow time for newspaper posting). Mr. Peck stated that at this time one letter of intent from Mary Hitchcock Memorial Hospital has been received; therefore staff requests that the Board issue the RFA based on the submission from MHMH.

Mr. Wallace asked if the Board had ever not issued an acute care RFA in the past. Ms. Carrier responded that the acute care RFA has always been issued.

Mr. Wallace then made a motion to issue the August 1, 2012 Acute Care RFA based on the letter of intent from Mary Hitchcock Memorial Hospital. Mr. Martin seconded the motion. All Board members voted in favor and this motion was unanimously approved.

Chair Vailas announced a ten minute break at this time.

7. Report Presentation: Understanding Hospital Costs in NH

Discussion: Chair Vailas invited Ms. Susan Palmer Terry to come forward to present the findings to the Board from her report entitled “Understanding Hospital Costs in NH”. Ms. Palmer Terry explained that she was hired by the NH Insurance Department to dissect the hospital costs throughout the State of NH. She stated that the purpose was to identify the costs of hospitals health care systems in NH and inventory health care systems. She referenced hospital economics, external factors, costs and charges, Medicaid and Medicare reimbursement, commercial insurance, competition among hospitals, charity care and bad debt, collaboration, payor mix and CON. She spoke briefly on each subject.

8. Board Discussion: Change of Scope Analysis

Discussion: Chair Vailas asked Ms. Carrier to introduce this agenda item. Ms. Carrier stated that as directed by the Board at its last meeting, HSPR staff presents an analysis of the Change of Scope process allowed under RSA 151-C:12, IV. She stated that this analysis includes a review of the change of scope requests that have been approved by the Board since 2001;

these have been categorized to facilitate discussion. Ms. Carrier explained that recommended amendments to Board rules are also included regarding this procedure, as well as additional topics for consideration when implementing a rule change. Ms. Carrier stated that HSPR staff has developed a form for the change of scope process; however, it is not supported by the rule and cannot be enforced until the rule is changed. She stated that changes of scope have been handled on a case by case basis. Ms. Carrier recommended making changes to the Board's practice and procedure rules to formalize the change of scope process. She stated that a subcommittee is recommended. Ms. Maria Proulx volunteered to chair the subcommittee with Ms. Carrier guiding it. Ms. Grabowski stated that she thought this is a good place to begin as other areas also need attention, and also stated her willingness to serve on the subcommittee. Staff will follow up to establish a meeting date.

9. Other Administrative Business

- Mr. Peck stated that the next meeting of the Board is scheduled for Thursday, July 19, 2012 but HSPR staff suggests canceling and meeting in August.
- HB1617 – this amended bill was approved by the Legislative Committee of Conference with an expiration of the CON program in 2015; a 2014 extension of the moratorium on long term care and rehabilitation beds was added to HB1658. Both Houses passed the amendment by voice vote on June 6, 2012.
- We bid a fond farewell to Board member John Wallace, who is retiring from state service after a long career. Ms. Katja Fox will replace Mr. Wallace as the Commissioner's Designee on the HSPR Board – our best to you, John!

A motion to adjourn the meeting was made by Mr. Chase and seconded by Mr. Wallace; the meeting was adjourned at approximately 11:25 a.m.

Signature:

Nicholas Vailas
HSPR Board Chair

Approved by
HSPR Board:

Date