

July 6, 2017

Ron Escarda
Fairfax Behavioral Health System
10200 N.E. 132nd Street
Kirkland, WA 98034

Re: NEWCO Oregon, Inc., Final Decision on CN Application #675

Dear Mr. Escarda:

The Oregon Health Authority (OHA), Public Health Division, Certificate of Need Program is tasked with reviewing and making decisions on certificate of need applications. ORS 442.315(4).

On January 5, 2016, NEWCO Oregon, Inc. (NEWCO), a wholly owned subsidiary of Universal Health Services, Inc. (UHS), DBA Willamette Valley Behavioral Health, filed an application with the required fee for a 100-bed freestanding psychiatric hospital to be located at 9500 SW Day Road in Wilsonville, pursuant to ORS 442.315(1) and (3). The application was determined to be complete on October 20, 2016 and review began on October 21, 2016. A public meeting was held on November 17, 2016.

OHA issued a proposed decision on February 24, 2017. NEWCO and Ann Kasper, an affected party requested an informal hearing. An informal hearing was held on March 17, 2017 and the following individuals testified: Ann Kasper, Ron Escarda (NEWCO), Frank Fox (NEWCO), Rob Minor (NEWCO), Nicole Knudsen (SEIU), and Ryan Pfeffer (SEIU). OHA initially kept the record of the informal hearing open until March 27, 2017, however based on a request from the applicant OHA re-opened the informal hearing record until May 5, 2017. During the informal hearing process NEWCO and Legacy Health submitted additional written materials. The materials submitted during the informal hearing process are incorporated by reference into the record. OHA's reply to NEWCO's informal hearing responses is attached as Exhibit 9 and incorporated by reference.

The CN process is governed by a number of rules adopted by OHA under ORS 442.315(2), found at Oregon Administrative Rules (OAR) 333, Divisions 545 through 670. The burden

of proof for justifying need and the viability of the proposal rests with the applicant, NEWCO. OAR 333-580-0000(8). In order for a CN to be granted, OHA must find that NEWCO satisfied all the criteria in OAR 333-580-0040 to 333-580-0060. The criteria incorporate the applicable service-specific methodologies and standards in OAR 333, Divisions 590 (Demonstration of Need for Acute Inpatient Beds and Facilities); and the applicable service-specific methodologies and standards in Division 615 (Demonstration of Need for Psychiatric Inpatient Beds). OAR 333-580-0030(1).

OHA makes findings and bases its decision on the extent to which the applicant demonstrates the criteria and standards referenced in OAR 333-580-0030(1) are met. Criteria will be considered to have been met if the applicant can demonstrate that the questions posed in the criteria can be answered in the affirmative. OAR 333-580-0030(2).

DECISION

OHA denies the NEWCO application. OHA finds that NEWCO has not met its burden of proof for justifying the need for a 100-bed inpatient psychiatric bed facility. This decision is based on the application and accompanying documents, the agency record, including information submitted by affected parties during this process, information submitted during the informal hearing process, the staff analysis, attached and incorporated by reference and OHA exhibits 1-11, attached and incorporated by reference. The summary below is intended to highlight some of the key reasons OHA has reached this decision, but the summary is not intended to limit the broad basis upon which the decision is based.

SUMMARY OF FINDINGS AND ANALYSIS

As stated above, in order to grant a CN application, the applicant must submit facts and documentation that support a finding that the criteria for a CN have been met.

I. Need for the Proposed Facility: OAR 333-580-0040¹

1. Criterion: Does the service area population need the proposed project? OAR 333- 580-0040(1).

OHA Findings: No, the service area population does not need the proposed project.

This criterion requires the applicant to use particular indicators and specific standards and methodologies to determine the appropriate service area and to determine whether there is a need for both general acute care beds and psychiatric beds within the service area.

The applicant has not met its burden with regard to either identifying the population to be served or the bed-need within the proposed service area. The applicant has proposed a service area that for general acute care beds is too large given the likely market share. With

¹ Only the applicable criteria in the CN rules are called out in the summary.

regard to the service area for psychiatric beds, the proposed tri-county area of Multnomah, Washington and Clackamas Counties is also too large and the more appropriate service area would be a single county service area.

The applicant concedes there is no need for general acute care beds in its identified service area. In determining whether there is a need for inpatient psychiatric beds, there is a preference under the state law that these beds be in local community hospitals. OAR 333-615-0020. In addition, the applicant must meet its burden of showing why there are not alternative ways to meet the need for psychiatric services, other than inpatient beds. The applicant has not met its burden for the all the reasons more fully set out in the attached analysis, but in sum:

- The state is concentrating efforts on community-based care for the mentally ill and de-emphasizing hospitalization.
- The opening of the Unity Center in Portland, with a psychiatric emergency department will alleviate the need for transfers to a new inpatient psychiatric facility.
- There is no foreseeable general inpatient bed need in the service area.
- The applicant has not demonstrated that there is a lack of alternatives to its proposal.
- There is a lack of support from Coordinated Care Organizations (CCOs) for the proposed project.

2. Criterion: Will the proposed project result in an improvement in patients' reasonable access to services? OAR 333-580-0040(3).

OHA Findings: The proposed project will not result in an improvement in patients' reasonable access to services.

This criterion looks at issues related to the accessibility of the facility, including traffic patterns; restrictive admissions policies; access to care for public-paid patients; and restrictive staff privileges or denial of privileges.

The applicant's main focus for the need for this project and for why it will improve patients' reasonable access to services, is the issue of the "boarding" of individuals with mental illness in hospital emergency departments and the high occupancy rates at existing hospitals with psychiatric beds. The reliance on this issue is misplaced. ED boarding is an issue that Oregon must address, given the United States Department of Justice (USDOJ) Performance Plan, but the solution is not an additional free-standing inpatient psychiatric hospital in this service area. OHA commissioned the College of Public Health and Human Sciences at Oregon State University to author an ED Boarding Report in response to the USDOJ's plan, to identify ways in which the state will work to reduce incidents of ED boarding. They include but are not limited to expanding comprehensive community-based mental health resources for persons with severe mental illness; expanding the availability of ED alternatives such as crisis centers or psychiatric emergency centers like the new Unity Center in Portland; increasing alternatives to inpatient beds such as sub-acute beds and residential services; expanding community mental health services to reduce the number of psychiatric ED visits; addressing specific challenges for

pediatric populations; and providing supportive services, such as housing in the community. Reasonable access to services for patients is best met by community based solutions such as preventative and crisis services that can help patients remain in the community and avoid expensive hospitalizations. The focus on community-based mental health services and a continuum of care for individuals with mental illness is an approach supported by many of the affected parties involved in this matter.

Based on information provided by Legacy Health, Providence Health and Services-Oregon, and Kaiser Permanente, affected parties, patients that rely on public funding make up at least half of the current population of individuals that need psychiatric inpatient care. This project will not improve access for patients, including patients that rely on public funding to pay for mental health services, for a number of reasons:

- Under current Oregon law, a free-standing inpatient psychiatric hospital with more than 16 beds cannot bill Medicaid and therefore NEWCO would provide minimal services to this population.
- The proposed facility is not readily accessible by public transportation which is more likely to be the mode of transportation for patients with limited means.
- The proposed facility would not have an emergency department which often serves as a safety net for individuals without health insurance or who are under-insured.
- Oregon is investing in mental health promotion and prevention in the community as a means of avoiding the need for expensive hospitalization, shortening stays and alleviating the high use of EDs.
- As a freestanding psychiatric hospital, NEWCO will not provide comprehensive medical care and will exclude many medically compromised patients, often the most expensive and difficult patients to treat.

II. Availability of Resources and Alternative Uses of Those Resources: OAR 333-580-0050

1. Criterion: Does the proposed project represent the most effective and least costly alternative, considering all appropriate and adequate ways of meeting the identified needs? OAR 333-580-0050(1).

OHA Findings: No, the proposed project is not the most effective and least costly alternative considering all appropriate and adequate ways of meeting identified needs.

This criterion requires an applicant to do the following:

- Demonstrate that the best price for the proposal has been sought and selected;
- Demonstrate that proposed solutions to identified needs represent the best solution from among reasonable alternatives, both internal alternatives and external alternatives;
- Demonstrate:
 - Why approval of the application will not constitute unnecessary duplication of services;

- Why the proposal is an efficient solution to identified needs;
- Why the proposal represents the most effective method of providing the proposal; and
- That the applicant can provide this proposal at the same or lower cost to the patient than is currently available.
- If the applicant cannot demonstrate why the application will not be an unnecessary duplication of services, is not an efficient solution, is not the most effective method, or that the proposal cannot provide services at the same or a lower costs to patients, the applicant must show that without the proposal, the health of the service area population will be seriously compromised.
- Demonstrate that the identified needs of the population to be served cannot be reasonably served under current conditions, or by alternative types of service or equipment or equal quality to the proposal.

This finding is based in large part on the reasons stated above regarding why there is not a demonstrated need for this proposal and why the proposal will not result in an improvement in patients' reasonable access to care, namely:

- There is a move in Oregon to decrease the need for inpatient psychiatric beds.
- Development of a stand-alone 100 bed inpatient psychiatric hospital that did not result from a larger broad based planning effort is not the most effective or the least costly alternative for providing psychiatric services in part because it reduces the state's ability to invest in community-based care.
- The proposal would add unneeded beds resulting in unnecessary duplication of services in the highest cost setting as hospital care is the most expensive level of care in the mental health system.

In addition, the proposed project would not meet current rule requirements that child and adolescent units be physically and visually separated from each other and from adult units.

2. Criterion: Will sufficient qualified personnel, adequate land, and adequate financing be available to develop and support the proposed project? OAR 333-580-0050(2).

OHA Findings: This criterion is not met. There is adequate land and adequate financing, but other hospitals have had difficulty finding psychiatrists and other staff to provide psychiatric care.

A few of the affected parties that provide in-patient psychiatric care report difficulty hiring and keeping qualified staff. It is likely that NEWCO would have similar difficulties, but in addition the creation of this proposed facility would undermine the ability of community-based hospitals to recruit necessary staff. The applicant failed to provide persuasive support for the proposition that it will be able to adequately staff the proposed hospital with sufficient qualified personnel, a necessary component of ensuring safe quality care.

3. Criterion: Will the proposed project have an appropriate relationship to its

service area, including limiting any unnecessary duplication of services and any negative financial impact on other providers? OAR 333-580-0050(3).

OHA Findings: No, NEWCO will not have an appropriate relationship with its service area, will result in an unnecessary duplication of services and will have a negative financial impact on other providers.

This criterion requires the applicant to identify the extent to which the proposal and its alternatives are currently being offered to the identified service area population, or in the case of acute inpatient beds, could be offered on the basis of an analysis under OAR 333, Division 590. The applicant must address any negative impact the proposal will have on those presently offering or reimbursing for similar or alternative services. The applicant must also demonstrate that all necessary support services and ancillary services for the proposal are available at acceptable levels to insure that patients will have the necessary continuity in their health care.

As noted previously, the applicant has not met its burden of establishing that the proposed hospital will result in an improvement in patients' reasonable access to services. There are inpatient psychiatric beds available in the service area and concerted efforts underway to provide lower cost and more effective community-based alternatives designed to prevent the need for hospitalization and to shorten lengths of stay. Institutional care is very expensive and prevention and crisis response services that avoid the need for hospitalization and shorten lengths of stay will save money for patients, families, payers such as insurance companies and government, and for the general public. Money spent on inpatient care diverts money from favored community-based alternatives.

A new, stand alone, 100-bed psychiatric hospital, located in the suburbs of Portland without adequate access to public transportation, lacking an emergency room and not resulting from a larger broad-based planning effort does not appear to have an appropriate relationship to its service area. The proposed facility would add unneeded beds resulting in an unnecessary duplication of services.

Since comprehensive medical care will not be available at the facility, patients who require emergency care beyond the scope of the facility's scope of services will not be able to access its services. These patients are often the individuals most acutely in need of services and are also often the most costly patients to treat. If this facility were to be approved, the burden of caring for these patients will fall on existing community-based hospital inpatient psychiatric units and have a negative impact on these providers. Additionally, lack of an emergency room in combination with its location means that the proposed hospital is less likely to serve individuals without health insurance or who are under-insured. This will also have a negative impact on the existing community-based providers.

Insured patients using the proposed facility will be those who would otherwise be treated by existing community hospital inpatient psychiatric units thereby resulting in a diminished contribution from commercially insured patients thus negatively impacting existing providers.

4. Criterion: Does the proposed project conform to relevant state physical plant standards, and will it represent any improvement in regard to conformity to such standards, compared to other similar services in the area? OAR 333-580-0050(4).

OHA Findings: The proposed project does not conform to relevant physical plant standards and for this reason, is not an improvement in regard to conformity to such standards.

NEWCO's floor plans and additional information provided by the applicant show that following items are not compliant with OHA's Physical Environment Oregon Administrative Rules (OAR 333, Division 535):

- No visual separation is provided between adolescent and geriatric cohorts as required by OAR 333-535-0061 (8)(d);
- No visually functional windows are provided in patient rooms as required by OAR 333- 535-0025 (1)(c); and
- No age appropriate spaces are provided as required by OAR 333-535-0061 (8)(a) since some required spaces are shared between adolescent/geriatric cohorts and some between adolescent/adult/geriatric cohorts.

III. Economic Evaluation: OAR 333-580-0060

1. Criterion: Is the financial status of the applicant adequate to support the proposed project, and will it continue to be adequate following implementation of the project? OAR 333- 580-0060(1).

OHA Findings: Yes, this criterion is met.

See Analysis, Section II.C

2. Criterion: Will the impact of the proposal on the cost of health care be acceptable? OAR 333-580-0060(2).

OHA Findings: No the impact of NEWCO on the cost of health care is not acceptable.

Under this criterion the applicant must:

- Discuss the impact of the proposal both on overall patient charges at the institution and on charges for services affected by the project;
- Show what the proposal's impact will be on the gross revenues and expenses per inpatient day and per adjusted patient day;
 - When a health service is affected by the proposal, an applicant must demonstrate what impact the proposal will have on related patient charges and operating expenses.
- Discuss both the proposed or actual charges for the proposed service and the

profitability of the proposed service, compared to other similar services in the state (if any);

- Discuss the projected expenses for the proposed service, and demonstrate the reasonableness of these expense forecasts;
- Discuss the architectural costs of the proposal.

While OHA believes that NEWCO has met its burden of showing that this project is financially feasible and profitable, that profit will come at a cost to existing community hospitals providing psychiatric care, and will not provide a reasonable alternative to the patient population that most needs inpatient psychiatric care.

As explained more fully in the Analysis (attached) the payor mix was not identified by the applicant. However, looking at Cedar Hills Hospital, the other for-profit inpatient psychiatric facility in Oregon, owned by the same company as NEWCO, its Medicaid portion as a percentage of total discharges was two percent. Medicaid patients make up 50 percent or more of the population of inpatient psychiatric patients across the geographic area. It is unclear whether Medicaid patients would be admitted to NEWCO, but if not, this could result in a shift in payor mix seen at other facilities in the area.

The applicant has not demonstrated that the proposed facility is needed or the most effective and least costly alternative considering all appropriate and adequate way of meeting the population's need for services. For the reasons previously discussed, the proposed facility would add unneeded inpatient hospital beds to the service area. Hospital care is the most expensive level of care in the-mental health system. Less costly and more effective alternatives to the building of more resource intensive inpatient psychiatric beds are preferable. Consequently, the impact of this proposal on the cost of health care is not acceptable.

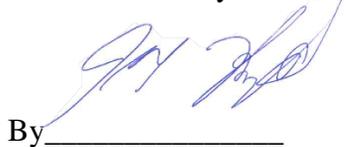
CONCLUSION

For all the reasons cited, above, and based on the more in-depth discussions in the attached Analysis, the Division finds that except for the financial criteria, NEWCO has not met its burden of demonstrating that the CN criteria can be met.

ORDER

IT IS THEREFORE ORDERED that a Certificate of Need is denied to the applicant, NEWCO Oregon, Inc., for a 100-bed freestanding psychiatric hospital to be located at 9500 SW Day Road in Wilsonville as set forth in its application.

Dated this 6th day of July, 2017.



By _____
Jere High, ND, Administrator
Center for Health Protection, Public Health Division, Oregon Health Authority

NOTICE:

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes). ORS 442.315. If you want a hearing you must file a written request for a hearing to OHA within **60 days from the date this notice was mailed**. In order for a hearing request that is mailed to be timely, it must be postmarked within 60 days from the date this notice was mailed. You may mail your request for hearing to the address below.

Dana Selover MD, MPH
Section Manager
Health Care Regulation and Quality Improvement
800 NE Oregon Street, Suite 465
Portland, OR 97232

If you request a hearing, you will be notified of the time and place of the hearing. You may be represented by legal counsel at the hearing. Legal aid organizations may be able to assist those with limited financial resources. Per ORS 413.041, a party that is not a natural person may be represented by an attorney or by any officer or authorized agent or employee of the party. OHA will be represented by an Assistant Attorney General. You will be provided information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing. Any hearing will be held by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

If a request for hearing is not received within this 60-day period, your right to a hearing under ORS chapter 183 shall be considered waived except as provided in OAR 137-003-0670(2). If you do not request a hearing within 60 days, if you withdraw a request for hearing, if you notify OHA or the administrative law judge that you will not appear, or if you fail to appear at a scheduled hearing, OHA may issue a final order by default on reconsideration denying your application. If OHA issues a final order on reconsideration by default, OHA designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purposes of proving a prima facie case upon default.

Notice to Active Duty Service members. Active duty service members have a right to stay proceedings under the federal Service members Civil Relief Act and may contact the Oregon State Bar at 1 (800) 452-8260 or the Oregon Military Department at 1 (800) 452-7500 for more information. The internet address for the United States Armed Forces Legal Assistance Locator website is <http://legalassistance.law.af.mil/content/locator.php>.