

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FMC HOSPITAL, LTD.,)
)
Petitioner,)
)
vs.) Case No. 96-4031
)
AGENCY FOR HEALTH CARE)
ADMINISTRATION and THE NORTH)
BROWARD HOSPITAL DISTRICT,)
d/b/a BROWARD GENERAL MEDICAL)
CENTER,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 28-31, and November 3, 1997, in Tallahassee, Florida, before Eleanor M. Hunter, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner FMC Hospital, Ltd:

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STATEMENT OF THE ISSUES

Whether the certificate of need application to convert 30 acute care beds to 30 adult psychiatric beds at Broward General Medical Center meets the statutory and rule criteria for approval.

PRELIMINARY STATEMENT

The North Broward Hospital District (NBHD) submitted a certificate of need (CON) application to the Agency for Health Care Administration (AHCA) in the first hospital batching cycle of 1996. In that application, NBHD proposed to convert 30 acute care beds to 30 adult psychiatric beds at Broward General Medical Center (Broward General). NBHD owns and operates Broward General in AHCA District 10, Broward County, Florida. AHCA reviewed and preliminarily decided to approve the application and to issue CON Number 8425 to the NBHD. See 22 Florida Administrative Weekly 29 (7/19/96). On August 9, 1996, FMC Hospital, Ltd. (FMC) filed a Petition for Formal Administrative Proceedings challenging the issuance of CON 8425. AHCA referred the Petition to the Division of Administrative

Hearings for formal hearing.

At the hearing, NBHD presented the testimony of Ruth Eldridge, expert in hospital administration; Michael Elwell, expert in mental health care program administration; Linda Berger, expert in health care planning and health care finance; Edward L. Hengtgen, Jr., expert in health care architecture; Mariamma Pyngolil, expert in mental health program development and administration; Sharon Gordon-Girvin, expert in health care planning; Timothy P. Menton, expert in hospital administration and health care finance; and Elizabeth Dudek, expert in health care planning who was also a witness for AHCA. NBHD's Exhibits 1-20 were received in evidence.

FMC presented the testimony of Margaret D. DeNarvaz, expert in hospital administration; Joanne Correia Kent, expert in psychiatric clinical operations, psychiatric program development, and psychiatric program administration; Merle Bass, expert in health care finance and accounting; and Patricia Greenberg, expert in health planning. FMC's Exhibits 1-11 were received in evidence.

The transcript of the hearing was received on November 21, 1997. Following the granting of a Motion for Extension of Time, the parties filed proposed findings of fact and conclusions of law on December 31, 1997.

FINDINGS OF FACT

1. The North Broward Hospital District (NBHD) is a special taxing district established by the Florida Legislature in 1951 to provide health care services to residents of the northern two-thirds of Broward County. NBHD owns and operates four acute care hospitals: Coral Springs Medical Center, North Broward Medical Center, Imperial Point Medical Center (Imperial Point), and Broward General Medical Center (Broward General). NBHD also owns

and/or operates primary care clinics, school clinics, urgent care centers, and a home health agency.

2. FMC Hospital, Ltd., d/b/a Florida Medical Center (FMC) is a 459-bed hospital with 74 inpatient psychiatric beds, 51 for adults separated into a 25-bed adult unit and a 26-bed geriatric psychiatric unit, and 23 child/adolescent psychiatric beds. FMC is a public Baker Act receiving facility for children and adolescents and operates a mental health crisis stabilization unit (CSU) for children and adolescents. FMC also operates separately located facilities which include a partial hospitalization program, an adult day treatment program, and a community mental health center. At Florida Medical Center South, FMC operates another day treatment program and partial hospitalization program.

3. The Agency for Health Care Administration (AHCA) is the state agency which administers the certificate of need (CON) program for health care services and facilities in Florida.

4. The NBHD applied for CON Number 8425 to convert 30 acute care beds to 30 adult psychiatric beds at Broward General. Broward General operates approximately 550 of its total 744 licensed beds. It is a state Level II adult and pediatric trauma center and the tertiary referral center for the NBHD, offering Level II and III neonatal intensive care, pediatric intensive care, cardiac catheterization and open heart surgery

services. Broward General has 68 adult psychiatric beds and is a public Baker Act receiving facility for adults.

5. Public Baker Act receiving facilities have state contracts and receive state funds to hold involuntarily committed mental patients, regardless of their ability to pay, for psychiatric evaluation and short-term treatment. See Subsections 394.455(25) and (26), Florida Statutes. Although they serve different age groups, both FMC and Broward General are, by virtue of contracts with the state, public Baker Act facilities. When a Baker Act patient who is an indigent child or adolescent arrives at Broward General, the patient is transferred to FMC. FMC also typically transfers indigent Baker Act adults to Broward General.

6. At Broward General, psychiatric patients are screened in a separate section of the emergency room by a staff which has significant experience with indigent mental health patients. If hospitalization is appropriate, depending on the patient's physical and mental condition, inpatient psychiatric services are provided in either a 38-bed unit on the sixth floor or a 30-bed unit on the fourth floor of Broward General.

7. In July 1995, Broward General also started operating a 20-bed mental health CSU located on Northwest 19th Street in Fort Lauderdale. Prior to 1995, the County operated the 19th Street CSU and 60 CSU beds on the grounds of the South Florida State Hospital (SFSH), a state mental hospital. Following an investigation of mental health services in the County, a grand

jury recommended closing the 60 CSU beds at SFSH because of "deplorable conditions." In addition, the grand jury recommended that the County transfer CSU operations to the NBHD and the South Broward Hospital District (SBHD). As a result, the SBHD assumed the responsibility for up to 20 CSU inpatients a day within its existing 100 adult psychiatric beds at Memorial Regional Hospital.

8. The NBHD assumed the responsibility for up to 40 CSU inpatients a day, including 20 at the 19th Street location. The additional 20 were to be redirected to either the 68 adult psychiatric beds at Broward General or the 47 adult psychiatric beds at Imperial Point.

9. CSU services for adult Medicaid and indigent patients in the NBHD service area were transferred pursuant to contracts between the NBHD and Broward County, and the NBHD and the State of Florida, Department of Children and Family Services (formerly, the Department of Health and Rehabilitative Services). Based on the agreements, the County leases the 19th Street building in which Broward General operates the CSU. The County also pays a flat rate of \$1.6 million a year in monthly installments for the salaries of the staff which was transferred from the County mental health division to the NBHD. The County's contract with the NBHD lasts for five years, from December 1995 to September 2000. Either party may terminate the

contract, without cause, upon 30 days notice.

10. The State contract, unlike that of Broward County, does not provide a flat rate, but sets a per diem reimbursement rate of approximately \$260 per patient per day offset by projected Medicaid revenues. The State contract is renewable annually, but last expired on June 30, 1997. The contract was being re-negotiated at the time of the hearing in November 1997. Based on actual experience with declining average lengths of stay for psychiatric inpatients, the contract was being re-negotiated to fund an average of 30, not a maximum of 40 patients a day.

11. If CON 8425 is approved, NBHD intends to use the additional 30 adult psychiatric beds at Broward General to meet the requirements of the State and County contracts, while closing the 19th Street CSU and consolidating mental health screening and stabilization services at Broward General. NBHD proposes to condition the CON on the provision of 70 percent charity and 30 percent Medicaid patient days in the 30 new beds. By comparison, the condition applicable to the existing 68 beds requires the provision of 3 percent charity and 25 percent Medicaid. When averaged for a total of 98 beds, the overall condition would be 23.5 percent charity and 26.5 percent Medicaid, or a total of 51 or 52 percent.

12. The proposed project will require the renovation of

10,297 gross square feet on the fourth floor of Broward General at a cost of approximately \$450,000. The space is currently an unused section of Broward General which contains 42 medical/surgical beds. Twelve beds will be relocated to other areas of the hospital. The renovated space will include seclusion, group therapy, and social rooms, as well as 15 semi-private rooms. Twelve of the rooms will not have separate bathing/showering facilities, and seven of those will also not have toilets within the patients' rooms.

Need in Relation to State and District
Health Plans - Subsection 408.035(1)(a), Florida Statutes

13. The District 10 allocation factors include a requirement that a CON applicant demonstrate continuously high levels of utilization. The applicant is given the following evidentiary guidelines:

- a. patients are routinely waiting for admissions to inpatient units;
- b. the facility provides significant services to indigent and Medicaid individuals;
- c. the facility arranges transfer for patients to other appropriate facilities; and
- d. the facility provides other medical services, if needed.

14. Broward General does not demonstrate continuously high utilization by having patients routinely waiting for admission. Broward General does meet the other criteria required by allocation factor one.

15. The second District 10 allocation factor, like criterion (b) of the first, favors an applicant who commits to serving State funded and indigent patients.

16. Broward General is a disproportionate share Medicaid provider with a history of providing, and commitment to continue providing, significant services to Medicaid and indigent patients. In fact, the NBHD provides over 50 percent of both

indigent and Medicaid services in District 10. See also
Subsection 408.035(1)(n), Florida Statutes.

17. Allocation factor three for substance abuse facilities is inapplicable to Broward General which does not have substance abuse inpatient services.

18. Allocation factor 4 for an applicant with a full continuum of acute medical services is met by Broward General. See also Rule 59C-1.040(3)(h), Florida Administrative Code.

19. Broward General complies with allocation factor 5 by participating in data collection activities of the regional health planning council.

20. The state health plan includes preferences for (1) converting excess acute care beds; (2) serving the most seriously mentally ill patients; (3) serving indigent and Baker Act patients; (4) proposing to establish a continuum of mental health care; (5) serving Medicaid-eligible patients; and (6) providing a disproportionate share of Medicaid and charity care. Broward General meets the six state health plan preferences. See also Rule 59C-1.040(4)(e)2., Florida Administrative Code, and Subsection 408.035(1)(n), Florida Statutes.

21. Broward General does not meet the preference for acute care hospitals if fewer than .15 psychiatric beds per 1000 people in the District are located in acute care hospitals. The current ratio in the District is .19 beds per 1,000 people. Rule 59C-1.040(4)(3)3, Florida Administrative Code, also

requires that 40 percent of the psychiatric beds needed in a district should be allocated to general hospitals. Currently, approximately 51

percent, 266 of 517 licensed District 10 adult inpatient psychiatric beds are located in general acute care hospitals.

22. On balance, the NBHD and Broward General meet the factors and preferences of the health plans which support the approval of the CON application. See also Rule 59C-1.040(4)(e)1. and Rule 59C-1.030, Florida Administrative Code.

Numeric Need

23. The parties stipulated that the published fixed need pool indicated no numeric need for additional adult inpatient psychiatric hospital beds. In fact, the numeric need calculation shows a need for 434 beds in District 10, which has 517 beds, or 83 more than the projected numeric need. In 1994-1995, the District utilization rate was approximately 58 percent.

24. The NBHD asserts that the need arises from "not normal" circumstances, specifically certain benefits from closing the 19th Street CSU, especially the provision of better consolidated care in hospital-based psychiatric beds, and the establishment of a County mental health court.

25. The NBHD acknowledges that AHCA does not regulate CSU beds through the CON program and that CSU beds are not intended to be included in the calculation of numeric need for adult psychiatric beds. However, due to the substantial similarity of services provided, NBHD contends that CSU beds are de facto

inpatient psychiatric beds which affect the need for CON-regulated psychiatric beds. Therefore, according to the NBHD, the elimination of beds at SFSH and at the 19th Street CSU require an increase in the supply of adult psychiatric beds. The NBHD also notes that approval of its CON application will increase the total number of adult psychiatric hospital beds in Broward County, but will not affect the total number of adult mental health beds when CSU and adult psychiatric beds are combined. After the CSU beds at SFSH closed, the total number of adult mental health beds in the County has, in fact, been reduced.

26. NBHD projected a need to add 30 adult psychiatric beds at Broward General by combining the 1995 average daily census (ADC) of 48 patients with its assumption that it can add up to 10, increasing the ADC to 58 patients a day in the existing 68 beds. Based on its contractual obligation to care for up to 40 CSU inpatients a day, the NBHD projects a need for an additional 30 beds.

27. The projection assumed that the level of utilization of adult inpatient psychiatric services at Broward General would remain relatively constant. With 40 occupied beds added to the 48 ADC, NBHD predicted an ADC of 88 in the new total of 98 beds, or 90 percent occupancy.

28. The assumption that the ADC would remain fairly

constant is generally supported by the actual experience with ADCs of 48.1, 51.5, and 45.8 patients, respectively, in 1995, 1996, and the first seven months of 1997. NBHD's second assumption, that an ADC of 40 CSU patients will be added is not supported by the actual experience. Based on the terms of the State and County contracts, up to 20 CSU patients have already been absorbed into the existing beds at the Imperial Point or Broward General, which is one explanation for the temporary increase in ADC in 1996, while up to 20 more may receive services at the 19th Street location. In 1996 and 1997, the ADC in the 19th Street CSU beds was 15.3 and 14.2, respectively, with monthly ranges in 1997 from a high of 17 in April to a low of 12 in June. The relatively constant annual ADCs in psychiatric and CSU beds are a reflection of increasing admissions but declining average lengths of stay for psychiatric services.

29. The NBHD also projects that it will receive referrals from the Broward County Mental Health Court, established in June 1997. The Court is intended to divert mentally ill defendants with minor criminal charges from the criminal justice system to the mental health system. Actual experience for only three months of operations showed 7 or 8 admissions a month with widely varying average lengths of stay, from 6 to 95 days. The effect of court referrals on the ADC at Broward General was

statistically insignificant into the fall of 1997. Newspaper reports of the number of inmates with serious mental illnesses do not provide a reliable basis for projecting the effect of the mental health court on psychiatric admissions to Broward General, since it is not equipped to handle violent felons.

30. One of Broward General's experts also compared national hospital discharge data to that of Broward County. The results indicate a lower use rate in Broward County in 1995 and a higher one in 1996. That finding was consistent with the expert's finding of a growth in admissions and bed turnover rate which measures the demand for each bed. The expert also considered the prevalence of mental illness and hospitalization rates. The data reflecting expected increases in admissions, however, was not compared to available capacity in the County nor correlated with declining lengths of stay.

31. The District X: Comprehensive Health Plan 1994 includes an estimate of the need for 10 CSU beds per 100,000 people, or a total of 133 CSU beds needed for the District. FMC argues that the calculation is incorrect because only the adult population should be included. Using only adults, FMC determined that 116 CSU beds are needed which, when added to 434 adult psychiatric beds needed in the February 1996 projection, gives a bed need for all mental health beds of 550. That total is less than the actual combined total number of 567 mental

health beds, 517 adult psychiatric beds plus 50 CSU beds in 1995. Whatever population group is appropriate, the projection of the need for CSU beds is not reliable based on the evidence that, since the end of 1995, CSU services have been and, according to NBHD, should continue to be absorbed into hospital-based adult psychiatric units. For the same reason, the increase in adult psychiatric bed admissions from 1995 to 1996 does not establish a trend towards increasing psychiatric utilization, but is more likely attributable to the closing of CSU beds at SFSH.

32. FMC's expert's comparison of data from three selected months in two successive years is also not sufficient to establish a downward trend in utilization at the 19th Street CSU, neither is the evidence of a decline in ADC by one patient in one year. Utilization is relatively static based on ADCs in existing Broward County adult psychiatric beds and in CSU beds. FMC established Broward General's potential to decrease average lengths of stay by developing alternative non-inpatient services as FMC has done and Broward General proposes to do. See Finding of Fact 37.

33. Based on local health council reports, FMC's data reflects a rise in the ADC at Broward General to 52.7 in 1996, and a return to 46 in the first seven months of 1997. Using a 14.2 ADC for the 19th Street CSU, FMC projects that Broward

General will reach an ADC of approximately 60 in the first year of operations if the CON is approved, not 88 as projected.

34. Broward General acknowledged its capacity to add 10 more patients to the ADC without stress on the system. Having already absorbed 20 of up to 40 CSU patients at Imperial Point and Broward General in 1996 and 1997 resulting in an ADC of 48, and given the capacity to absorb 10 more, the NBHD has demonstrated a need to accommodate an ADC of 10 more adult psychiatric patients at Broward General, or a total ADC of 68 patients. The need to add capacity to accommodate an additional 10 patient ADC was not shown to equate to a need for 30 additional beds, which would result in an ADC of 68 patients in 98 beds, or 69 or 70 percent occupancy.

Special Circumstances - Rule 59C-1.040(4)(d)

35. The psychiatric bed rule provides for approval of additional beds in the absence of fixed numeric need. The "special circumstance" provision applies to a facility with an existing unit with 85 percent or greater occupancy. During the applicable period, the occupancy at Broward General was 74.15 percent. However, occupancy rates have exceeded 95 percent in the CSU beds on 19th Street.

36. If up to 20 patients on 19th Street are added to the 48 ADC at Broward General, the result is that the existing 68 beds will be full. A full unit is operationally not efficient

or desirable and allows no response to fluctuations in demand. Therefore, the state has established a desirable standard of 75 percent occupancy for psychiatric units, a range which supports the addition of 10 to 15 psychiatric beds at Broward General.

Available Alternatives - Subsection 408.035(1)(b)
and (d), Florida Statutes, and Rule 59C-1.040(4)(e)4.,
Florida Administrative Code

37. The psychiatric bed rule provides that additional beds will "not normally" be added if the district occupancy rate is below 75 percent. For the twelve months preceding the application filing, the occupancy rate in 517 adult psychiatric beds in District 10 was approximately 58 percent. FMC's expert noted that each day an average of 200 adult psychiatric beds were available in District 10. Broward General argues that the occupancy rate is misleading. Five of the nine facilities with psychiatric beds are freestanding, private facilities, which are ineligible for Medicaid participation. Historically, the freestanding hospitals have also provided little charity care. One facility, University Pavilion, is full.

38. Of the four acute care hospitals with adult psychiatric beds, Memorial Hospital in the SBHD, is not available to patients in the NBHD service area. Imperial Point, the only other NBHD facility with adult psychiatric beds, is not available based on its occupancy rate for the first seven months of 1997 of approximately 81 percent, which left an average of 9

available beds in a relatively small 47-bed unit. That leaves only Broward General and FMC to care for Medicaid and indigent adult psychiatric patients. FMC is the only possible alternative provider of services, but Broward General was recommended by the grand jury and was the only contract applicant. The occupancy rate in FMC's 51 adult beds was approximately 80 percent in 1995, 73 percent in 1996, and 77 percent for the first seven months in 1997. FMC has reduced average lengths of stay by having patients "step down" to partial hospitalization, day treatment and other outpatient services of varying intensities. The same decline in average lengths of stay is reasonably expected when Broward General implements these alternatives.

39. Adult psychiatric services are also accessible in District 10 applying the psychiatric bed rule access standard. That is, ninety percent of the population of District 10 has access to the service within a maximum driving time of forty-five minutes.

40. The CSU license cannot be transferred to Broward General. Broward County holds the license for CSU beds which, by rule, must be located on the first floor of a building. Although Broward General may not legally hold the CSU license and provide CSU services on the fourth floor of the hospital, there is no apparent legal impediment to providing CSU services

in psychiatric beds.

Quality of Care - Subsection 408.035(1)(c), Florida Statutes
and Rule 1.040(7), Florida Administrative Code

41. Broward General is accredited by the Joint Commission on Accreditation of Health Care Organizations. The parties stipulated that Broward General has a history of providing quality care. Broward General provides the services required by Rule 59C-1.040(3)(h), Florida Administrative Code.

Services Not Accessible in Adjoining Areas;
Research and Educational Facilities; Needs of HMOs;
Services Provided to Individuals Beyond the District;
Subsections 408.035(1)(f),(g),(j), and (k), Florida Statutes

42. Broward General does not propose to provide services which are inaccessible in adjoining areas nor will it provide services to non-residents of the district. Broward General is not one of the six statutory teaching hospitals nor a health maintenance organization (HMO). Therefore, those criteria are of no value in determining whether this application should be approved.

Economics and Improvements in Service from
Joint Operation - Subsection 408.035(1)(e), Florida Statutes

43. The consolidation of the psychiatric services at Broward General is reasonably expected to result in economies and improvements in the provision of coordinated services to the mentally ill indigent and Medicaid population. Broward General will eliminate the cost of meal deliveries and the transfer of

medically ill patients, but that potential cost-saving was not quantified by Broward General.

Staff and Other Resources - Subsection 408.035(1)(h),
Florida Statutes

44. The parties stipulated that NBHD has available the necessary resources, including health manpower, management personnel, and funds to implement the project.

Financially Feasibility - Subsection 408.035(1)(h) and (i),
Florida Statutes

45. The parties stipulated that the proposed project is financially feasible in the immediate term. The estimated total project cost is \$451,791, but NBHD has \$500,000 in funds for capital improvements available from the County and \$700,000 from the Florida Legislature. As stipulated by the parties, NBHD has sufficient cash on hand to fund the project.

46. Regardless of the census, the County's contractual obligation to the NBHD remains fixed at \$1.6 million. The State contract requires the prospective payment of costs offset by expected Medicaid dollars. If the number of Medicaid eligible patients decreases, then state funding increases proportionately. The state assumed that 20 percent of the patients would qualify for Medicaid, therefore it reimburses the per diem cost of care for 80 percent of the patients. One audit indicated that 30 percent of the patients qualified for Medicaid, so that State payments for that year were higher than needed. The State contract apparently makes no provision to recover excess payments.

47. The application projects a net profit of \$740,789 for the first year of operations, and a net profit of \$664,489 for the second year. If the State contract with NBHD is renewed to contemplate an average of 30 patients per day as opposed to up to 40 patients per day, then annual revenue could be reduced up to \$400,000. Projected net profit will, nevertheless, exceed expenses when variable expenses are reduced correspondingly.

48. If 20 state funded patients are already in psychiatric beds, and 20 more could be transferred from 19th Street, the result is an ADC of 68. Based on the funding arrangements, there is no evidence that the operation of a total of 98 beds could not be profitable, even with an ADC of 68, although it would be wasteful to have 30 extra beds.

Impact on Competition, Quality Assurance
and Cost-Effectiveness - Subsection 408.035(1)(1),
Florida Statutes

49. With a maximum of 68 inpatients or more realistically, under the expected terms of a renegotiated State contract, 58 to 60 inpatients in 98 beds, Broward General will reasonably attempt to expand the demand for its inpatient psychiatric services. Within the NBHD's legal service area, one-third of adult psychiatric patients not admitted to Broward General are admitted to FMC.

50. Assuming a proportionate impact on competitors, FMC's expert projected that one-third of approximately 30 unfilled

beds at Broward General will be filled by patients who would otherwise have gone to FMC. The projection of a loss of 9 patients from the ADC of FMC is reasonably based on an analysis showing comparable patient severity in the most prevalent diagnostic category. Given the blended payor commitment of approximately 51 or 52 percent total for Medicaid and charity in 98 beds, Broward General will be able to take patients from every payor category accepted at FMC.

51. The loss of 9 patients from its ADC can reduce revenues by \$568,967 at FMC. The impact analysis is reasonably based on lost patient days since most payers use a per diem basis for compensating FMC. For example, although Medicare reimbursement is usually based on diagnosis regardless of length of stay, it is cost-based for the geriatric psychiatric unit. Net profit at FMC, for the year 1996-1997, was expected to be approximately \$4.5 million.

52. FMC will also experience increased costs in transporting indigent patients from FMC to Broward General for admission and treatment. Because of the additional distance, the cost to transfer indigent patients is \$20 more per patient from FMC to Broward General than it is from FMC to the 19th Street CSU. FMC typically stabilizes indigent adult psychiatric inpatients, then transfers them to either the 19th Street CSU or Broward General. From March through September of 1997, FMC

transported approximately 256 indigent patients from FMC to the 19th Street CSU.

53. In terms of quality assurance, the consolidation of psychiatric services at Broward General will allow all patients better access to the full range of medical services available at Broward General.

54. The NBHD's operation of the 19th Street CSU is profitable. Approval of the CON application should reasonably eliminate all costs associated with operation of the 19th Street facility, and shift more revenues from the State and County contracts to Broward General. Some savings are reasonably expected from not having meal deliveries to 19th Street or patient transfers for medical care. The NBHD did not quantify any expected savings.

Costs and Methods of Construction
- Subsection 408.035(1)(m), Florida Statutes

55. Broward General will relocate 12 of 42 medical/surgical beds and convert 30 medical/surgical beds to 30 adult psychiatric beds on one wing of the fourth floor, which is currently unused. Fifteen semi-private medical/surgical patient rooms will be converted into semi-private adult psychiatric rooms. Existing wards will be converted to two social rooms, one noisy and one quiet. With the removal of the walls of some offices, the architect designed a group therapy room. An

existing semi-private room will be used as a seclusion room. Of the fifteen semi-private rooms, twelve will not have bathing or showering facilities and seven will not have toilets within the patients' rooms. At the time the hospital was constructed, the state required only a lavatory/sink in each patient room. AHCA's architect agreed to allow Broward General to plan to use central bathing and toilet facilities to avoid additional costs and diminished patient room sizes. Because the plan intentionally avoids construction in the toilets, except to enlarge one to include a shower, there is no requirement to upgrade to Americans With Disabilities Act (ADA) standards. Therefore, the \$23,280 construction cost contingency for code compliance is adequate.

56. Although the projected construction costs are reasonable and the applicable architectural code requirements are met, the design is not the most desirable in terms of current standards. Patient privacy is compromised by the lack of toilets for each patient room.

Past and Proposed Provision of Services to Promote
a Continuum of Care in a Multi-level System -
Subsection 408.035(1)(o), Florida Statutes

57. Broward General is a tertiary acute care facility which provides a broad continuum of care. Because it already operates the CSU and provides CSU services in adult psychiatric beds, the proposal to relocate patients maintains but does not

further promote that continuum of care. Broward General's plan to establish more alternatives to inpatient psychiatric care does promote and enhance its continuum of care.

Capital Expenditures for New Inpatient Services -
Subsection 408.035(2), Florida Statutes

58. Broward General is not proposing to establish a new health service for inpatients, rather it is seeking to relocate an existing service without new construction. The criteria in this Subsection are inapplicable.

Factual Conclusions

59. Broward General did not establish a "not normal" circumstance based on the grand jury's findings and recommendations. The grand jury did not recommend closing 19th Street facility. Broward General did generally establish not normal circumstances based on the desirability of consolidating mental health services at Broward General to provide a single point of entry and to improve the quality of care for the 19th Street facility patients.

60. Broward General failed to establish the need to add 30 beds to accomplish the objective of closing the 19th Street facility. Although the existing beds at Broward General may reasonably be expected to be full as a result of the transfer of 19th Street patients, the addition of 30 beds without sufficient demand results in an occupancy rate of 69 or 70 percent, from an

ADC of 68 patients in 98 beds. Broward General has requested approximately twice as many beds as it demonstrated it needs.

61. Broward General's CON application on balance satisfies the local and state health plan preferences. In general, FMC is the only alternative facility in terms of available beds, but is not the tax-supported public facility which the grand jury favored to coordinate mental health services. Broward General meets the statutory criteria for quality of care, improvements from joint operations, financial feasibility, quality assurance, cost-effectiveness, and services to Medicaid and indigent patients.

62. The proposal is not the most desirable architecturally considering current standards. More importantly, Broward General did not demonstrate that it can achieve its projected occupancy without an adverse impact on FMC. The NBHD proposal will add too many beds to meet the targeted state occupancy levels in relatively a static market.

63. Broward General's application does not include a partial request for fewer additional beds which would have allowed the closing of 19th Street, while maintaining some empty

beds for demand fluctuations and avoiding an adverse impact on FMC.

CONCLUSIONS OF LAW

64. The Division of Administrative Hearings has jurisdiction over the subject matter of and parties to this proceeding pursuant to Subsections 120.57(1) and 408.039(5), Florida Statutes.

65. As the applicant, the NBHD has the burden of demonstrating its entitlement to the CON based on a balanced consideration of the statutory and rule criteria. Boca Raton Artificial Kidney Center v. Department of Health and Rehabilitative Services, 475 So. 2d 260 (Fla. 1st DCA 1985). Florida Department of Transportation v. JWC Company, Inc., 396 So. 2d 178 (Fla. 1st DCA 1981).

66. FMC has standing, pursuant to Subsection 408.039(5)(c), Florida Statutes, as an existing provider of adult inpatient psychiatric services in District 10 which will be substantially adversely affected by the issuance of CON 8425.

67. There is no fixed numeric need for psychiatric beds in District 10. The lack of numeric need is not determinative of the outcome of any CON case, particularly one like this in which "not normal" circumstances are demonstrated. Sarasota County Public Hospital Board v. Department of Health and Rehabilitative Services, 11 FALR 6248 (DHRS November 17, 1989).

68. The special or not normal circumstances demonstrated by the NBHD are the improvements in quality assurance and cost efficiency, the enhanced quality of services to mental health patients at Broward General, and the combined occupancy rates in the CSU and the adult psychiatric beds. See Rule 59C-1.040(4)(d), Florida Administrative Code; and Humana, Inc. v. Department of Health and Rehabilitative Services, 469 So. 2d 889 (Fla. 1st DCA 1985).

69. The proposal, is generally consistent with the factors and preferences in the district and state health plans, as required by Subsection 408.035(1)(a), Florida Statutes.

70. Broward General has a history of providing quality care and the range of services required for psychiatric patients, in compliance with Rule 59C-1.040(3)(h), Florida Administrative Code, and Subsection 408.035(1)(c), Florida Statutes.

71. Subsections 408.035(1)(f), (g),(j), and (k) are inapplicable or not met by Broward General. Without a competing applicant which is a teaching hospital or an HMO, those criteria do not assist in determining whether the CON should be issued.

72. Although not quantified, Broward General is reasonably expected to derive an economic benefit from providing psychiatric care at a single location, consistent with Subsection 408.035(1)(e), Florida Statutes.

73. NBHD has the resources to accomplish the proposed project and to operate it in a financially feasible manner in the immediate and long term. Subsections 408.035(1)(h), and (i), Florida Statutes.

74. The proposal to create excess capacity at Broward General is not the most cost-effective and will substantially and adversely affect that at FMC, which is inconsistent with Subsection 408.035(1)(l), Florida Statutes.

75. The design of the psychiatric unit is the least costly, but not the most effective in terms of patient care and privacy. Subsection 408.035(1)(m), Florida Statutes.

76. Broward General and NBHD have a commendable record of providing care to Medicaid and indigent patients, in compliance with Subsection 408.035(1)(n), Florida Statutes.

77. Broward General plans to expand alternatives to inpatient psychiatric care. Subsection 408.035(1)(o), Florida Statutes.

78. The addition of 30 beds at Broward General is not supported by the need to close 20 beds at the 19th Street CSU nor the speculative impact of the mental health court. Therefore, the proposal will not achieve the desired average annual occupancy rate of 75 percent, set in Rule 59C-1.040(4)(c)5., Florida Administrative Code.

79. The approval of beds in excess of those needed is

risky. That excess capacity can be detrimental to a worthy applicant in a future batching cycle. See Beverly Enterprises-Florida, Inc., etc. v. Agency for Health Care Administration, DOAH Case No. 92-6656 (F.O. 10/17/94).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration deny the application of the North Broward Hospital District for Certificate of Need Number 8425 to convert

30

medical/surgical beds to 30 adult psychiatric beds at Broward General Medical Center.

DONE AND ENTERED this 21st day of April, 1998, in Tallahassee, Leon County, Florida.

ELEANOR M. HUNTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of April, 1998.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.