STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARION COMMUNITY HOSPITAL, INC., d/b/a OCALA REGIONAL MEDICAL CENTER; CITRUS MEMORIAL HOSPITAL, INC., d/b/a CITRUS MEMORIAL HOSPITAL; AND MARION COMMUNITY HOSPITAL, INC., d/b/a WEST MARION COMMUNITY HOSPITAL,

Petitioners,

vs. Case No. 17-0554CON

MUNROE HMA HOSPITAL, LLC, d/b/a MUNROE REGIONAL MEDICAL CENTER AND AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondents.
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RECOMMENDED ORDER

Pursuant to notice to all parties, a final hearing was held in this case before the Honorable R. Bruce McKibben, Administrative Law Judge, on July 11 through 14 and 17 through 21, 2017, in Tallahassee, Florida. The purpose of the final hearing was to conduct a de novo review of the evidence, including but not limited to the approval, vel non, of CON Application Number 10449.

APPEARANCES

For Petitioners, Marion Community Hospital, Inc. d/b/a Ocala Regional Medical Center ("Ocala Regional"); Citrus Memorial Hospital, Inc. d/b/a Citrus Memorial Hospital ("Citrus Memorial"); and Marion Community Hospital, Inc. d/b/a West

Marion Community Hospital ("West Marion")(collectively, the "Petitioners"):

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For Respondent, Munroe HMA Hospital, LLC d/b/a Munroe Regional Medical Center ("Munroe Regional"):

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For Respondent, Agency for Health Care Administration ("AHCA" or the "Agency"):

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STATEMENT OF THE ISSUE

This proceeding involves Certificate of Need ("CON") application number 10449, submitted to the Agency by Munroe Regional, seeking to establish a 66-bed general acute care hospital in Marion County, Florida, District 3, Subdistrict 3-4. The nature of the controversy is whether, on balance, the CON application satisfies the applicable statutory and rule criteria and should be approved.

PRELIMINARY STATEMENT

Munroe Regional filed its CON application in the Hospital Beds and Facilities CON batching cycle of August 2016. AHCA issued a State Agency Action Report ("SAAR") addressing each of the CON applications filed in that cycle. The SAAR relating to Munroe Regional preliminarily recommended approval of CON 10449. The Agency's notice of preliminary approval was published in Volume 42, Number 234 of the Florida Administrative Register. The Petitioners jointly filed a detailed written statement of opposition ("DWSO") to Munroe Regional's approval in accordance with section 408.039(5)(c), Florida Statutes. (Unless otherwise specifically stated herein, all references to Florida Statutes will be to the 2017 version.) The Petitioners also, on December 23, 2016, filed a Petition for Formal Administrative Hearing with the Agency, challenging the preliminary approval of Munroe Regional's CON application. Munroe Regional filed an Answer to the Petition for Formal Administrative Hearing on January 9, 2017.

On January 23, 2017, the Petition for Formal Administrative Hearing was forwarded to the Division of Administrative Hearings ("DOAH") and assigned to Administrative Law Judge James H. Peterson. The case was subsequently transferred to the undersigned on April 17, 2017.

On June 26, 2017, Munroe Regional filed a motion in limine, seeking to limit certain evidence to be presented by Petitioners at final hearing. The motion was denied. On June 30, 2017, the parties submitted a Joint Pre-Hearing Stipulation setting forth their positions in this dispute and identifying their anticipated witnesses and exhibits. Munroe Regional listed 32 witnesses, plus impeachment witnesses, rebuttal witnesses, authenticating witnesses, all persons named or listed in CON application 10449, any witnesses named by other parties, and all witnesses deposed in this matter. Munroe Regional identified 246 exhibits, plus various general categories of other possible exhibits. The Agency named one witness and listed one Exhibit. Petitioners identified 29 witnesses, plus impeachment, rebuttal and authenticating witnesses, all witnesses named by any other party, and all witnesses deposed in this matter. They also listed 100 exhibits, plus categories of other possible exhibits.

At the final hearing, Munroe Regional called the following 11 witnesses: Patti Greenberg, accepted as an expert in healthcare and hospital planning and hospital finance; Ken Colen, president of On Top Of The World; Christopher Rison, senior planner, Marion County; Ryan Ott, president of TLC Management, Inc.; Kevin Sheilley, president and CEO of Ocala Chamber and Economic Partnership; Kevin McDonald; Patricia Gabriel; Rodney Mascho, division chief of Marion County Fire-

Rescue Emergency Medical Services ("EMS"); Erika Browne, RN, nurse manager of the Monroe Regional emergency department, accepted as an expert in emergency room nursing; Bob Moore, CEO of Munroe Regional, accepted as an expert in hospital administration; and Michael Pittman, EMS coordinator. Greenberg and Moore also testified in rebuttal. 181 of Munroe Regional's Exhibits were offered and accepted into evidence, including numbers: 1 through 3, 5 through 13, 15 through 27, 29 through 109, 130 through 135, 137 through 158, 163, 165 through 169, 172, 174 through 177, 180, 181, 183 through 192, 195 through 198, 201 through 203, 206 through 208, 212, 217, 219, 222, 224, 228, 229, 243, and 254 through 259.

AHCA called one witness, Marisol Fitch, supervisor of the CON Planning Unit at AHCA, accepted as an expert in health care planning and CON; AHCA's Exhibit 1 was accepted into evidence.

Petitioners called the following 10 witnesses: Ginger Carroll, CEO of West Marion, accepted as an expert in health care and hospital administration; Chad Christianson, CEO, Ocala Health/Ocala Regional, accepted as an expert in health care and hospital administration; Ralph Aleman, CEO, Citrus Memorial; Sydney Clevinger, chief medical officer, northern division of Hospital Corporation of America ("HCA"), accepted as an expert in family medicine; George Mavros, COO, Citrus Memorial, accepted as an expert in health care and hospital

administration; Bhadresh Patel, M.D.; Jon Voight, RN, accepted as an expert in nursing, nursing administration, and emergency services; Jonathan Thigpen, accepted as an expert in transportation engineering; Darryl Weiner, accepted as an expert in healthcare finance; and Gene Nelson, accepted as an expert in health planning. 33 of Petitioner's Exhibits were offered and accepted into evidence, including numbers: 2 through 9, 11 through 16, 18, 20, 22 through 26, 28, 29, 57, 58, 95, 96, 98, 101-1, and 102 through 105.

The Transcript of the final hearing, consisting of 15 volumes, was filed at DOAH on August 15, 2017. By agreement of the parties, proposed recommended orders ("PROs") were to be filed on or before September 29, 2017, and were to be no more than 50 pages. Due to Hurricane Irma and other events outside the control of the parties, the deadline was extended to October 16, 2017. Each of the parties timely filed a PRO for consideration.

FINDINGS OF FACT

(The following findings of fact are derived from the stipulation of the parties, the admitted exhibits, and the oral testimony at final hearing in this matter.)

Parties

1. AHCA is the state agency responsible for, inter alia, the review and approval (or denial) of CON applications. As

previously noted, AHCA made a preliminary decision to approve issuance of CON 10449 to Munroe Regional.

2. Munroe Regional is a 421-bed tertiary care hospital located in Ocala, Marion County, Florida, that offers inpatient, outpatient, medical, surgical, and emergency care. Its license covers both the 421-bed facility and a freestanding emergency department (known as TimberRidge) in the western part of Marion County. Munroe Regional is accredited by the Joint Commission on Accreditation of Healthcare Organizations and features a certified Chest Pain Center with specific accreditations for atrial fibrillation and heart failure. It is a general medical-surgical facility, including trauma care, obstetrics, pediatric services, surgery, neurosurgery, etc. It does not include care for burn patients, do transplants, or provide psychiatric services.

3. Munroe Regional was opened in 1898 as a county-owned, not-for-profit hospital. In 1901 the hospital moved to a three-story building located at the corner of Adams and Orange Street, now Northwest Second Street and First Avenue. The hospital was upgraded to a 73-bed facility in 1927, and that hospital space now serves as administrative offices. The expansion to 421 beds occurred in 2003, at which time Munroe Regional underwent a 200,000 square foot expansion. In 2013, Health Management Associates ("HMA") took over operation of Munroe Regional by way

of a long-term (40 year) lease. In 2014, HMA was acquired by Community Health Systems ("CHS"), a national for-profit healthcare provider. The acquisition by CHS was not well received by some hospital staff and there were many who decided not to work for the new owner, including a large number of nurses. Some of those nurses have since returned, but the exodus had some negative impact on Munroe Regional at the time.

4. Meanwhile, in 2002 Munroe Regional had opened TimberRidge, the first freestanding emergency department ("ED") in the State of Florida. TimberRidge is located at 9521 Southwest State Road 200, just west of the Ocala city limits. It has 12 examination rooms as well as four additional rooms utilized for treatment. TimberRidge is the second busiest ED in the state (second only to the facility located in Tallahassee).

5. When CHS took over operations, the lease agreement with the hospital obligated CHS to spend $150 million on major capital improvements and another $75 million in needed infrastructure improvements. CHS initially planned to construct a new bed tower on the current site of Munroe Regional. That plan was later changed, resulting in the plan to build a new hospital at the TimberRidge ED site. CHS determined that alternative to be a better way to improve service in the area.

6. TimberRidge is located in an area of Marion County generally referred to as the "200 Corridor," an area identified by State Road 200 as it goes from northeast to southwest in Marion County, starting at Interstate Highway 75 ("I-75"). I-75 is a federal highway which runs north and south through the center of Marion County, effectively dividing the county in half, east and west. The 200 Corridor is a rapidly growing area of west Marion County and includes a number of adult (age 55-plus) communities such as Top of the World, which has been approved for up to 36,000 lots for development. Although those lots have been "entitled" for development since 1972, only about seven thousand have actually been built out. There are several other age-restricted communities in the area as well, including Oak Run, Pine Run, Palm Cay, and Cherrywood Estates, to name a few. It is clear that the 200 Corridor is populated largely by middle-aged to elderly adults.

7. There was significant testimony at final hearing concerning recent population growth and expectations for the future. Although it is clear that Marion County is growing, the testimony was not persuasive as to whether that growth alone would not necessitate building another hospital in the county.

8. In 2016, Munroe Regional filed CON application number 10449, seeking approval of a new 66-bed general acute care hospital in Marion County, Florida. The hospital would be

located on the same site as TimberRidge. Its proposed primary service area would be zip codes 34481, 34476, 34473, 34432, and 34474 in District 3, Subdistrict 3-4. Its secondary service area would be zip codes 34442, 34431, 34482, and 34434.[1/] The proposed hospital would be a non-specialty/non-tertiary care facility. It would not include care in the area of obstetrics, newborns, psychiatry, substance abuse, burns, trauma, transplants, neurosurgery, or comprehensive medical rehabilitation.

9. Munroe Regional timely submitted a letter of intent, providing notice of its intent to file the aforementioned CON application number 10449. AHCA deemed the application to have satisfied, on balance, the statutory requirements for approval. Preliminary approval of the application was published in the Florida Administrative Register.

10. Ocala Health Systems operates Ocala Regional, an existing 222-bed general acute care hospital located in Marion County. Ocala Regional is a Level II trauma center. Ocala Health Systems also operates West Marion, an existing 94-bed acute care hospital also located in Marion County, and operates a free-standing ED in the southern portion of Marion County. Ocala Health Systems is an affiliate of Hospital Corporation of America ("HCA"). As both Ocala Regional and West Marion are operated by the same parent, the hospitals are much like a

single entity with two locations (exactly as Munroe Regional is proposing for TimberRidge).

11. Citrus Memorial is an existing 204-bed general acute care hospital located in District 3, Subdistrict 3-5, comprised of Citrus County. After experiencing operational and ownership difficulties beginning around 2008, Citrus Memorial began to decline. In 2014, HCA assumed operations of the hospital and began to make improvements. Citrus Memorial was experiencing very low utilization (around 50 percent) and its reputation in the community was poor. HCA has made strides in changing the community perception.

12. Each of the Petitioners, as existing providers in the same District, could be substantially affected by the approval of the Munroe Regional CON application. Each of the Petitioners has standing to challenge the preliminary approval of the CON to Munroe Regional.

Statutory Rule Criteria

Subsection 408.035(1)(a), Florida Statutes: The need for the health care facilities and health services being proposed

13. Munroe Regional raised several categories of facts that it suggests support the need for the proposed new hospital on the 200 Corridor. Those categories are, generally: 1) A large number of elderly persons living within close proximity to the proposed hospital; 2) Recent high occupancy rates at

existing hospitals in Marion County; 3) The potentially positive impact on EMS transports if another hospital existed in the county; and 4) The possible reduction of "wall times" and other delays in emergency rooms if the hospital is approved.[2/] Each of those areas will be discussed more fully below.

Elderly Population in the Service Area

14. The service area proposed by Munroe Regional for the new hospital would be primarily within the 200 Corridor, mostly in the age-restricted communities. However, the facility would be available to all residents of Marion County and surrounding areas.

15. There are approximately 146,000 residents living within the area designated by Munroe Regional as its anticipated primary service area. Of those, some 123,000 are adults, with more than 70,000 of those being elderly, i.e., over 65 years of age. It is axiomatic that elderly adults utilize hospital services more than others. That fact may also explain why there are so many medical and doctors' offices in the TimberRidge area. There are also other healthcare facilities in the service area, including a nursing home and a hospice. Several community representatives testified as to their desire to see a new hospital built on the 200 Corridor, but their testimony was not persuasive as to the "need" (versus the "want") for a new hospital. The witnesses described the location of the new

hospital as a convenience for local residents rather than addressing actual need. For example, Mrs. Gabriel frankly asserted that, "We would rather have [a hospital] right here in our own back yard." Transcript, Vol. 2, page 296.

16. Munroe Regional's witness, Mr. Ott, spoke of his company's involvement in building healthcare communities (assisted living facilities, nursing homes, etc.) in the rapidly growing area near TimberRidge. He noted, however, that such facilities had a singular goal of keeping people out of the hospital as much as possible. This militates against the addition of new hospital beds in Marion County.

17. There was no persuasive testimony that the mere existence of a large elderly population near the 200 Corridor warranted construction of a new hospital in that area.

Occupancy Rates at Existing Hospitals

18. Munroe Regional has experienced low occupancy rates during the last few years and it continues to decline. Prior to its acquisition by CHS in early 2014, the hospital's occupancy was around 67 percent. From April 2014 until December 2014, the occupancy averaged 63 percent. From January 2015 to December 2015, it was at 61 percent. And for calendar year 2016, the occupancy rate was at 56 percent. However, Munroe Regional asserts that calculation of occupancy is not a static event; there are many other factors that could be considered,

e.g., semi-private rooms may be utilized by a person with an infection, thereby making the other bed in the room inaccessible to another patient; rooms or entire units may be taken out of use during renovations (and Munroe Regional is in the midst of renovating its entire hospital, unit by unit); certain units may not be full, such as OB-GYN, but the beds within that unit are not available for other types of patients, etc. Although AHCA data show Munroe Regional's most recent occupancy rate to be around 56 percent, Munroe Regional calculates its "practical occupancy" to be in the range of 70 percent. And, if certain specialty units were omitted from consideration, Munroe Regional would say that its occupancy is close to capacity.

19. By comparison, the occupancy rates at Ocala Regional and West Marion were very high during the past three years. Though the testimony and evidence was contradictory in many regards, depending on which beds or patients were actually included, it is clear from the totality of the evidence that both hospitals operated at or near capacity for much of the time. There were periods during which West Marion operated at over one hundred percent of its capacity, indicating the rapid transition of patients on a given day.

20. The high occupancy at West Marion is being actively addressed by the hospital. West Marion first added 25 new beds, which went on-line in April 2015. There are 44 additional beds

which have been approved and will be available early in 2018. West Marion has also built an additional floor of "shelled in" space, which could house up to 48 additional medical surgical beds. That shelled-in space, however, has also been offered as space to house new comprehensive medical rehabilitation ("CMR") beds for which West Marion has applied, but the CON for those beds has not been approved by AHCA at this time. If approved, West Marion will look elsewhere for space to add additional medical surgical beds.

21. Ocala Regional begins to look at expansion when its inpatient occupancy reaches about 80 percent, exclusive of observation patients.[3/] 80 percent is a recognized level of "functional capacity" for a hospital in Marion County. In recognition of that loose standard and its present state of affairs, Ocala Regional will have a new 34-bed addition coming on line in late 2018. That addition will also contain 12 new beds in its ED and two new operating rooms. Though disputed by Munroe Regional, it seems logical the addition of those beds will reduce occupancy levels at Ocala Regional.

22. The data presented by Munroe Regional as to the two competing hospitals was not entirely persuasive as to whether the high occupancy rates at the other hospitals constituted need for another hospital. In total, the evidence supports the contention that occupancy rates were high, but nothing more.

23. Although Munroe Regional does not acknowledge the potential impact of its proposed new hospital on Citrus Memorial, it is clear from the evidence that Citrus Memorial has grave concerns about the proposed project. It is already difficult for Citrus Memorial to hire and retain professional staff; a new hospital in the area would further exacerbate that problem. The same is true concerning Citrus Memorial's patient census. Already suffering from low utilization, another hospital just 25 to 30 miles northwest of Citrus Memorial (and only a short drive from many residents of Citrus County) could have significant negative impact on the hospital. Occupancy rates at Citrus Memorial of around 60 percent over the past three years cannot be ignored. Its CEO noted that there is very little in-migration from other counties by persons seeking healthcare in Citrus County. However, many Citrus County residents out-migrate for healthcare services to surrounding counties. In contrast to Munroe Regional's position, Citrus Memorial sees its low occupancy as "room for growth" rather than "functional occupancy." All in all, Munroe Regional's dismissal of the potential negative impact on Citrus Memorial is not well taken.

24. Furthermore, the occupancy rate at Munroe Regional over the past three years effectively defuses its claim of need for a new hospital, especially one operated by the same

organization. As noted above, the evidence shows that a number of beds, even entire units, at Munroe Regional have been closed and out of use in the recent past. There is enormous capacity for additional patients at Munroe Regional, militating against approval of a new hospital in the subdistrict.

25. Though not a hospital, TimberRidge is also a very busy provider of healthcare services. Annually, TimberRidge cares for over 32,000 emergency patients, a number greater than half of the hospital-based EDs around the state. TimberRidge transfers about 2,500 patients per year to hospitals for in-patient care, around 8 to 10 patients a day. Most of those patients go to Munroe Regional. And, although Munroe Regional operates at a fairly low occupancy, TimberRidge reports that patients sometimes have to wait 8 to 10 hours for a bed to become available. If the CON is approved, TimberRidge will add 14 more emergency treatment rooms, presumably handling even more emergency patients.

Impact on EMS Transport

26. Emergency transport to hospitals in Marion County is provided by a single entity, the Marion County Fire-Rescue service. This service consists of three different departments: Dunnellon Fire-Rescue, a non-transport, basic life support ("BLS") service; Ocala Fire-Rescue, a non-transport advanced life support ("ALS") service; and Marion County Fire-Rescue, an

ALS entity that is both a non-transport unit and is the primary transportation provider for "scene calls," i.e., to pick up patients at the scene of an accident or event. There is another BLS transport provider in Marion County which is allowed to do minimal inter-facility transfers, but it is not authorized to transport from scenes or to emergency rooms. About 450 to 475 emergency medical technicians ("EMTs") and paramedics work within the system. It operates about 32 vehicles a day, seven days a week, on a regular basis, with some increase during peak season.[4/] The annual call volume for Marion County Fire-Rescue is about 70,000 to 75,000 calls; of that number about 45,000 to 47,000 result in persons being transported to a hospital. The medical director for Marion County Fire-Rescue is Frank Fraunfelter, who, coincidentally, also works with the Munroe Regional ED.

27. When a person is placed in an ambulance, he or she has the right to be transported to the hospital of their choice. If they do not have a preference or cannot make the decision, the transport will go to the nearest available hospital or ED. (Besides the freestanding TimberRidge ED, the Ocala Health System also operates a freestanding ED in the southeast quadrant of Marion County.) The patient's condition or malady may dictate where they are taken, regardless of their preference. For example, heart attack victims or stroke alert patients

usually require transport to the closest of either Munroe Regional, Ocala Regional, or West Marion. Trauma alert patients may only go to Ocala Regional. Pediatric trauma patients are sped to Shands, in Gainesville.

28. When responding to calls on the west side of I-75, EMT drivers say many patients do not want to go all the way "into town" for care. That leaves West Marion and TimberRidge as the available sites for delivery of the patient. Though there was some evidence to suggest that individuals prefer not to go all the way into town, i.e., to Munroe Regional or Ocala Regional, the evidence was not sufficient to establish that preference as an absolute fact.

29. Due to the layout of Marion County, it often takes EMS longer to transport patients from the western areas of the county to the two downtown hospitals. Another hospital located on the 200 Corridor would obviously cut down on their drive time for some patients (if the patient chose to go to that hosptial). The number of facility-to-facility transfers could also be reduced if patients at TimberRidge ED had the option to remain at the new hospital rather than being transferred to Munroe Regional.

30. The EMS drivers noted that it sometimes takes 20 to 30 minutes to reach the downtown hospitals (Munroe Regional and Ocala Regional), followed by 20 to 30 minutes waiting at the

hospital ED, plus 20 to 30 minutes to drive back to the station. The time spent at the hospital involves getting the hospital room assignment from the charge nurse, discussing the patient's status with the RN who will be taking over care of the patient, and getting the patient transferred to a hospital bed or gurney. The division chief of Marion County Fire-Rescue supports the addition of the hospital at TimberRidge, but it seems to be because it would be more advantageous to his business, i.e., not because there is a "need" for the hospital. He said, "I'd love to see a hundred more beds at each of the hospitals. More beds means they are off my stretcher; gets my truck back in service." Transcript, Vol. 3, page 392. His stated "preference" does not support need for a new hospital in the area.

31. While wall times and diversions have been a problem in Marion County for some time, the evidence suggests that the problem is less acute in recent months. Everyone involved seems to be working to eliminate delays. The EMS division chief noted, for example, that the addition of beds at West Marion has had a positive effect on transportation times. The additional beds coming on line at that hospital should further impact this improvement. So should the renovations of the EDs at Munroe Regional and Ocala Regional.

32. There was extensive testimony at final hearing concerning drive times and how long it took EMS to reach this

hospital or that. The testimony was not persuasive, as witnesses seemed to presuppose that all patients would be picked up at a location furthest from the hospital being discussed. For example, EMTs testified that it takes up to 30 minutes to get from the 200 Corridor to Ocala Regional or Munroe Regional. But the 200 Corridor is a fairly long stretch of road. It cannot possibly take "up to 30 minutes" for every patient, no matter where on the Corridor they were picked up. And, obviously, traffic patterns change; sometimes it is heavier than others. The drive time testimony seemed very speculative and unreliable.

33. One important issue became clear through testimony in this proceeding: As the single provider of transportation in the county, Marion County Fire-Rescue could relieve its busy schedule by allowing ALS facility-to-facility transfers to be done by a private entity. There does not seem to be an absolute need for Marion County Fire-Rescue ambulances (which are needed for emergency situations) to be utilized for such transfers. One reason is that EMS drivers consider facility-to-facility transfers to be rather mundane; they would prefer to transfer patients directly from the scene of an accident or event. (This was described as a "morale" issue for the drivers.) The issue has been addressed with Marion County Fire-Rescue by the county

hospitals, but it seems they are getting push-back from the EMS provider for some reason.

34. It also seems that having EMS testify concerning the need for a new hospital is, as one witness suggested, like the tail wagging the dog. Perhaps it should be Marion County Fire-Rescue adding additional stations or vehicles rather than building a new hospital costing up to $100 million dollars.

Reduction of Wall Times

35. Marion County, like many other areas within Florida and nationwide, has historically experienced chronic difficulties by EMS transporters (ambulances) in discharging of patients at hospitals in a timely fashion. Often, the driver of an ambulance must wait extended periods of time for a hospital to admit the patient or accept the patient into the hospital's care. This so-called "wall time" results in the EMT not being available to respond to other calls in the community. Wall times may exist for a number of reasons, including but not limited to: a major accident within the vicinity might require simultaneous treatment for numerous victims; an unforeseen spike in the number of persons needing treatment at one time; a natural calamity resulting in injuries; other hospital EDs being full, etc. A major factor faced by many hospitals is that there simply are not enough beds available within the hospital at certain times to which the ED patients could be admitted. The

patient, therefore, must occupy an ED bed, denying the use of the ED beds to later-arriving patients. This problematic situation is exacerbated by the common practice of uninsured people utilizing the ED as their private doctor's office. When those persons show up at an ED with a non-emergency complaint, they occupy space which would otherwise be available to treat patients brought in by EMS from accident sites or the like.

36. One method utilized by individual hospital EDs to reduce wall times is a process called "diversion." This simply means the hospital will contact the EMS provider and ask that all emergency patients be diverted to another hospital for a prescribed period of time, usually about an hour or two. The diversion allows the hospital to catch up on its existing patients before others are brought into the ED. Diversion is a commonly accepted means of dealing with ED overcrowding. There are some exceptions to a hospital's request for diversion. For example, patients suffering a heart attack or other similar problem will be sent to the nearest appropriate hospital, whether it is on diversion or not. And if two hospitals ask for diversion at the same time, then all hospitals are denied diversion. Diversion, however, is only applicable to patients who arrive at an ED by way of emergency transport, which is about 15 percent of the total ED patients. The great majority of patients, who arrive via other means (personal car, family,

friends, taxi, etc.) are accepted by the ED even if it is on diversion.

37. Munroe Regional is restructuring its ED, adding four additional beds (or bays) and reconfiguring the ED so that EMTs have better access to the area. The changes will also make it easier for nurses to maintain visual contact with the patients. The changes will make the process of safeguarding bays for psychiatric patients much faster and easier. These changes will have a positive impact on the ED and contribute to less wall time for EMTs.

38. After having the largest amount of time on diversion from July 2015 to June 2016, Munroe Regional has not gone on diversion for over one full calendar year. It has taken steps to improve its ED wall times. The low occupancy at Munroe Regional would seem to suggest that it would not have a problem finding ED patients a bed within the hospital, thus alleviating at least that one reason for going on diversion. But even though Munroe Regional has more vacant beds than other hospitals in the subdistrict, that fact does not automatically mean that it has more beds to which patients may be admitted. If the available beds are in an area of the hospital that is not appropriate for admission of an ED patient, the patient must still wait for an appropriate bed.

39. Still, one must wonder why a hospital operating at less than 60 percent occupancy would have trouble finding a bed for patients who are waiting in the ED. Munroe Regional provided no empirical data at final hearing as to the needs of its ED patients versus the kinds of open beds at the hospital, so a conclusion cannot be reached in that regard. By comparison, West Marion had the shortest wall times despite having the highest occupancy rate of the county hospitals. The correlation between census and delays is nebulous at best.

40. Munroe Regional's EMS coordinator confirmed the regular phenomenon of beds not being available for patients coming in through the emergency rooms, but acknowledged that the current closure of many units contributes to that problem. Also, Munroe Regional is in the process of renovating its emergency department, which should help alleviate some of the wall time problems.

41. Ocala Regional has shown the longest wall times of all hospitals in the county. Its high occupancy and downtown location contribute to that fact. The hospital has taken steps to reduce wall times and has made some progress. As the wall time issue continues to improve county-wide, Ocala Regional's wall times have decreased around 50 percent as well.

Subsection 408.035(1)(b): The availability, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant

42. All citizens have access to the existing hospitals and EDs in Marion County, as well as two facilities in surrounding counties. In the service area identified by Munroe County for its new hospital, the closest hospitals are, in geographic order, Marion West, Munroe Regional, Ocala Regional, and Citrus Memorial.

43. The occupancy rates at the existing hospitals are discussed above and need not be repeated here. Suffice to say that Munroe Regional is arguably not being utilized to the same extent of the other Marion County hospitals. Reasons for the lower utilization include the fact that Munroe Regional has several diverse medical units. Some beds in the open heart or neurosurgery units might be empty, while OB-GYN beds are needed. It is not possible to utilize beds in the former units to treat the latter patients. Thus, beds remain empty even as beds are needed. It is a difficult problem for any hospital to manage.

44. It should be noted, however, that there are no established desired occupancy rates for hospitals. That is, AHCA does not penalize a hospital for having a high or low occupancy.

Subsection 408.035(1)(e): The extent to which the proposed services will enhance access to health care for residents of the service district

45. Clearly, having another hospital on the 200 Corridor would be more convenient for persons living in that area of

town. The new hospital would, therefore, enhance access – at least to the extent access is equated to less travel time for some residents. The new hospital would not offer any services which are not already available at area hospitals.

46. The most persuasive evidence is that the approval of the TimberRidge hospital would not significantly improve drive time for persons living in the areas that hospital would serve. Of the 27 zip codes which are in or near the TimberRidge proposed service area, only six would have reduced drive times to a hospital. (One of those zip codes would be affected by about three minutes.) The large age-limited communities addressed by TimberRidge are all within 20 minutes' drive time to West Marion – the existing hospital in western Marion County.

47. If the new hospital is not approved, 98 percent of the population of Marion County would still be within 30 minutes' drive time of an existing hospital. Stated differently, only about 5,500 people in the population of 266,000 would realize a significantly positive impact on their drive time to a hospital, if the TimberRidge hospital is approved. (Note: Testimony and evidence to the contrary at final hearing was not persuasive.)

48. From a purely transportation perspective, the existing TimberRidge ED is moving most of its patients needing acute care to Munroe Regional, i.e., its sister facility. Munroe Regional presumes those same patients would prefer to remain at

TimberRidge if a hospital was available on-site, but of course that is speculative. If all patients arriving at the TimberRidge ED chose to stay at TimberRidge Hospital, then access for those patients would be greatly enhanced (as long as there were beds available). The same cannot be said for the remainder of the populace.

Subsection 408.035(1)g): The extent to which the proposal will foster competition that promotes quality and cost-effectiveness

49. The new hospital would necessarily compete with West Marion, its closest unaffiliated facility. Because it would be located within Marion County, it would also compete somewhat with Ocala Regional. It would also compete to a much lesser degree with Citrus Memorial.

50. It seems reasonable that the new hospital would also "compete" with Munroe Regional, i.e., it would retain patients from the TimberRidge ED who might otherwise be transferred to Munroe Regional. Such competition could have a negative impact on Munroe Regional's ability to improve its already-flagging census.

51. It would appear that a satellite hospital for Munroe Regional would increase cost-effectiveness for CHS, which would then be operating two hospitals within the county.

52. The question is whether the competition would promote quality and cost-effectiveness overall. The most persuasive evidence suggests that it would not.

53. The primary problem espoused by the Ocala Health System witnesses about the proposed new hospital had to do with staffing. There is a shortage of nurses in Marion County, similar to the shortage across the state and the country. There are, e.g., some 67,000 nursing vacancies in Florida at this time.

54. Munroe Regional normally has 50 to 60 vacancies on its nursing staff at any given time. Right after CHS took over, Munroe Regional was down about 240 nurses; just prior to the final hearing, that number was at around 100 vacancies. However, there are currently 80 nurses in orientation at Munroe Regional who will be coming on board soon. No evidence was presented as to whether these would be experienced nurses, recent nursing school graduates, LPNs or RNs. Munroe Regional generally has a turnover rate for nurses of about 24 percent, which is very high. That means about one in four positions are vacant at any given time. This rate is comparable to Citrus Memorial, which currently has 15 to 20 percent of its nursing positions vacant.

55. Many of the area hospitals are operating with less than a full nursing staff. Many nurse positions have to be

filled by "travelers," i.e., nurses who go from community to community for interim work positions. The travelers demand higher salaries than local, permanent nurses. They are, however, simply needed at certain times to meet a hospital's needs.

56. The same is true for physicians needed to staff the area hospitals; they are hard to recruit and difficult to retain. This is especially true for Citrus Memorial, located in an area that does not provide the cultural amenities desired by families of many physicians. Citrus Memorial often has to rely on temporary doctors, locum tenens, to fill needed positions when no permanent doctors are available.

57. The competition for nurses and physicians would not promote quality and cost-effectiveness. To the contrary, such competition could have significantly negative consequences for all hospitals in the area.

Subsection 408.035(1)(i): The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent

58. Munroe Regional's payor mix includes about 24 percent Medicaid and indigent care; its emergency department's Medicaid average is around 39 percent; and TimberRidge's is at about 37 percent. In the CON application, Munroe Regional agreed to a condition equal to the current community average for Medicaid and charity care, i.e., 13 percent.

CONCLUSIONS OF LAW

59. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.57(1) and 408.039(5)(b), Fla. Stat.

60. In order for an existing health care facility to have standing in a CON proceeding, it must show that it will be "substantially affected" by approval of the CON Application at issue. § 408.039(5), Fla. Stat.

61. Petitioners have each proven, by a preponderance of the evidence, that they have standing to participate as a party in this proceeding. Though Citrus Memorial would not lose a large volume of patients if TimberRidge's hospital is approved, there could be a significant negative impact on its ability to hire doctors and nursing staff.

62. Munroe Regional, as the applicant, has the burden of proving, by the preponderance of the evidence, entitlement to a CON. Boca Raton Artificial Kidney Ctr., Inc. v. Dep't of HRS, 475 So. 2d 260 (Fla. 1st DCA 1985); § 120.57(1)(j), Fla. Stat.

Balancing the Applicable Statutory and Rule Criteria

63. The award of a CON must be based on a balanced consideration of all applicable statutory and rule criteria. Balsam v. Dep't of HRS, 486 So. 2d 1341 (Fla. 1st DCA 1986). "[T]he appropriate weight to be given to each individual criterion is not fixed, but rather must vary on a case-by-case

basis, depending upon the facts of each case." Collier Med. Ctr., Inc. v. Dep't of HRS, 462 So. 2d 83, 84 (Fla. 1st DCA 1985).

64. An administrative hearing involving disputed issues of material fact is a de novo proceeding in which the administrative law judge independently evaluates the evidence presented. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 787 (Fla. 1st DCA 1981); § 120.57(1), Fla. Stat. The Agency's preliminary decision on a CON application, including its findings in the SAAR, is not entitled to a presumption of correctness. Id.[5/] Generally, health care planning should not be done on an institution-specific basis. See Amisub (North Ridge Hosp.), Inc. v. Ag. for Health Care Admin., Case Nos. 94-1012, 94-1016, 94-1017, and 94-1018 (Fla. DOAH Mar. 17, 1995, ¶ 145; Fla. AHCA June 9, 1995); St. Joseph's Hosp. v. Dep't of HRS, Case No. 86-1542 (Fla. DOAH Sept. 8, 1987, ¶ 67; Fla. DHRS Dec. 15, 1987), aff'd, 536 So. 2d 346 (Fla. 1st DCA 1988); Morton F. Plant Hosp. Ass'n, Inc. v. Dep't of HRS, Case Nos. 83-1275, 84-0296, and 84-0699 (Fla. DOAH Mar. 27, 1985; DHRS Oct. 4, 1985)("The purpose of the Certificate of Need law is not only to eliminate unnecessary duplication of health services, but also to rationally examine alternative methods of achieving health goals, 'and to aid in their achievement through the most effective means possible within the limits of available

resources.' Section 381.493(2), Florida Statutes." RO ¶ 39), aff'd, 491 So. 2d 586 (Fla. 1st DCA 1986).

65. In this case, AHCA accepted Munroe Regional's arguments regarding need without verification or detailed analysis. The Agency took the assertions, applied reasonable health planning principles, and concluded that the CON should be approved. A more detailed examination of the proposal (as was done at final hearing), indicates no valid basis for approval at this time. The needs assessment presented by Munroe Regional, though thorough and well-presented, fell short of establishing a proven need for a hospital at the TimberRidge location at this time.

66. The evidence did not establish a need for the new hospital, that it would enhance access, or that it would improve competition. Further, there is significant evidence that the new hospital would have a negative impact on the existing facilities' ability to hire and retain healthcare professionals.

67. "[A]n applicant is not required to set forth in its application every piece of evidence, testimony, or argument upon which it intends to rely if a challenge is brought to its application, but must simply raise all issues which it contends support its application." Sarasota Cnty. Pub. Hosp. Bd., d/b/a Mem'l Hosp., Sarasota, and Adventist Health Sys./Sunbelt, Inc., d/b/a Med. Ctr. Hosp. v. Dep't of HRS, Case No. 89-1412 (Fla.

DOAH Sept. 28, 1989; Fla. DHRS Nov. 17, 1989). See also NME Hosp., Inc., d/b/a West Boca Med. Ctr. v. Dep't of HRS, Case No. 90-7037 (Fla. DOAH Feb. 25, 1992; Fla. DHRS April 8, 1992) (evidence is admissible that explains or elaborates on assertions made in a CON application, and does not change the nature and scope of the proposal); Columbia Hosp. Corp. of South Broward, d/b/a Westside Reg'l Med. Ctr. v. AHCA, Case No. 94-1020 (Fla. DOAH Jan. 31, 1996; Fla. AHCA Mar. 6, 1996)("it was appropriate for Westside to provide [such] data . . . at hearing in an attempt to explain or elaborate on the information originally submitted. . . ."); Marriott Ret. Comm. v. Dep't of HRS, Case No. 91-2231 (Fla. DOAH Feb. 11, 1992; Fla. DHRS May 6, 1992)(details presented at hearing which supplied the basis for statements contained in the application did not constitute an impermissible amendment--an applicant is not required to set forth in its application every piece of evidence upon which it may rely if it proceeds to hearing).

68. If this proceeding concerned a "Certificate of Want" rather than a Certificate of Need, Petitioners would have proven by a clear preponderance of evidence that many citizens of Marion County, including specifically, EMS personnel and residents of some adult communities, strongly desire a new hospital at the site of the existing TimberRidge emergency center. However, "need" for a new hospital involves far more

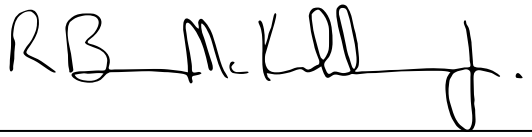
than citizen preferences. The significant negative impact of a new hospital on existing facilities, especially West Marion and Ocala Regional, coupled with the negative impact on every hospital's ability to find and hire sufficient medical staff (doctors, nurses, specialists), militate against the approval of a new hospital at this time.

69. By a preponderance of evidence, Petitioners proved that the CON application filed by Munroe Regional should be denied.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration issue an order denying CON 10449 to Munroe Regional.

DONE AND ENTERED this 15th day of November, 2017, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of November, 2017.

ENDNOTES

[1/] The primary and secondary service areas identified by Munroe Regional are essentially the regions of Marion County from whence most of its anticipated admissions would arise. However, like all hospitals, the actual service area could be much broader and may depend on factors such as patient choice, critical need, and special services.

[2/] "Wall time" is a term generally used to describe the time a patient and EMT must wait (usually sitting along the wall) before the patient is accepted by the hospital as a patient.

[3/] The issue of "observation beds" was extensively discussed by the parties during the final hearing. The upshot of the evidence was that some patients are in hospital under the category of observation. Such patients are not counted in the daily census numbers as "patients," but they often occupy a bed that might otherwise house a regular patient. Exactly how such patients are counted in the occupancy rate at a hospital is disputed and, depending on the hospital, handled somewhat differently. Even the internal data at a hospital seems to be interpreted differently by various hospital employees. The sum and substance of the differentiation of observation patients is that it only minimally affects the occupancy data and is not significant or important in the instant case. The state does not provide guidance as to how a hospital should record observation patients. Therefore, each hospital makes the determination individually, resulting in meaningless comparisons from one hospital to the next.

[4/] Marion County has historically had a significant change in population during the winter months. This has been the result of "snow birds" from the north flocking to Florida to escape cold weather. The influx is not as large in recent years as many of the birds have decided to nest in Florida permanently.

[5/] In its PRO, ACHA argues that its "interpretation of the [CON] statute" should somehow be the end of the argument as to whether the CON should be issued to Munroe Regional. That position is contrary to law and is not accepted.

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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.