

**COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DIVISION OF ADMINISTRATIVE HEARINGS
HEALTH SERVICES ADMINISTRATIVE HEARINGS BRANCH
Administrative Case No. CON 20-0023
Agency Case No. CON #056-06-5982(1)**

IN RE: THE REHABILITATION HOSPITAL OF LOUISVILLE

CON #056-06-5982(1) to establish a forty (40) bed comprehensive physical rehabilitation hospital by relocating twenty-nine (29) physical rehabilitation beds from Baptist Hospital Louisville and establishing eleven (11) physical rehabilitation beds for a final bed complement of forty (40) comprehensive physical rehabilitation beds.

FINAL ORDER

This is the consideration of an application for a Certificate of Need filed with the Cabinet for Health and Family Services by The Rehabilitation Hospital of Louisville, LLC ("RHL" or "Rehabilitation Hospital of Louisville"). In its application, RHL proposes to establish a forty (40) bed comprehensive physical rehabilitation hospital in Louisville, Jefferson County, Kentucky. (Application, pp. 3, 5, 10, 25-6). Applicant RHL appeared by counsel Matthew R. Klein and David Dirr.

I. FINDINGS OF FACT

Based upon a review of the Application, Additional Information, and the complete Application ("the Application"), the undersigned makes the following Findings of Fact:

A. THE PARTIES

1. Baptist Healthcare System, Inc., ("Baptist Health") is the largest non-profit health system in Kentucky, headquartered in Louisville, with nine hospitals and more than 2,700 licensed beds. Baptist Health has a long history of serving the local community and offers services in a wide geographic area, representing more than 300 points of care, including outpatient facilities that offer urgent and express care, occupational medicine, physical therapy, and diagnostics. Baptist Health's physician network includes more than 3,000 affiliated physicians. (Application p. 3, 24-26, 34, 102).

2. Baptist Health runs three hospitals in the Louisville area, including Baptist Health Louisville, a 519-bed facility that includes a 29-bed inpatient rehabilitation unit in its licensed acute care unit. (Application pp. 3, 24-26). Through this facility, Baptist Health Louisville works

with community-based internal medicine physicians, Hospitalists, and other healthcare specialists, to ensure their patients have access to appropriate and needed medical care. (Application pp. 35-36).

3. Encompass Health of Birmingham, Alabama is the nation's leading owner and operator of inpatient rehabilitation hospitals, with over 20% of the licensed acute rehabilitation beds nationally. Encompass has a proven track record of returning approximately 80% of its patients back to the community, out-performing other providers nationally (Application p. 25, 26, 31-32).

4. Combined, Baptist Health and Encompass currently operate over 40% of the licensed inpatient rehabilitation beds in Kentucky at six locations. (Application pp. 24-26).

5. In its operations, RHL will have access to Encompass' extensive training internal education resources and programs, as well as Encompass' clinical teaching affiliations with universities, colleges, and technical schools throughout the United States. (Application p. 33). In addition, RHL will have access to Encompass' primary research in numerous areas related to rehabilitation, including research in audiology, speech and spatial cognition, stroke, geriatrics, incontinence, flexor tendon repair, fitness in older adults, spine, tele-rehabilitation, falls and hip fractures and amputee rehabilitation. (Application pp. 32-33).

6. Encompass plans to develop relationships and agreements with other providers throughout the greater Louisville area, and use the linkages of Baptist Health with healthcare providers in the Kentuckiana Regional Planning and Development Agency ("the KIPDA ADD"). (Application pp. 35-36). However, Encompass already owns and operates Encompass Health Rehabilitation Hospital of Northern Kentucky in Edgewood, Encompass Rehabilitation Hospital of Lakeview in Elizabethtown, and Cardinal Hill Rehabilitation Hospital, in Lexington, Kentucky, all of which have multiple linkages to institutions and providers. (Application, pp. 35-36).

7. The Encompass Health Rehabilitation Hospital of Northern Kentucky has ties to ~~St. Elizabeth Healthcare, The Rehabilitation Hospital of Lakeview~~ has strong ties and a long history of working with Hardin Memorial Health, a 300-bed hospital that includes a 15-bed skilled nursing unit and serves 10 counties and approximately 400,000 residents. Hardin Memorial Health hospital also was scheduled to become a member of Baptist Health in 2020. Cardinal Hill Rehabilitation Hospital is a rehabilitation facility in Lexington with linkages to health care providers in the greater Lexington area. Cardinal Hill maintains relationships with the 391-bed

Baptist Health Lexington hospital, as well as the Level I Trauma provider UK HealthCare, and the University of Kentucky. (Application pp. 38-39).

8. The Rehabilitation Hospital of Louisville, LLC is a limited liability company comprised of Baptist Health and Encompass. RHL is not in operation yet but intends to build and operate a rehabilitation hospital. That proposed facility is the subject of the present application for a Certificate of Need. (Application, p. 2; Appendix B).

B. RHL'S PROPOSAL

9. As noted above, this case concerns an application by RHL for a Certificate of Need to build and establish a freestanding inpatient comprehensive physical rehabilitation health facility. RHL proposes transferring all 29 beds unit of Baptist Health Louisville's inpatient rehabilitation unit and adding an 11 additional inpatient rehabilitation beds at its facility. This would give RHL a 40-bed complement of inpatient rehabilitation beds. (Application, pp. 1, 5).

1. Services to be Offered

10. At its new facility, RHL proposes to provide a comprehensive array of higher intensity rehabilitation services than provided by most inpatient physical rehabilitation programs. More specifically, RHL proposes to provide rehabilitation nursing, occupational therapy, physical therapy, respiratory therapy, speech-language pathology, dietary and nutritional counseling, and case management services. (Application, p. 29).

11. In addition, relying on Encompass' experience supplying disease-specific rehabilitation services, RHL also proposes to provide rehabilitation Disease-specific services for neurological conditions, joint replacement, orthopedic conditions, hip fractures, spinal cord injuries, amputations, Parkinson's disease, multiple sclerosis, burns, pulmonary/respiratory conditions, and pain management. (Application p. 29, 48).

12. RHL has the ability to provide such services in a variety of ways, benefitting from the expertise, experience, and capabilities of its principals, Baptist Health and Encompass. For example, in providing care, RHL will use Encompass' multidisciplinary team approach using teams made up of a Board-certified Medical Director involved in the patient's care, Rehabilitation Nurse, Occupational Therapist, Physical Therapist, Speech-Language Therapist, Dietary and Nutritional Counselor, and a Case Manager. (Application p. 29).

13. RHL will implement Encompass' programs and services that benefit the patients and families of the new facility, including TeamWorks, a company-wide initiative to improve

quality of care, a Patient Safety Task Force, and a Post-acute Innovation Center. Through Encompass, it will also maintain partnerships with the American Heart Association/American Stroke Association and the Association of Rehabilitation Nurses. It will also participate in The Joint Commission's Disease-Specific Care Certification Programs. (Application pp. 26-27).

14. Encompass also will provide RHL with advanced clinical information systems (including ACE-IT, BEACON, ReAct and Sepsis/SIRS Alert, and proprietary systems), to help manage and maintain a high level and quality of service. In addition, using the experience and expertise of Baptist Health and Encompass, RHL will be able to provide advanced therapeutic equipment and technology. (Application p. 27).

2. Personnel Required

15. RHL's proposal calls for more than 95 staff to work providing care at the new facility. The kind of care RHL proposes to provide will require specialized and credentialed staff for care, composed of Board-certified physicians such as Physical Medicine and Rehabilitation specialists, Registered Nurses, Occupational Therapists, Physical Therapists, Respiratory Therapists, Speech-Language Therapists, and Case Managers, among others. (Application p. 48-49).

16. Baptist Health and Encompass already have extensive experience with running managing rehabilitation facilities and with hiring, training, and supervising qualified rehabilitation staff. In addition, both have established recruitment programs, including national recruitment programs, competitive benefits, and established relationships with universities and colleges, to help RHL find qualified staff for the new facility. (Application pp. 48-50).

3. Licensing and Accreditation

17. All of Baptist Health and Encompass' hospitals are accredited although Baptist Health and Encompass use different accrediting authorities. RHL's proposed new facility is not yet accredited or licensed. RHL intends to seek and expects to obtain accreditation from The Joint Commission, which accredits all of Encompass' hospitals. (Application p. 52).

4. The Proposed Facility

18. The new facility RHL proposes to build will have 47,050 square feet of space, designed to address the needs of a medically complex rehabilitation patients. All rooms are designed with the full capability of general acute care inpatient rooms and will be private. All rooms will have wheelchair accessible bathrooms. Two rooms are designed for bariatric patients

and one room is designed to have negative air pressure flow for patients with communicable diseases. The facility plans include a dialysis suite for patients with kidney failure, as well as a therapy gym, an outdoor therapy area with ramps, surfaces, curbs, and seating areas for patients to learn to traverse, and a dedicated activities-of-daily-living suite. (Application pp. 3, 30; Appendix D).

19. The facility design includes sufficient areas for support functions, including nursing units, administration and human resources, dietary, environmental services, central supply, as well as a pharmacy, to ensure the facility can meet the needs of its rehabilitation patients. (Application p. 4; Appendix D).

20. RHL proposes to build its new facility at 11800 Bluegrass Parkway, in Louisville, Jefferson County, Kentucky. Located in Louisville, Jefferson County, RHL's facility will primarily serve residents of the KIPDA ADD. The KIPDA ADD is comprised of Bullitt, Henry, Jefferson, Oldham, Shelby, Spencer, and Trimble counties. (Application, p. 1).

21. Jefferson County is the most populous county in the Commonwealth. It is projected to have a total population of 815,058 residents by 2025. This is more than double the number of residents in Fayette County, the second-most populated county in the Commonwealth. Including the Indiana Counties across the Ohio River from Louisville, the greater Louisville area population has 1.28 million residents. Jefferson County is also the state's fastest growing county, with a projected increase of 111,836 residents between 2015 and 2040. (Application p. 15).

22. The KIPDA counties are all within a relatively small geographical area and have easy road access to Louisville. Major Interstate highways run through the Louisville Metropolitan area, connecting Louisville to Fayette County, the populous northern counties of the Commonwealth and to population centers across the Ohio River in southern Indiana. Louisville has a large and busy regional airport. Thus, RHL's facility will be available and accessible to not only KIPDA, but other counties, other ADDs, and patients seeking services from across the Ohio River in Indiana. (Appendix C).

23. Consequently, RHL intends primarily to serve the residents of the KIPDA ADD. However, Louisville has a concentration of specialized healthcare services. For example, it has both Baptist Health Louisville, a 519-bed tertiary-level acute care hospital and the University of Louisville Medical Center, a tertiary-level teaching hospital. RHL's proposed facility will serve as an extension of these tertiary-level services. (Application pp. 12, 23-24).

5. Patients Served and Identified Need

24. Because of the concentration of tertiary services, Louisville healthcare facilities draw patients from throughout the area, the state, and from out-of-state, primarily from southern Indiana. Thus, RHL anticipates its new health facility also will serve both patients from KIPDA, from other parts of the Commonwealth, and patients from southern Indiana. (Application p. 3, 5, 8, 10, 26, and Table 1, p. 8).

25. RHL anticipates that approximately 60% of its patients will be KIPDA residents, or from within the Commonwealth, while 40% of its patients will be from out-of-state. RHL bases this on historical data of Baptist Health Louisville's rehabilitation patients, the fact RHL will serve the same geographic area that Baptist Health currently serves, the current actual patient origin at the Baptist Health Louisville, Baptist Health LaGrange, and Baptist Health Floyd facilities, and the fact RHL will offer advanced therapy services. RHL anticipates this ratio to remain the same. (Application, p. 8, 25, 34).

26. Elderly patients are the primary user of inpatient rehabilitation services. KIPDA, including Louisville, Jefferson County, has a relatively large and growing population of people ages 65 and over. In 2025, KIPDA is projected to have almost 200,000 elderly residents (aged 65-years-old or more), comprising 18.4% of the total population. The Indiana counties across the Ohio River, RHL expects to serve another 40,000 more elderly. (Application p. 16-17).

27. Because the elderly population is the primary user of inpatient rehabilitation services, RHL projects that as its population continues to grow and to age, the demand for inpatient rehabilitation services in the KIPDA counties and surrounding area will continue to increase. The same is true of the out-of-state patients now served by Baptist Health. (Application pp. 15-17). This projection is bolstered by several factors peculiar to the KIPDA ADD.

28. Discharge rates from general acute care hospitals in the KIPDA ADD are comparable to the statewide general acute care discharge rate. This indicates the majority of ~~KIPDA residents have adequate access to general acute care facilities. Approximately 90% of~~ those discharged acute care patients are discharged to a rehabilitation facility. However, KIPDA patients use inpatient rehabilitation services at a significantly lower rate than both the state and national averages. (Application pp. 13-14, 20-22).

29. The rate of inpatient rehabilitation discharge for Bullitt County's Medicare residents is 41.7% of the statewide rehab discharge rate, Oldham County's is 33.3% and Shelby

County's is 25.0%. Louisville has a rehabilitation inpatient discharge rate 50% below the statewide rate. The remaining KIPDA counties do not have available data but are at least one below the state average discharge rate. (Application p. 13).

30. At the same time, KIPDA residents have relatively higher discharge rates from Skilled Nursing Facilities (SNF) and higher home health visits than discharges from rehabilitation facilities. Bullitt (77/5), Jefferson (88/6), Oldham (66/4) and Shelby (75/3) Counties all have a large number of patient discharges for skilled nursing facilities compared with IRFs. The difference is more exaggerated when compared with Home Health visits. (Application pp. 13-14, 20-22).

31. These circumstances indicate KIPDA patients discharged from acute care facilities are receiving rehabilitation services at skilled nursing facilities or through home health, and not rehabilitation facilities. This conclusion is corroborated by the steady fall in discharges from rehabilitation facilities from 2007 to 2017. The rate of rehabilitation discharges in KIPDA is now far below the national benchmark and the state average. That trend is expected to continue. (Application pp. 13-15).

32. The data from the KIPDA ADD indicate either patients can find no open beds in KIPDA rehabilitation facilities, or they cannot access a rehabilitation facility, or they do not want to go to a rehabilitation facility. Each would explain why KIPDA patients are receiving rehabilitation services in Skilled Nursing Facilities ("SNFs"). A lack of available beds is indicated by a projected need for 38 additional inpatient rehabilitation beds to adequately serve the residents in the KIPDA ADD, including Louisville, Jefferson County. (Application 20-23).

6. Existing Care and Projected Changes

33. RHL notes that SNFs generally are not set up or have adequate resources to offer a comprehensive, high intensity array of rehabilitation services. Thus, KIPDA patients, who are receiving rehabilitation services in SNFs, are more likely than not receiving less than the optimal rehabilitation than they would at an IRF. This is shown in several ways.

34. On a basic quantifiable level, patients receive more therapy hours per day in an IRF than in a SNF. Outcomes are better on discharge from an IRF. Nationally, inpatient rehabilitation hospitals return approximately 76% of rehabilitation patients to the community compared to nursing homes, which return only 40%. Data suggest that receiving therapy at an IRF makes mortality, readmission to a hospital, and a decreased number of Emergency Room

visits. Conversely, this gives patients more days at home and not in any facility than receiving rehabilitation in a SNF. Significantly fewer Medicare Patients are readmitted to a hospital following a stay in a rehabilitation facility than those receiving rehabilitation services in a nursing home. Moreover, RHL points out, at its IRF, patients will have the benefit an involved physician leading a multidisciplinary team (described above) to provide a higher level of care. (Application p. 17-18; Appendix F).

35. RHL projects the problems with SNFs providing rehabilitation care will soon be exacerbated by a recent change by the Center for Medicaid and Medicare Services (CMS) in the way SNFs are paid for rehabilitation services. Before October of 2019, Medicare reimbursed SNFs on a fee-for-service basis. Under that system, the more therapy SNFs provided, the higher their reimbursement. Effective October 1, 2019, however, CMS changed the payment system for SNFs that significantly changes how they will be paid by Medicare. This was apparently to address the problem that the old system encouraged SNFs to provide unneeded therapy services to increase revenue. The new payment system abandons the old volume-based reimbursement system. This new payment system is expected to result in a significant reduction in the therapy services (particularly one-on-one sessions) nursing homes will provide to their residents. Thus, those KIPDA patients receiving rehabilitation services in nursing homes are likely to see a significant reduction in those services. (Application 19-20).

7. Projected Costs and Return

36. RHL estimates its total capital cost for constructing and starting its new facility will be \$41,706,221. Out of this, \$15,932,366 is construction, \$3,400,000 is site acquisition, \$3,500,000 is site improvement, \$10,097,000 is CON preparation costs, pre-opening expenses, ACE-IT installation costs, and owner-contributed rehabilitation assets, and new equipment is \$4,576,538. RHL will pay the total costs of this out of cash or negotiable securities. (Application pp. 39-43).

37. ~~Based on the projected shortfall in needed rehabilitation beds and the expected~~ increase in demand for rehabilitation services resulting from CMS's new payment method, RHL projects it will reach an operational breakeven point of approximately 800 admissions with an average occupancy level of 63% and revenue of \$20,246,300 during its first year of operation. It projects 980 admissions with 76% occupancy and revenue at \$24,912,600 by the second year of operation. This level of use is supported by letters of support from Baptist

Health physicians located in and serving patients throughout the greater Louisville area. (Application p. 24, 34, 44-47; Appendix H).

C. PROCEDURAL HISTORY

38. On January 29, 2020, RHL filed an application for a Certificate of Need to establish its Louisville facility. In early 2020, after RHL filed its application, the Governor officially declared a state of emergency in the Commonwealth of Kentucky because of the COVID-19 pandemic. Thereafter, a moratorium on the issuance of Certificates of Need was declared. In-person hearings were prohibited by the terms of the Governor's declaration.

39. On March 5, 2020, the Office of Inspector General deemed RHL's application complete for review.

40. On April 1, 2020, Rehabilitation Hospital of Southern Indiana, L.L.C. d/b/a Southern Indiana Rehabilitation Hospital ("SIRH") and Michele D. Arledge ("Arledge"), a resident of Shelby County, Kentucky filed a joint request for a hearing to oppose RHL's CON application.

41. The Inspector General referred SIRH and Arledge's request to the Division of Administrative Hearings to conduct a hearing. However, because of the state of emergency the Division took no immediate action on the request. Ultimately, the undersigned was assigned to preside in this case. After resolving a motion to exclude SIRH and Aldrige, SIRH and Ms. Arledge both withdrew their requests for a hearing, leaving RHL's application unopposed.

42. There being no other requests for public hearing, this matter is ripe for consideration on the Application. The Application and Additional Information are incorporated into the record under consideration herein.

II. CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, and the evidence in the official record, the Hearing Officer reaches the following Conclusions of Law:

43. The Cabinet for Health and Family Services, Health Services Administrative Hearings Branch, has jurisdiction over this proceeding pursuant to KRS Chapter 216B, 900 KAR 6:070, and 900 KAR 6:090, Section 3.

44. RHL's Certificate of Need application is governed by the considerations set forth in KRS 216B.040(2), the review criteria established by 900 KAR 6:070, Section 2, and the 2018 Update to the 2017-2019 State Health Plan.

45. Applicants before an administrative agency have the burden of proof. Energy Regulatory Commission v. Kentucky Power Co., 605 S.W.2d 46 (Ky. App. 1980).

46. The Applicant has the burden of proving by a preponderance of substantial evidence that the application satisfies the review criteria. See Kentucky Board of Nursing v. Ward, 890 S.W.2d 641 (Ky. App. 1994); Commission for Health Economics Control in Kentucky v. Medical Consultants Imaging Co., 844 S.W.2d 437 (Ky. App. 1992); Starks v. Kentucky Health Facilities, 684 S.W.2d 5 (Ky. App. 1984).

47. In reviewing Certificate of Need applications, the Hearing Officer is guided by the stated legislative purpose of the Certificate of Need law, which is, "to improve the quality and increase access to health care facilities, services, and providers, and to create a cost-effective healthcare delivery system to the citizens of the Commonwealth." In addition, review requires consideration of, "the proliferation of unnecessary health care facilities, health services and major medical equipment results in costly duplication and under-use of such facilities, services, and equipment and that such proliferation increases the cost of quality health care within the Commonwealth." KRS 2168.010.

**Criterion One – Consistency with State Health Plan,
KRS 216B.040(2)(a)2.a., 900 KAR 6:070 Section 2(1)**

48. Pursuant to KRS 2168.040(2)(a)2.a., a Certificate of Need application must be consistent with the review criteria set forth in the Kentucky State Health Plan. 900 KAR 6:070 Section 2(1) implements this requirement and mandates, in pertinent part, that:

- (a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020;
- (b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest criteria, inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice.

49. The 2018 Update to the 2017-2019 State Health Plan, provides that, "[a]n application for comprehensive physical rehabilitation beds shall be consistent with this Plan if" several criteria are met. The most significant of these is criterion 4, which provides:

Notwithstanding criteria 1, 2, and 3, the Cabinet may approve more comprehensive physical rehabilitation beds than indicated by the need formula to allow for the presence of hospitals that provide a higher intensity of rehabilitation services than provided by most rehabilitation hospitals due to the in-migration of out-of-state

patients or a high percentage of patient referrals for specialized services from other ADDs.

50. The Hearing officer concludes RHL's application shows it has the backing and ability to provide a higher intensity of rehabilitation services than are provided by other rehabilitation hospitals for residents of the KIPDA ADD as well as for patients from other parts of the geographic area that RHL will serve. This includes patients from outside the Commonwealth of Kentucky. The Hearing Officer concludes RHL has shown there is an existing in-migration of out-of-state patients, from counties in southern Indiana seeking rehabilitation services. In addition, RHL has shown a well-based anticipation of increased patient referrals for specialized rehabilitation services both from within the KIPDA ADD and other ADDs as well as from out-of-state.

51. On the foregoing, the Hearing Officer concludes RHL's Certificate of Need application is consistent with the State Health Plan and meets the requirements of KRS 216B.040(2)(a)2.a. and 900 KAR 6:070 Section 2(1).

Criterion Two – Need and Accessibility,
KRS 216B.040(2)(a)(2)(b); 900 KAR 6:070, Section 2(2) and (3).

52. KRS 216B.040(2)(a)(2)(b) requires that a, proposal shall meet an identified need in a defined geographic area and be accessible to all residents of the area. A defined geographic area shall be defined as the area the proposal seeks to serve, including its demographics, and shall not be limited to geographical boundaries.

53. In addition, 900 KAR 6:070 Section 2(2) requires the Cabinet to consider whether

(a) the applicant has identified a need for the proposal in the geographic area defined in the application

(b) the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

54. 900 KAR 6:070, Section 2(3) states that the Cabinet shall consider "if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed."

55. Criterion 2.A.(1) requires RHL to

Identify the geographic area that this proposal seeks to serve and document how it was determined that there is a need for this proposal in the defined geographic area.

56. The Hearing Officer concludes RHL's application has identified the KIPDA ADD and the surrounding geographic area it proposes to serve. RHL has identified an existing need for inpatient rehabilitation services in the KIPDA ADD and the defined geographic area. It has also shown a well-based projection of a significantly increased need for inpatient rehabilitation services resulting from an anticipated decrease in rehabilitation services available to KIPDA residents from SNFs.

57. The Hearing Officer concludes RHL has demonstrated in its application that with the backing of Baptist Health and Encompass, it will be able to meet the existing need identified and documented in its application.

58. The Hearing Officer concludes from the location, nature, and design of RHL's proposed facility, and the expertise, experience, capabilities, and financial backing of RHL's principals, that RHL's proposed facility will be accessible in terms of timeliness, amount, duration, and personnel, and sufficient to provide the specialized inpatient rehabilitation services RHL proposes to provide.

59. On the foregoing, the Hearing Officer concludes RHL's Certificate of Need application meets the requirements of KRS 216B.040(2)(a)(2)(b); 900 KAR 6:070, Section 2(2) and (3).

Criterion Three - Interrelationships and Linkages,
KRS 216B.040(2)(a)(2)(c) and 900 KAR 6:070, Section 2(4)(a),(b).

60. Pursuant to KRS 216B(2)(a)2c and 900 KAR 6:070 Section 2(4), RHL must show its proposed service will, "accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state" and that, "the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system."

61. The Hearing Officer concludes RHL's application shows it will be part of Baptist Health, which owns nine hospitals with thousands of beds, serves a large part of the Commonwealth and has a network of thousands of physicians, and Encompass, which runs multiple facilities comprising 20% of licensed acute rehabilitation beds nationally, and which owns and operates Encompass Rehabilitation Hospital of Lakeview in Elizabethtown, which has linkages to Hardin Memorial Health, and Cardinal Hill Rehabilitation Hospital, in Lexington, which has linkages to UK HealthCare and the University of Kentucky. The Hearing Officer

concludes RHL will have linkages with associations, physicians, hospitals, other healthcare facilities, and educational institutions, on a national, regional, and local scale.

62. The undersigned concludes its application shows RHL will have both appropriate and effective linkages and will put forth the effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the healthcare system.

63. On the foregoing, the Hearing Officer concludes RHL's Certificate of Need application meets the requirements of KRS 216B.040(2)(a)(2)(c) and 900 KAR 6:070, Section 2(4)(a),(b).

**Criterion Four - Costs, Economic Feasibility, and Resources Availability,
KRS 216B.040(2)(a)(2)(d) and 900 KAR 6:070, Section 2(5).**

64. Pursuant to KRS 216B.040(2)(a)2.d. and 900 KAR 6:070 Section 2(5), RHL must demonstrate, "it is economically feasible for the applicant to implement and operate the proposal." The applicant's proposal must be measured, if applicable, against, "the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources."

65. The Hearing Officer concludes RHL's application sets forth a reasonable construction plan and costs, an operating cost analysis based upon expected demand for services, costs of equipment, and costs of personnel. RHL's submissions show its proposal is economically feasible. Its statement of available financial resources shows it has the resources available to implement its project.

66. On the foregoing, the Hearing Officer concludes RHL's Certificate of Need application is consistent with and meets the requirements of KRS 216B.040(2)(a)(2)(d) and 900 KAR 6:070, Section 2(5).

**Criterion Five - Quality of Services,
KRS 216B.040(2)(a)(2)(e); and 900 KAR 6:070, Section 2(6).**

67. Pursuant to KRS 216B.040(2)(a)(2)2.e. and 900 KAR 6:070 § 2(6), RHL must demonstrate that it, "is prepared to and capable of undertaking and carrying all the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet." RHL must also have, "the ability to comply with applicable licensure requirements."

68. The Hearing Officer concludes RHL's application shows it has the financial resources and the support of two major healthcare companies each with a long successful history of providing quality healthcare services and particularly inpatient rehabilitation services. The Hearing Officer concludes by virtue of their association with RHL, RHL will have the experience, expertise, ability, connections, to give it the ability to undertake all of the responsibilities of this proposal in a manner that meets all the Cabinet's standards and requirements.

69. The Hearing Officer concludes, based upon all the above, as well as Baptist Health and Encompass's multiple accredited and licensed facilities in multiple states that RHL will have the ability to comply with all licensure requirements.

70. On the foregoing, the Hearing Officer concludes RHL's Certificate of Need application is consistent with and meets the requirements of KRS 216B.040(2)(a)(2)(e); and 900 KAR 6:070, Section 2(6).

III. ORDER

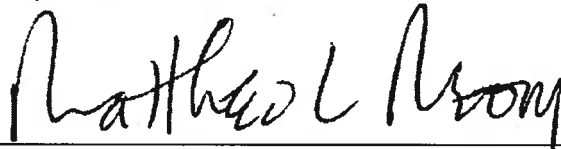
Having reviewed the entire record, and being otherwise sufficiently advised, and for all the reasons set forth above, the Hearing Officer **APPROVES THE APPLICATION** of The Rehabilitation Hospital of Louisville, LLC, C/N #056-06-5982(1), as consistent with all requirements of the law.

IV. RECONSIDERATION AND APPEAL RIGHTS

Pursuant to KRS 216B.090(1), any party to the proceeding may file a request for reconsideration with the Cabinet for Health and Family Services, Office of Health Policy within fifteen (15) days from the date of notice of this decision.

Pursuant to KRS 216B.115, any of the parties to the proceeding may file an appeal to the Franklin Circuit Court within thirty (30) days from the date of notice of this decision or within fifteen (15) days from the date of notice of a decision to deny reconsideration or a decision on reconsideration.

SO ORDERED THIS September 27, 2021.



MATTHEW L. MOONEY, HEARING OFFICER
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