



State of New Jersey
DEPARTMENT OF HEALTH
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CATHLEEN D. BENNETT
Commissioner

July 24, 2017

VIA ELECTRONIC AND FIRST CLASS MAIL

Joseph F. Scott
President and Chief Executive Officer
Jersey City Medical Center
355 Grand Street
Jersey City, New Jersey 07302

Re: Jersey City Medical Center- License #10904
355 Grand Street, Jersey City, NJ
Waiver Request ID # 6845
N.J.A.C. 8:43G-36.1(b) - Satellite Emergency Department (SED) at Bayonne

Dear Mr. Scott:

The New Jersey Department of Health (Department) is in receipt of Jersey City Medical Center's (JCMC or Applicant) application for a waiver from the requirement of N.J.A.C. 8:43G-36.1(b), to establish a satellite emergency department (SED) in Bayonne, New Jersey (the Application).

N.J.A.C. 8:43G-36.1(b) provides that a SED:

shall be licensed only to replace the full service emergency department of a licensed general acute care hospital which has approval from the Department to cease operation of all of its licensed acute care beds. The [SED] shall be located in as close proximity to the closed full service emergency department as is possible. This location shall require the prior written approval of the Department.

JCMC requests a waiver from N.J.A.C. 8:43G-36.1(b), pursuant to N.J.A.C. 8:43G-36.1(c), which permits the establishment of a SED "where the proposed operator of a [SED] is able to demonstrate to the satisfaction of the Department that its proposed location will serve to eliminate or substantially mitigate problems of access to appropriate emergency care affecting a community or communities."

JCMC's Application for a Waiver Pursuant to N.J.A.C. 8:43G-36.1(c)

JCMC indicates in its Application that the proposed SED would be a new, freestanding SED, located on the first floor of a multi-story building in Bayonne, New Jersey, and would be licensed and operated by JCMC.

According to JCMC, it requests a waiver to establish a SED in Bayonne in order to provide a needed access point of care in the Bayonne and Greenville communities; allow JCMC to decrease volume from its current emergency department (ED), which has experienced significant volume increases since the closure of Greenville Hospital in 2008;¹ and mitigate problems of access to appropriate emergency care affecting the Jersey City and Bayonne communities. The Applicant adds that the location of a SED in Bayonne, rather than in Jersey City, would provide access to emergency services to populations in Jersey City, Bayonne and the surrounding Hudson County service area.

In its waiver application, the Applicant states that JCMC's ED was designed to handle 57,000 visits annually. However, according to information submitted by JCMC in 2017 in support of its licensure application for a SED in Bayonne, JCMC experienced nearly 87,000 ED visits in 2016, with over 33,000 of those visits coming from Greenville and Bayonne. According to JCMC, the JCMC ED overcrowding inhibits access to services, with approximately 3.9% of Greenville patients and 3.3% of Bayonne patients leaving the ED without being seen. The Applicant asserts that the location of the SED in Bayonne would provide a point of access for local in-network services that are not currently available or offered to residents in the Bayonne service area. JCMC has submitted documentation supporting its licensure application from Aetna, Horizon Blue Cross Blue Shield, and United Healthcare health insurance companies, as well as a City of Bayonne Council Member, and several members of Congress. A public petition with over 450 signatures in favor of the SED in Bayonne has also been submitted. The Application also incorporates materials that were provided to the Department by the Applicant in 2014, including two PowerPoint presentations providing information concerning marketshare, ED overcrowding, project benefits, and an economic analysis in support of its proposal.

JCMC is 3.2 miles from the site of the now-closed Greenville Hospital and Bayonne Medical Center (BMC) is 3.0 miles from the Greenville Hospital site. The proposed JCMC SED site in Bayonne is 3.3 miles from the Greenville Hospital site.

¹ JCMC states in its Application that the SED cannot be located at the former Greenville hospital (closed in 2008) because the closed site does not provide sufficient contiguous space for a code-compliant SED and would have potential increased project costs due to site limitations and major renovations required to render the project feasible.

Carepoint Health's Objections to the Waiver Request Submitted by JCMC

The Department received numerous materials from CarePoint Health in opposition to JCMC's waiver request and in support of CarePoint Health's own request for waivers pursuant to N.J.A.C. 8:43G-36.1(c). On August 4, 2016, representatives of CarePoint Health met with the Department to present its proposal to establish nine SEDs in Hudson, Bergen and Passaic Counties. One of the locations identified for a SED was Greenville. CarePoint Health sought a waiver, pursuant to N.J.A.C. 8:43G-36.1(c), to establish all nine of the proposed SEDs. As part of its August 2016 presentation, CarePoint Health relied on findings of a study commissioned by CarePoint Health and performed by Executive Resources, LLC (the ER LLC Study). That study found that "BMC appears to have sufficient capacity to absorb the projected incremental visits of the City of Bayonne residents, while maintaining its existing volume" and that JCMC's proposal to establish a SED in Bayonne should, therefore, be denied.²

On January 31, 2017, Kirat Y. Kharode, Executive Vice President and Chief Strategy Officer of CarePoint Health, sent a letter to Commissioner Bennett, again requesting that the Department deny JCMC's waiver application to create a SED in Bayonne. Mr. Kharode appears to argue in that letter that JCMC should have built a SED at the site of the former Greenville Hospital instead of selling the hospital property to a private developer. He also argues that JCMC should be required to demonstrate that there is no other site in Greenville that is available to build a SED before it can be permitted to seek a waiver of N.J.A.C. 8:43G-36.1(b). The Department notes that there is nothing in N.J.A.C. 8:43G-36.1(c) that requires a hospital applying for a waiver pursuant to that provision to first try to establish a SED at the site of a closed hospital or in a location in as close proximity to a closed hospital as possible. Rather, N.J.A.C. 8:43G-36.1(c) expressly authorizes a hospital to seek a waiver of the requirements of N.J.A.C. 8:43G-36.1(b), including the requirement that a SED "be located in as close proximity to the closed full service emergency department as is possible," if it can demonstrate that the proposed location will eliminate or substantially mitigate problems of access to appropriate emergency care affecting a community or communities.

In his letter, Mr. Kharode also argues that the ER LLC Study provided to the Department in August 2016 demonstrates that there are no access problems in Bayonne, but that such problems do exist in Greenville. However, as discussed below, the data provided by JCMC, as well as the UB data used by the Department in its own analysis, refute the findings of that study. Mr. Kharode also asserts in his letter that JCMC has been unable to meet adequate national standards for advanced life support response times in Bayonne, according

² CarePoint Health subsequently submitted nine separate waiver applications for each of its nine proposed SEDs. One of the Hudson County SEDs that was originally proposed by CarePoint was replaced with a proposed SED in Essex County. The Department's decision on CarePoint Health's waiver application to establish a SED in Greenville and other areas, pursuant to N.J.A.C. 8:43G-36.1(c), will be issued in separate decision letters.

to another independent external review commissioned by CarePoint Health. He argues that because JCMC is "clearly unable to even fulfill [its] current commitments to patients in Bayonne," it would be inappropriate to permit JCMC to expand its emergency footprint in Bayonne. This argument is flawed because, assuming CarePoint Health is correct, permitting JCMC to establish a SED in Bayonne can only serve to enhance its ability to serve the residents of Bayonne with necessary emergency services.

Representatives of CarePoint Health have previously argued that BMC's status as an out-of-network provider with respect to Horizon, Aetna, CIGNA, Oxford, Qualcare and United Healthcare has no bearing on its ability to provide emergency services to patients who have insurance with those carriers because BMC is obligated to treat ED patients regardless of their insurance coverage, and cannot pass the cost of that care onto the patients. Although the Department acknowledges that the provision of emergency care does not turn on a patient's coverage or ability to pay, the data reviewed by the Department reflects that a number of patients from Bayonne and Greenville are nevertheless choosing to go to JCMC where they would be entitled to the full complement of in-network services.

CarePoint Health also provided the Department with materials from an organization calling itself the Coalition for Greenville Health Access, including a public petition in favor of the establishment of a SED in Greenville. As Mr. Kharode acknowledged in his January 31 letter, "[i]n order to ensure that Greenville has appropriate access to emergency care, [it] has proposed a full service satellite emergency department in Greenville"

Analysis

The Department conducted its own analysis of utilization data for the years 2012 to 2016, inclusive, and found that the data provided by JCMC in support of its waiver and licensure applications was accurate and supported its position that the proposed SED in Bayonne would eliminate or substantially mitigate problems of access to appropriate emergency care in Bayonne and Greenville. Specifically, the Department examined UB data from 2012 through 2016 regarding JCMC ED patient visits by zip codes from Greenville (07305) and Bayonne (07002). That data demonstrated that there was an average of 30,192 JCMC ED visits annually from those two zip codes, with approximately 85% of those patients coming from Greenville, and approximately 15% of those patients coming from Bayonne. The data showed that from 2012 through 2016, there were 150,962 visits to JCMC's ED from residents of Greenville and Bayonne, notwithstanding the fact that BMC is located in Bayonne. This suggests that there is, indeed, a problem of access to appropriate emergency care in Bayonne and Greenville that can be mitigated by establishing a SED at the site proposed by JCMC. The data also showed that from 2012 to 2016, there were approximately 7,500 visits to JCMC's ED by residents of Bayonne and Greenville who had healthcare insurance in which BMC is currently out-of-network – Aetna, CIGNA, Oxford, Qualcare and United Healthcare. Additionally, as of June 1, 2016, Carepoint Health was no longer in-network with Horizon Blue Cross Blue Shield of New Jersey. JCMC, on the other hand, is currently in network with all six

of those insurance providers, and indicated in its application that it “remains in-network for the majority of health insurance plans in this region.”

Conclusion

In summary, JCMC has demonstrated to the satisfaction of the Department that locating a SED in Bayonne will, in fact, mitigate problems of access to appropriate emergency care in Greenville and Bayonne. The data indicates that the access to care problem that is created by the increase in volume and overcrowding at the JCMC ED, which was designed for 57,000 visits per year and experienced nearly 87,000 visits in 2016, can be significantly reduced by the establishment of an additional emergency care access point for the residents of Greenville and Bayonne.

After consultation with Department staff, I am **approving JCMC’s application for a waiver from the requirement of N.J.A.C. 8:43G-36.1(b), to establish a SED at Bayonne, which will be operated and licensed by JCMC.** On March 10, 2017, JCMC submitted an application and fee for licensure of the proposed SED. Please be aware that a finding of “acceptable” on an operational survey conducted by Department Staff will be required prior to the start of operation and licensure, and authorization from this Program is required prior to licensure.

The Department, in approving this waiver application, has relied on the facts and information presented to us, as well as the UB data reported to the Department for 2012 through 2016, inclusive. The Department offers no opinion as to whether the proposed ownership or business organization is in compliance with the Codey Act, Board of Medical Examiners administrative rules, the federal anti-referral (Stark) and federal anti-kickback laws. We have not undertaken an independent investigation of such information. If material facts have not been disclosed or have been misrepresented, the Department may take appropriate administrative regulatory action to rescind the approval or refer the matter to the Office of the Attorney General.

Please be advised that any approval granted by the Department relates to licensing requirements only and does not imply acceptance by a reimbursing entity. This letter also is not intended as an approval of any arrangement affecting reimbursement or any remuneration involving claims for health care services.

Furthermore, regardless of any management agreement addressing the operation of the facility between the licensee and any other entity, the licensee is responsible for financial, operational and management control. All health services provided by the facility and the revenue generated by a facility from providing these health services is the responsibility of the licensee.

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If you have any questions regarding this matter, you may contact Ms. Judy Brown,
Team Leader, at 609-292-7228.

Sincerely,



John A. Calabria
Director
Certificate of Need and Healthcare Facility Licensure
Program

Lic. File

cc. Ms. Dougherty (By Electronic Mail)
Ms. Steska (By Electronic Mail)
Ms. Cunningham (By Electronic Mail)
Ms. Brown (By Electronic Mail)
Mr. Lohman (By Electronic Mail)
Ms. Jackson (By Electronic Mail)
Ms. D'Errico (By Electronic Mail)