



State of New Jersey

DEPARTMENT OF HEALTH AND SENIOR SERVICES

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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lieutenant Governor

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MATTHEW D'ORIA  
Acting Commissioner

January 15, 2010

**VIA UNITED PARCEL SERVICE**

Robert J. Fogg, Esq.  
ARCHER & GREINER, P.C.  
700 Alexander Park, Suite 102  
Princeton, NJ 08540

Re: William B. Kessler Memorial Hospital  
CN# FR 090604-01-01  
Project Cost: 0  
Expiration Date: January 15, 2015

Dear Mr. Fogg:

I am approving William B. Kessler Memorial Hospital's (Kessler) certificate of need (CN) application, submitted on June 1, 2009, for the discontinuance of its 160 bed general acute care hospital. Specifically, this application constitutes a request to formally cease operation of the hospital in its entirety, which consisted of 106 Medical/Surgical, 16 Pediatric and 8 Adult ICU/CCU beds. Kessler's licensed service complement also consisted of 3 mixed operating rooms, acute hemodialysis service, 1 mobile magnetic resonance imaging unit, 1 mobile computerized axial tomography and 1 hospital-based off-site ambulatory care facility providing primary care. There are no capital costs associated with this project. I note that Kessler actually ceased providing services in March, 2009.

The standards that I am compelled to use in evaluating this application are set forth in statute (N.J.S.A. 26:2H-1 et seq.) and by administrative rule (N.J.A.C. 8:33). I must be satisfied that the project submitted by Kessler is consistent with those requirements. Therefore, for the reasons that follow, I am approving with conditions the application submitted by Kessler. I note for the record that my decision to approve this application is consistent with the recommendation of the State Health Planning Board (SHPB), which recommended approval of the project with conditions at its January 7, 2009 meeting.

N.J.S.A. 26:2H-8, as well as N.J.A.C. 8:33-4.9(a), provides for the issuance of a certificate of need only where the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, will not have an adverse economic or financial impact on the delivery of health services in the region or statewide, and will contribute to the orderly development of adequate and effective health care services. In making such determinations, I must take into consideration: (a) the availability of facilities or services which may serve as alternatives or substitutes, (b) the need for special equipment and services in the area, (c) the possible economies and improvement in services to be anticipated from the operation of joint central services, (d) the adequacy of financial resources and sources of present and future revenues, (e) the availability of sufficient manpower in the several professional disciplines, and (f) such other factors as may be established by regulation. As previously mentioned, I have also taken into consideration the recommendations made by the SHPB to approve this application. I have reviewed the CN application, transcripts of the public hearing and the SHPB meeting and received a briefing from staff of the Department of Health and Senior Services (Department) covering the SHPB meeting, presentations, comments and findings. I note that the application was submitted approximately two and one-half months after the hospital ceased providing inpatient care.

I am also mindful that in 1992, the Legislature enacted P.L. 1992, c. 160, the "Health Care Reform Act" (HCRA) to "move in the direction of a deregulated hospital reimbursement system" and promote a "truly competitive market environment." Indeed, in the years since the HCRA became law, the health care environment has changed dramatically; among other things, it has become increasingly competitive and in many ways more financially challenging for hospitals. For example, managed care penetration has grown significantly during this period and, partly as a result of this, hospital utilization has decreased substantially. The HCRA also eliminated authority for hospital rate-setting, which in the past may have shielded hospitals from the financial consequences of their actions or inactions.

In accordance with N.J.S.A. 26:2H-5.8(c), facilities seeking to close or eliminate a health care facility or service subject to certificate of need review by SHPB are required to file a full review certificate of need application. The SHPB is also required to hold at least one public hearing in the service area of the health care facility or service proposed to be closed within 30 days of the application being declared complete by the Department. In this instance, a public hearing took place on December 17, 2009, where ten people attended and three spoke. All of the speakers expressed concern regarding area residents access to emergency services; the conditions leading up to the closure of the facility and the roles that state and local government, facility management, and Trustees had played in addressing the conditions that led to the hospital's closure; efforts to save the hospital prior to closure; and, funding available to surrounding facilities.



The application fully addresses the regulatory and statutory requirements set forth below, and I believe that it is in the best interest of the public to approve this application. As to the specifics of this application, N.J.S.A. 26:2H-8(a) requires that I consider the availability of facilities or services, which may serve as alternatives or substitutes. Since Hammonton is situated close to the Western border of Atlantic County, the closest general acute care hospitals are located in five surrounding counties. Virtua West Jersey Hospital-Berlin (Virtua-Berlin), located in Camden County, is the closest hospital at 13.4 miles. In Burlington County, the closest hospital is Virtua West Jersey Hospital-Marlton at 20.7 miles. In Cumberland County, the closest hospital is South Jersey Healthcare Regional Medical Center-Vineland (SJH-Vineland) at 22 miles. In Salem County, the closest hospital is South Jersey Healthcare-Elmer (SJH-Elmer) at 25.5 miles. Finally, in Atlantic County, there are three other general acute care hospitals in addition to Kessler, all of which are located within a 34 mile radius of Kessler. Atlanticare Regional Medical Center, Inc.-Mainland Division (AtlantiCare-Mainland) is the closest hospital within the county at 17.2 miles, then Atlanticare Regional Medical Center, Inc., City Division (AtlantiCare-City) at 33 miles and Shore Memorial Hospital at 33.9 miles. When looking at the current average daily census figures for Kessler, there is a sufficient number of unoccupied licensed beds at the hospitals in Atlantic County alone to absorb the relatively small inpatient census at Kessler. Furthermore, it is noted that AtlantiCare –Mainland is operating a satellite emergency department (SED) at the Kessler facility and that it is serving the population, evidenced by the 3862 patient visits at the SED in the second quarter of 2009. I am confident that the closure will not adversely affect access to health care services for the community, including the medically indigent and medically underserved population. Thus, I am satisfied that this criterion is met.

I also find that the requirement at N.J.S.A. 26:2H-8(b) to consider the need for special equipment and services in the area would be met in this case, since at least one or more of the area hospitals currently offer the same services provided at Kessler. I note that Kessler did not provide any specialized services or equipment since it was not a tertiary facility. Since former Kessler patients did not receive specialized services from Kessler and would have gone elsewhere to receive such services, access problems are also not an issue in this case.

With respect to N.J.S.A. 26:2H-8(c) regarding the possible economies and improvement in services to be anticipated from the operation of joint central services, this provision is not applicable since Kessler would be discontinuing its services. N.J.S.A. 26:2H-8(d) requires me to examine the adequacy of financial resources and sources of present and future revenues. I believe that the closure of Kessler is a responsible course of action given the hospital's poor financial condition. The fiscal forecast for the hospital showed that the continuation of hospital services was unsustainable given its operational losses and insolvency. I agree that the Kessler's rationale to discontinue services is a realistic assessment of the health care environment in its service area.



Finally, with respect to N.J.S.A. 26:2H-8(e), regarding the availability of sufficient manpower in the several professional disciplines, since the application proposes closure of the entire facility, adequate staffing is not an issue. I note that the Kessler stated that there are currently two full-time employees, and four individuals working with Kessler to oversee the winding down process. I note that Kessler employs one part-time employee to respond to medical records requests.

N.J.S.A. 26:2H-8(f) requires consideration of such other factors as may be established by regulation; therefore, I have taken into consideration the applicable administrative rules governing the services subject to full review (i.e., N.J.A.C. 8:33-1.1 et seq.). Kessler is in compliance with the access requirements set forth in N.J.A.C. 8:33-1.1 et seq. and N.J.A.C. 8:33-4.10(a). Specifically, the other area hospitals will continue their services to low income, racial and ethnic minorities, women, and disabled, elderly and all other patients in need of prevention, diagnostic and treatment services. The area hospitals have longstanding history and a commitment to the community to continue providing medical care and treatment for medically underserved populations. There is no indication that any of these hospitals would discontinue their commitment to preserve the same level of access to health care services for the Kessler community, including the medically indigent and medically underserved population.

I have also taken into consideration the statutory requirement set forth in N.J.S.A. 26:2H-8 to determine whether the action proposed will have an adverse economic or financial impact on the delivery of health care services in the region or statewide and will contribute to the orderly development of adequate and effective health care services. I note the project will result in the formal closure of a 160 bed acute care facility, which has already ceased services and had been underutilized in the months preceding closure. I conclude that the Kessler's decision to close appears sound and in the best interest of the area's health care delivery system. The objectives of this application and approval are as follows: (1) to formalize the closure of Kessler; (2) to ensure that emergency health care services remain accessible and available to the former patients at Kessler through AltantiCare-Mainland's SED; and, (3) to assure that the overall financial viability of the remaining area hospitals is strengthened.

Additionally, as previously noted, there will be sufficient regional capacity to meet the need for inpatient acute care services, even after closure of Kessler. As to whether the discontinuance of acute inpatient services at Kessler has contributed to the orderly development of adequate and effective health care services, I find that their discontinuance has strengthened area hospitals that are presently underutilized, contributes to rationalizing the delivery of inpatient acute care services in the region and has not had any adverse impact on any hospital in either Atlantic County or the surrounding counties.

Based on the foregoing, and noting the approval of the SHPB, I am approving Kessler's application subject to the following conditions:

1. Kessler shall surrender its license for the existing location to the Department's Certificate of Need and Healthcare Facility Licensure Program (CNHCFL) within ten days of this approval.
2. A detailed description must be provided to the Department, in writing, of the established process to obtain a copy of a complete medical record, inclusive of electronic and hard copy components, and the projected timeframe from request to receipt of medical records.
3. A detailed plan must be provided for public notification regarding the process to obtain a copy of a complete medical record. Public notification must occur on a weekly basis over the course of a three month period in both English and Spanish, commencing on the date of approval of the closure of Kessler by the Commissioner of Health and Senior Services.
4. The name of the individual responsible for the safekeeping and accessibility of all components of the patients' medical records (both active and stored) from Kessler must be provided, in accordance with N.J.S.A. 26:8.5 et seq. and N.J.A.C. 8:43G-15.2.
5. A detailed description of Kessler's process in notifying employees of termination of employment and available benefits.
6. Kessler shall document its plan for retention and accessibility of medical records during its Community Health Assets Protection Act (CHAPA) non-profit institutions dissolution process.

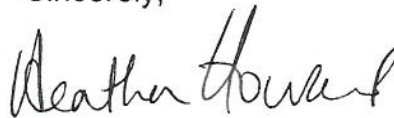
Please be advised that this approval is limited to the application as presented and reviewed. The application, related correspondence, and any completeness questions and responses are incorporated and made a part of this approval.

Failure to satisfy the aforementioned conditions of approval may result in sanctions, in accordance with N.J.S.A. 26:2H-1 et seq. and all other applicable requirements. Acceptance of these conditions will be presumed unless written objections are submitted to the Department within 30 days of receipt of this letter. Upon receipt of such objections, this approval will be deemed suspended and the project shall be reexamined in light of the objections.

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If you have any questions concerning this certificate of need, please do not hesitate to contact John Calabria, Director, Office of Certificate of Need and Healthcare Facility Licensure, at (609) 292-8773.

Sincerely,

A handwritten signature in black ink that reads "Heather Howard". The signature is written in a cursive style with a large, prominent "H" at the beginning.

Heather Howard  
Commissioner

c: John A. Calabria