

IN THE MATTER OF	*	BEFORE THE
	*	
BALTIMORE NURSING AND	*	MARYLAND
	*	
REHABILITATION, LLC	*	HEALTH CARE COMMISSION
	*	
<b>The Establishment of a</b>	*	<b>Matter No. 15-24-2366</b>
<b>Comprehensive Care Facility d/b/a/</b>	*	
<b>“Restore Health” in Baltimore City</b>	*	
	*	
* * * * *	*	* * * * *

**BALTIMORE NURSING AND REHABILITATION, LLC’S  
MOTION TO STRIKE and/or MOTION IN OPPOSITION to  
LIFEBRIDGE’S REQUEST FOR INTERESTED PARTY STATUS**

---

Baltimore Nursing and Rehabilitation, LLC (“BN&R”) through its undersigned counsel, submits this Motion to Strike and/or Motion in Opposition to LifeBridge Health, Inc.’s (“LifeBridge”) Request for Interested Party Status in the above captioned matter. LifeBridge neither meets the regulatory definition of an “Interested Party” nor attempts to satisfy any of the regulatory criteria for Interested Party. For the reasons set forth more fully below, LifeBridge’s request for interested party status should be stricken and/or denied.

A. LIFEBRIDGE MADE NO ATTEMPT TO SATISFY ITS BURDEN OF ESTABLISHING INTERESTED PARTY STATUS, AND THEREFORE FAILS TO QUALIFY AS AN INTERESTED PARTY.

The Code of Maryland Regulations sets for the specific definition of an “Interested Party” at COMAR 10.24.01.01(B)(20):

- (20) “Interested Party” means a person recognized by a reviewer as an interested party and may include:
- (a) The applicant for a proposed project;
  - (b) The staff of the Commission;
  - (c) A third-party payor who can demonstrate substantial negative impact on overall costs to the health care system if the project is approved;
  - (d) A local health department in the jurisdiction or, in the case of regional services, in the planning region in which the proposed service is to be offered; and
  - (e) *A person who can demonstrate to the reviewer that the person would be adversely affected, in an issue area of which the Commission has jurisdiction, by the approval of a proposed project.*

The only potentially applicable provision in COMAR that relates to LifeBridge is that which defines an interested party as one who can demonstrate that it would be “adversely affected” by approval of the proposed project. While the term “demonstrate” is not defined in COMAR, in common parlance, the term means to “clearly show the existence or truth of by giving proof or evidence.”<sup>1</sup> LifeBridge’s regulatory burden was to **clearly show with proof or evidence**, that it would be “adversely affected” by the proposed project.

COMAR sets forth the requirements necessary for a party to establish that it will be “adversely affected”:

(2) "Adversely affected", for purposes of determining interested party status in a Certificate of Need review, as defined in §B(19) of this regulation, means that a person:

(a) Is authorized to provide the same service as the applicant, in the same planning region used for purposes of determining need under the State Health Plan or in a contiguous planning region if the proposed new facility or service could reasonably provide services to residents in the contiguous area;

(b) Can demonstrate that the approval of the application would materially affect the quality of care at a health care facility that the person operates, such as by causing a reduction in the volume of services when volume is linked to maintaining quality of care;

(c) Would suffer a substantial depletion of essential personnel or other resources by approval of the application by the Commission; or

(d) Can demonstrate to the reviewer that the person could suffer a potentially detrimental impact from the approval of a project before the Commission, in an issue area over which the Commission has jurisdiction, such that the reviewer, in the reviewer's sole discretion, determines that the person should be qualified as an interested party to the Certificate of Need review.

LifeBridge did not provide any evidentiary support that the proposed facility would materially affect its quality of care, or that there would be a substantial depletion of resources, or any detrimental impact whatever. In fact, it is highly unlikely there would be any impact to LifeBridge whatsoever, because the only facility specifically referenced in LifeBridge’s Comments, Levindale Hebrew Geriatric Center and Hospital (“Levindale”), is located adjacent to Sinai Hospital and is almost eight miles away from the proposed BN&R site and has significantly different licensure.

---

<sup>1</sup> Oxford Dictionary, [www.oxforddictionaries.com/us/](http://www.oxforddictionaries.com/us/), Oxford University Press (2015).

Furthermore, LifeBridge failed to provide any evidence, or even indicate, how a proposed nursing home in downtown Baltimore could affect a facility that combines chronic hospital, rehabilitation hospital, and chronic care facility beds so far away. There is no discussion of the depletion of essential personnel or other resources, largely because there will be none. There is no discussion of any potentially detrimental impact. LifeBridge's request for interested party status is completely devoid of the necessary information to even consider the submission.

LifeBridge simply made one unsupported statement that it would be adversely affected. It made no attempt to demonstrate, in any manner whatsoever, any potential adverse impact to it. LifeBridge offered no facts, no evidence, no calculations, and not even any grounded statements. The regulatory requirements have not been met, and LifeBridge's request for Interested Party status should be denied.<sup>2</sup>

B. EVEN IF LIFEBRIDGE HAD MADE SOME ATTEMPT TO QUALIFY AS AN INTERESTED PARTY, IT DOES NOT SATISFY THE CRITERIA.

Even if LifeBridge made some attempt to qualify as an Interested Party, LifeBridge does not and cannot satisfy the criteria for Interested Party Status. BN&R incorporates by reference Response #3 on pages 2-4 and Response # 13 on pages 14-15 to LifeBridge's Comments dated October 5, 2015, which Responses are filed simultaneously herewith. In short, LifeBridge notes, at most, a theoretical impact on its chronic hospital beds, which are not the same licensure category as the beds requested. LifeBridge presents no evidence of any sort as to any impact on its comprehensive care facility beds. For the reasons cited above, an Interested Party must demonstrate that it is adversely affected, and LifeBridge cannot do this.

---

<sup>2</sup> In that LifeBridge failed to support its request with any required "demonstration", and given that the deadline for interested party comments now has expired (within 30 days of docketing expired 10/6/15), LifeBridge cannot now amend or revise its request with supplementary information. To do so would be an improper attempt to subvert the Regulatory deadlines, which are in place to ensure the integrity of the CON review process. See COMAR 10.24.01.08(D)(2)(b); COMAR 10.24.01.08(F)(1)(a).

C. BN&R WILL ADDRESS LIFEBRIDGE'S COMMENTS AS A PERSON SEEKING PARTICIPATING ENTITY STATUS.

Given the failure to qualify as an Interested Party, pursuant to COMAR 24.01.08(F)(2), BN&R will respond to LifeBridge's comments as a Person Seeking Participating Entity Status. Full responses will be filed separately within the appropriate time period. This will allow comments to be considered as part of the Record.

WHEREFORE, Baltimore Nursing and Rehabilitation, LLC requests that LifeBridge Health, Inc.'s request for Interested Party status be stricken and/or denied, and that no further submissions supporting Interested Party status be entertained due to the expiration of the deadline for any such filing.

October 20, 2015

Respectfully submitted,



---

Peter P. Parvis  
Jennifer J. Coyne  
MILES & STOCKBRIDGE P.C.  
One W. Pennsylvania Ave., St. 900  
Towson, Maryland 21204  
[pparvis@milesstockbridge.com](mailto:pparvis@milesstockbridge.com)  
[jcoyne@milesstockbridge.com](mailto:jcoyne@milesstockbridge.com)  
Telephone: 410.823.8165  
Fax: 410.823.8123

*Counsel for Baltimore Nursing and Rehabilitation, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th of October, 2015, a copy of BALTIMORE NURSING AND REHABILITATION, LLC'S MOTION TO STRIKE and/or MOTION IN OPPOSITION to LIFEBRIDGE'S REQUEST FOR INTERESTED PARTY STATUS was served, first-class mail, postage prepaid, on:

Ms. Ruby Potter  
Health Facilities Coordination Officer  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Kevin McDonald, Chief  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

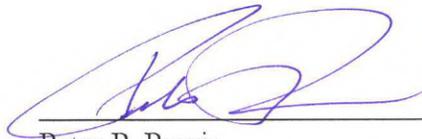
Suellen Wideman, Esq.  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Mr. Paul Parker  
Director  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

Leanna Wen, MD  
Commissioner of Health, Baltimore City  
Baltimore City Health Department  
1001 E. Fayette Street  
Baltimore, MD 21202

Richard McAlee  
Richard G. McAlee, LLC  
6911 Prince Georges Ave.  
Takoma Park, MD 20912  
*Attorney for LifeBridge Health, Inc.*

October 20, 2015

  
\_\_\_\_\_  
Peter P. Parvis