

Robert E. Moffit  
CHAIR

STATE OF MARYLAND

Ben Steffen  
EXECUTIVE DIRECTOR



**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

October 29, 2018

**VIA Email & U.S. MAIL**

Michael A. Franklin, President/CEO  
Atlantic General Hospital Corporation  
9733 Healthway Drive  
Berlin, MD 21811

**Re: Atlantic General Surgical Center  
Matter No. 18-14-2431**

Dear Mr. Franklin:

Commission staff has reviewed the application from the Atlantic General Hospital Corporation (“AGHC” or “the Applicant”) for Certificate of Need (“CON”) approval to establish an ambulatory surgery facility with two operating rooms in the City of Berlin, Worcester County. The total project cost is estimated to be \$8,883,332. Staff found the application incomplete, and, accordingly, requests that you provide responses to the following questions.

**Part 1 – Project Identification and General Information**

1. Please provide a site map that shows the plat or lot number where the Medical Office Building and proposed ASF will be located on Racetrack Road in Ocean Pines, Worcester County. How far is the proposed ASF from AGH in miles and driving time?
2. Please provide an organizational chart for Atlantic General Hospital Corporation and show the affiliation or the corporate relationship with the hospital and the proposed ASF.
3. Regarding Attachment 3, please discuss and clarify the relationship between Atlantic General Hospital Corporation and Sina Companies. Please explain the relationship of Sina as a “managing member of the ownership entity” and how the ownership entity “will be a single purpose entity whose sole asset is this facility and its associated land.”

4. While Sina Companies will build and own the two-story MOB, please discuss whether Sina Companies or the applicant will have the fiscal responsibility for the entire cost or do these two parties have an agreement to share the costs of constructing the 13,101 gross square foot ASF that includes the two ORs and the three procedure rooms.
5. Please provide a copy of the agreement between Sina Companies and the applicant that identifies (a) the type of ownership entity between the applicant and Sina Companies including the responsibilities for each party in constructing the proposed ASF, and (b) the terms of the lease for the proposed ASF upon project completion, including responsibilities and terms.
6. Regarding your statement on p. 7, please provide details or an explanation on how the “proposed consolidation will save approximately \$292,000 per year” for AGH management and how this relates to the proposed establishment of the ASF.
7. Please describe what other businesses or services in addition to the proposed ASF will be located in the proposed MOB.
8. Please provide a response to the following:
  - a. A line diagram that shows Atlantic General Hospital’s Surgical Operating Rooms both before and after the proposed project. The line diagram should clearly indicate the operating room and the three procedure rooms that will be taken out of service in the hospital.
  - b. Provide an expected date when the hospital will take the OR and three procedure rooms out-of-service and what the hospital will do with this space after the proposed project is completed.
  - c. Are any of the plans as well as the renovation costs for the changes to the AGH’s surgical services department part of this proposed project budget, and if not, please explain why and when the hospital will complete these changes to the areas where the single OR and three procedure rooms are proposed to close?
9. Please provide documentation to support the position that the proposed 4 acres located at Racedown Road in Ocean Pines has all the required State and local land use and environmental approvals including zoning and site plan.
10. As instructed under “Features of Project Construction,” please discuss the availability and adequacy of utilities for the proposed site on Racedown Road. Please identify the provider for each utility and the steps to be taken to obtain these approvals.

## **Part II – Project Budget**

11. Please provide documentation that includes the details on how the project cost of \$8.9 million will be shared between AGHC and Sina Companies. Is this arrangement identified in the leasing arrangement previously requested by staff? If not, provide a copy of the signed agreement between these two parties that delineates this arrangement between Atlantic General Hospital Corporation and Sina Companies.
12. Attachment 12 indicates that between 60% and 75% of the total cost of the project “will be funded by debt characterized as a construction, mini-permanent loan from a traditional bank or private lender.” Provide a letter from a financial institution that delineates the terms for the \$5,444,065 identified in the Project Budget as “MOB Developer Financing.” Please discuss how the applicant will arrange this debt financing; will the applicant reimburse the financial institution directly or reimburse Sina Companies, and is there a financing cost involved in setting up this debt financing between Atlantic General Hospital Corporation and Sina Companies with this financial lending institution. Are these financing costs included in the Project Budget?
13. With regard to the cash contribution, Attachment 12 states this will be funded as equity “either fully funded by the principals/executives of Sina Companies, or by the principals/executives in combination with an institutional partner.” This statement differs with the applicant’s statement on p. 12 of the application that “AGH will fund those estimated costs from Corporation cash assets.” Please clarify how the \$3.4 million in cash will be funded. If Sina Corporation provides the cash equity, then Sina will have to provide documentation in the form of an audited financial statement or a letter signed by an independent Certified Public Accountant that attests to the financial condition of Sina Companies and the availability of such funds, and provides details on how the CPA reached this conclusion that adequate funds are available.
14. The project budget only includes \$7,065 for Architectural and Engineering Fees and - \$0- for Permits. In our experience these seem quite unrealistic. Please confirm and explain.

## **Part III – Applicant History, Statement of Responsibility, Authorization and Release of Information, and Signature**

15. Please clarify whether Sina Companies is an owner and responsible for the proposed project and its implementation, and whether it should provide a response to this section of the CON application.

**Part IV – Consistency with General Review Criteria at COMAR 10.24.01.08G(3)**

Charity Care Policy

16. We have attached a table to facilitate review of how your charity care policy conforms to the provisions of the Charity Care Standard. Please complete the table, excerpting the relevant language in the policy that addresses the standard, and provide a citation to where that language appears in the policy.

Quality of Care

17. Please discuss the hospital's progress in obtaining re-accreditation with the Joint Commission. Does the applicant envision any delays or problems in obtaining re-accreditation?
18. Your response on p. 21 contains typographical errors. The applicant appears to be meaning to say that it "agrees to voluntarily suspend operation of the facility" if it does not obtain the necessary accreditation. Please confirm staff's interpretation.

Transfer Agreements

19. Please provide a signed copy of a transfer agreement between the proposed ASF and Atlantic General Hospital.

Service Area

20. Please identify which zip codes for the proposed ASF are in the primary and which are in the secondary service area. Is the ASF service area different from the hospital, and if so, please identify this difference?

Need – Minimum Utilization for Establishment of a New or Replacement Facility

21. Regarding Attachment 7, please respond to the following:
  - a. Are the minutes reported only for length of time for each physician's surgical cases, or does it include turnaround time as well?
  - b. Provide documentation to support the statement that outpatient surgery utilization at AGH increased 11.65% between 2017 and 2018.
  - c. The applicant states on p. 23 of the CON that "fourteen surgeons are likely to treat patients" and "will shift some of these cases to the ASF." Clearly identify which physician will move outpatient surgical cases to the proposed ASF, and whether the surgeons will move all of the projected surgical cases for Years 1 thru 3 listed in Attachment 7 to the proposed ASF, or are these utilization projections reporting the total number of surgical cases each of these physicians will perform for these three years, combining the utilization performed at both AGH and the proposed ASF. If the latter is true, then separate the projected utilization performed at the proposed ASF from the projections for the hospital.

#### Construction Costs

22. Please provide the calculations and background details to support the applicant's statement that MVS value is \$278 per sq. ft. and the estimated project cost of new construction. Include any assumptions used to arrive at these two figures.

#### Financial Feasibility

23. Please respond to the following:

- a. Table F and I: Please clarify whether the OR Minutes reported include average turnaround times. If not, then indicate whether the turnaround assumption of 25 minutes in Subsection .07A(2)(a) is reliable or Subsection .07A(2)(c) should be used and state the average turnaround time and justify the basis for this alternative assumption. Note: The physician minutes in Attachment 7 reporting utilization at the proposed ASF for Year 1 through Year 3 should total the projected OR minutes in Attachment 1, Table I for FY 2021 through FY 2023
- b. Table F: Please report the Inpatient Surgery Utilization at AGH for four ORs from FY 2017 through FY 2020, and the projected utilization for the three ORs from FY 2021 through FY 2023.
- c. Table F: Based on the Outpatient Surgery utilization projections for FY 2021 through FY 2023, the number of minutes would not be sufficient to support the need for 3 ORs at AGH after project completion. Please provide projected surgery utilization to support the need to maintain 3 ORs at AGH after project completion.
- d. Table G: Please provide the projected Revenues and Expenses for AGH for FY 2020 through FY 2023.
- e. Table L Workforce for ASF: Please reconcile the difference in the total cost of \$2,144,588 in Table L with the \$2,002,715 for Salaries and Wages reported in Table J for FY 2023.
- f. For Tables F through L, please list the assumptions used to arrive at the projected utilization and Revenues and Expenses for these tables.

#### Need

24. Please provide the calculations based on historical and projected OR utilization that supports the need to establish a new ASF with two ORs and maintain 3 ORs at AGH in Worcester County. Provide the documentation that supports the applicant's statement on p. 32 that "the projection of 2,679 dedicated outpatient general purpose operating room (DOGPOR) cases, 179,645 DOGPOR minutes, and turnaround time of 24 minutes/case."
25. Provide evidence regarding the applicant's statement on p. 32 that "the overall projected growth in outpatient surgical utilization by the service area population" supports the need for the proposed ASF.

#### Availability of More Cost-Effective Alternatives

26. Please specifically provide more details on the pros and cons for each of the four alternative financing options discussed on pp 32-33 of the CON, and why the applicant selected the “turnkey operating lease” with “a real estate development company who would be responsible for building and furnishing the ASF” as the best of the four alternatives identified by the applicant. As instructed in the standard, the analysis should include the level of cost required to implement each of the four alternatives identified by the applicant.

#### Viability of the Proposal

27. Please provide the audited financial statement for Atlantic General Hospital Corporation for the year ended June 30, 2018 when this document becomes available.

#### Impact on Existing Providers and the Health Care Delivery System.

28. Is your statement that third-party payers have indicated their preference that “subscribers obtain services at freestanding ASFs rather than at Maryland hospitals” a generic one about the environment, or do you have specific examples?
29. Please provide a response on how the proposed project will improve travel times for residents of Worcester County to AGH and the ASF.

#### Tables

30. Regarding **Table C**, please provide the perimeter and the wall height for the proposed ASF in linear feet.
31. Does the Total Estimated On-Site and Off-Site Costs of \$658,970 entered into Table D represent the cost of constructing the proposed ASF, or for the construction of the MOB. If the former, please revise Table E, the Project Budget, to include it among the costs associated with construction of the ASF.

Please submit four copies of the responses to the additional information requested in this letter within ten working days of receipt. Also submit the response electronically, in both Word and PDF format, to Ruby Potter ([ruby.potter@maryland.gov](mailto:ruby.potter@maryland.gov)).

All information supplementing the application must be signed by person(s) available for cross-examination on the facts set forth in the supplementary information, who shall sign a statement as follows: “I hereby declare and affirm under the penalties of perjury that the facts stated in this application and its attachments are true and correct to the best of my knowledge, information, and belief.”

Micheal A. Franklin  
October 29, 2018  
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Should you have any questions regarding this matter, feel free to contact me at either at [bill.chan@maryland.gov](mailto:bill.chan@maryland.gov) or by phone at (410) 764-3374.

Sincerely,

A handwritten signature in cursive script that reads "William D. Chan".

William D. Chan  
Program Manager

cc: Rebecca Jones, R.N., Health Officer, Worcester County Health Department  
Richard Coughlan, DHG Healthcare

<b>(3) Charity Care Policy Standard</b>	<b>Language that Satisfies the Standard, with Citation to Location within AGH Charity Care Policy</b>
<p>(a) Each hospital and ambulatory surgical facility shall have a written policy for the provision of charity care that ensures access to services regardless of an individual's ability to pay and shall provide ambulatory surgical services on a charitable basis to qualified indigent persons consistent with this policy. The policy shall have the following provisions:</p>	
<p>(i) Determination of Eligibility for Charity Care. Within two business days following a patient's request for charity care services, application for medical assistance, or both, the facility shall make a determination of probable eligibility.</p>	
<p>(ii) Notice of Charity Care Policy. Public notice and information regarding the facility's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the facility's service area population and in a format understandable by the service area population. Notices regarding the facility's charity care policy shall be posted in the registration area and business office of the facility. Prior to a patient's arrival for surgery, the facility shall address any financial concerns of the patient, and individual notice regarding the facility's charity care policy shall be provided.</p>	
<p>(iii) Criteria for Eligibility. A hospital shall comply with applicable State statutes and Health Services Cost Review Commission ("HSCRC") regulations regarding financial assistance policies and charity care eligibility. An ASF, at a minimum, shall include the following eligibility criteria in its charity care policies. Persons with family income below 100 percent of the current federal poverty guideline who have no health insurance coverage and are not eligible for any public</p>	



	<p>           program providing coverage for medical expenses shall be eligible for services free of charge. At a minimum, persons with family income above 100 percent of the federal poverty guideline but below 200 percent of the federal poverty guideline shall be eligible for services at a discounted charge, based on a sliding scale of discounts for family income bands. A health maintenance organization, acting as both the insurer and provider of health care services for members, shall have a financial assistance policy for its members that is consistent with the minimum eligibility criteria for charity care required of ASFs described in these regulations.         </p>
	<p>           (b) A hospital with a level of charity care, defined as the percentage of total operating expenses that falls within the bottom quartile of all hospitals, as reported in the most recent HSCRC Community Benefit Report, shall demonstrate that its level of charity care is appropriate to the needs of its service area population.         </p>
	<p>           (c) A proposal to establish or expand an ASF for which third party reimbursement is available, shall commit to provide charitable surgical services to indigent patients that are equivalent to at least the average amount of charity care provided by ASFs in the most recent year reported, measured as a percentage of total operating expenses. The applicant shall demonstrate that:         </p>
	<p>           (i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and         </p>
	<p>           (ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.         </p>
	<p>           (iii) If an existing ASF has not met the expected level of charity care for the two most recent years reported to MHCC,         </p>

	<p>the applicant shall demonstrate that its historic level of charity care was appropriate to the needs of the service area population.</p> <p>(d) A health maintenance organization, acting as both the insurer and provider of health care services for members, if applying for a Certificate of Need for a surgical facility project, shall make a commitment to provide charitable services to indigent patients. Charitable services may be surgical or non-surgical and may include charitable programs that subsidize health plan coverage. At a minimum, the amount of charitable services provided as a percentage of total operating expenses for the health maintenance organization will be equivalent to the average amount of charity care provided statewide by ASFs, measured as a percentage of total ASF expenses, in the most recent year reported. The applicant shall demonstrate that:</p>
	<p>(i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and</p> <p>(ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.</p> <p>(iii) If the health maintenance organization's track record is not consistent with the expected level for the population in the proposed service area, the applicant shall demonstrate that its historic level of charity care was appropriate to the needs of the population in the proposed service area.</p>