

IN THE MATTER OF  
BALTIMORE NURSING AND  
REHABILITATION, LLC

The Establishment of a  
Comprehensive Care Facility d/b/a/  
“Restore Health” in Baltimore City

BEFORE THE  
MARYLAND  
HEALTH CARE COMMISSION  
Matter No. 15-24-2366

\* \* \* \* \*

**BALTIMORE NURSING AND REHABILITATION, LLC’S  
REPLY IN FURTHER SUPPORT OF ITS 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 Reply in Further Support of its Motion to Strike and/or in Opposition to LifeBridge Health, Inc.’s (“LifeBridge”) Request for Interested Party Status, and in formal response to LifeBridge’s recent filing, which purports to advance support for consideration as an Interested Party (the “Reply”). First, BN&R does not dispute the language of COMAR. LifeBridge’s lengthy discussion of the regulations is a red herring and does not further its position as an Interested Party. Second, rather than providing any required demonstration that it will be adversely affected by the proposed project, LifeBridge improperly seeks *ipso facto* appointment as an Interested Party. Third, now recognizing that it has failed to provide any real demonstration of any adverse impact, LifeBridge tries to supplement the record well after the deadline for doing so. Finally, despite its continued improper and untimely submissions, LifeBridge still has not satisfied the requirements for Interested Party status. For these reasons, as set forth in more detail below, LifeBridge’s request for Interested Party status should be denied both as a matter of law and as a matter of fact.

**A. The Definition of an “Interested Party” is not in Dispute, LifeBridge Just Doesn’t Qualify as One.**

In its Reply, LifeBridge sets forth a long and extensive review of the Commission’s Regulations concerning the definition of an Interested Party. While the history of the regulatory evolution could be helpful if the definition was at issue, in this case it is not. BN&R does not assert that LifeBridge must satisfy all of the subsections describing how a person might be “adversely affected”; it asserts that LifeBridge didn’t satisfy any. See COMAR 10.24.01.01B(2). LifeBridge’s only timely submission on Interested Party status is so devoid of facts on the issue that it was impossible to determine under which subsection LifeBridge was seeking qualification. Specifically, in its Comments, LifeBridge submitted the following statement:

LifeBridge requests that it be recognized as an interested party in the review of the Application. Through its subsidiary Levindale Hebrew Geriatric Center and Hospital (“Levindale”), LifeBridge provides comprehensive care facility (“CCF”) services in the same planning area as proposed in the Applications (Baltimore City). LifeBridge would be adversely affected by the approval of the Application.

See, LifeBridge’s October 5, 2015 Comments.<sup>1</sup> These statements do not include any evidentiary support or “demonstration”<sup>2</sup>, as required by the Regulations. There is nothing (other than simply stating as much) to evidence that Levindale provides the “same” services as those of the proposed facility. In fact, BN&R has provided in extensive detail how the services will not be the same.

---

<sup>1</sup> In the midst of LifeBridge’s hair splicing argument on the definition of an “aggrieved party” versus that of an adversely impacted “interested party,” one this point is clear: LifeBridge does not and cannot constitute an “aggrieved party,” and admits as much in its Reply. (Reply, p. 4.) LifeBridge’s comments can be considered, but it cannot be a party to this proceeding.

<sup>2</sup> “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.*  
COMAR 10.24.01.01(B)(20).



BN&R did not confuse the Regulations. It was simply pointing out to the Commission that LifeBridge is not an Interested Party under them.

**B. LifeBridge Seeks *Ipsa Facto* Designation as an Interested Party.**

As there is no dispute as to how an Interested Party is defined, the only real issue is whether or not LifeBridge provided sufficient evidence to justify that designation. After much discussion as to what the Regulations say, LifeBridge's argument, in essence, is that because it is in the same geographic region as the proposed facility, it will be adversely impacted in accordance with subsection (a). LifeBridge therefore demands that the Commission designate it as such, *ipsa facto*.

The very Regulations cited numerous times by LifeBridge, however, do not grant such *ipsa facto* authority by the Commission. The only subsection specifically granting the Reviewer discretion is subsection (d), which requires a further demonstration of detrimental impact to the Reviewer. We now know, based upon LifeBridge's own statements, that LifeBridge has not and did not intend to qualify as an Interested Party under subsection (d). LifeBridge argues that it qualifies by virtue of subsection (a). Therefore, the Reviewer does not have the same discretion to grant Interested Party status under subsection (a) that it would have had under subsection (d). And, as stated above, LifeBridge failed to provide any substantive evidence that it, "is authorized to provide the same service as the applicant," "in the same planning region used for the purposes of planning need under the State Health Plan." In fact, Levindale is located adjacent to Sinai Hospital and is almost eight miles away from the proposed BN&R site and has significantly different licensure, including chronic hospital beds. LifeBridge did not submit any timely evidence addressing these issues.

**C. LifeBridge Inappropriately Attempts to Supplement the Record with Additional Facts Not Timely Filed.**

The balance of LifeBridge's Reply is an inappropriate attempt to circumvent the firm deadline for both submitting Comments and requesting Interested Party statute. That deadline expired on October 5, 2015. Anything submitted afterwards, including LifeBridge's new attempt to

claim Interested Party status with new facts and arguments, is wholly inappropriate and should be stricken in its entirety. In essence, LifeBridge has attempted to make the very argument it should have made prior to October 5. The Commission's acceptance of these exceedingly late facts would circumvent the Regulations, lengthen the process, and create a precedent for any person to continuously submit motion after motion, regardless of the deadlines.

**D. Even if the Commission Considered LifeBridge's Untimely Facts and Argument, it Still Fails to Justify Interested Party Status.**

LifeBridge provides new facts and data purporting to justify its request for Interested Party status. As stated above, this information is untimely and should not be considered, but even if it is considered, it does not establish that BN&R will be providing the "same" services in the same service area.

Occupancy criteria is established to measure occupancy for the same service, but existing nursing homes do not provide the same services and do not serve the same population cohorts as the proposed facility aims to serve. Even if occupancy rates were 40%, that would not establish that services were available; it wouldn't indicate that patients in need can be served. Furthermore,

- Approximately 30% of the projected census is expected to represent volume shifts from nursing homes outside the jurisdiction to a more local nursing home. This should be judged as increasing access and a quality improvement for patient care; improving access is a core principle in the State Health Plan and one of the criteria for project evaluation.
- More than 10% of the projected census represents patients who are not currently transferred to nursing homes, but who continue to be served in the hospital because CCFs do not provide the services needed (e.g. NG tubes; post-transplant care; other). Therefore, this volume **will not be at the expense of existing nursing homes**, i.e. will not lower the occupancy rate at existing nursing homes.

- The balance of patients are ones with specialized needs such as dialysis services, vent care, and/or bariatric accommodations, and who spend a significant number of days in the acute hospital while waiting for placement. Therefore, a significant percentage of nursing home days projected for the new facility will replace *hospital days* and not be at the expense of existing nursing homes.

Therefore, even if the Commission considered the supplemental argument submitted by LifeBridge, it does not satisfy its burden under COMAR. The plain language of the regulations require that LifeBridge “demonstrate” (“clearly show the existence or truth of by giving proof or evidence”<sup>3</sup>) that it would be adversely affected by the proposed project. There was no proof or evidence establishing that LifeBridge provides the “same” services proposed in the project in the “same” planning region. The record facts establish that it will not. There was no proof or evidence 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. Simply put, despite the additional and improper argument, LifeBridge still cannot justify Interested Party status.

---

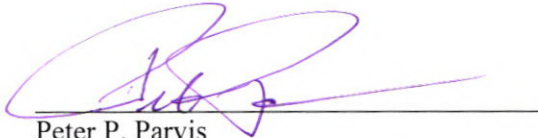
<sup>3</sup> Oxford Dictionary, [www.oxforddictionaries.com/us/](http://www.oxforddictionaries.com/us/), Oxford University Press (2015).



WHEREFORE, Baltimore Nursing and Rehabilitation, LLC renews its request that LifeBridge Health, Inc.'s request for Interested Party status be stricken and/or denied, and that the untimely submissions (and any future submissions) purporting to support Interested Party status not be entertained due to the expiration of the deadline for any such filing.

November 9, 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 9<sup>th</sup> of November, 2015, a copy of BALTIMORE NURSING AND REHABILITATION, LLC'S REPLY IN FURTHER SUPPORT OF ITS 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.*

November 9, 2015



Peter P. Parvis