IHFPB Task Force Position
July 2008

OVERVIEW

The Service Employees International Union is one of the fastest growing and diverse unions in North America, with 2 million members working in hospital systems, long term care, property services and public services. In Illinois, the recent merging of SEIU healthcare locals 4, 20, and 880 has created SEIU Healthcare Illinois and Indiana (SEIU-HCII), the largest healthcare union in Illinois. The 85,000 unified home care, hospital system, nursing home and child care workers in SEIU-HCII provide care to residents in every legislative district in the state and deliver care through many of the facilities and services that the Illinois Health Facilities Planning Board ("the Board") and its Certificate of Need program review. SEIU-HCII shares the commitment of the Board to a high-quality affordable health care system.

SEIU-HCII recognizes that the Board's primary mission is to provide for planning of health care services and in doing so, play a part in healthcare cost containment. However, the CON process has also evolved to include public accountability and public disclosure functions, regulation of the closure of facilities and discontinuation of services, an acknowledgement of an applicant's relationship to a broader system of services and the important contribution it makes in protecting safety net services. Recognizing the vital roles that the Board plays in healthcare delivery, SEIU-HCII supports the continuation of the Board's review of services and institutions through the CON process. In order to enhance the Board's effectiveness in carrying out its important public mission, we believe that significant changes should be made in how the Board operates and the criteria used to approve CON applications to ensure that patients, workers and communities are beneficiaries of any changes sought by healthcare provider systems.

SUPPORT FOR THE CON PROCESS

SEIU-HCII supports the continuation of the CON process on a permanent basis because it benefits patients, communities and workers by protecting our health care system in several ways.

The CON process is integral in protecting against the unnecessary duplication of services.

If given the ability to build without a planning process, hospitals and other health care providers will continue to build and expand to both drive volume and gain market share by offering new services and expanding their facilities in order to attract new and better-paying patients. These expansions may be driven more by reimbursement rates or a desire to keep up with other providers rather than an actual demand for services by the community. Experts have noted that healthcare

supply drives demand.[1] Thus, without the CON process a "medical arms race" occurs in the hospital industry that results in two negative consequences.

First, the medical arms race increases costs across the health care system with undesirable results for users of the system. A study by PriceWaterhouseCoopers concluded that the main reason for higher health care costs in Indiana can be attributed to an increase in the volume of health care facilities, which occurred after the state of Indiana repealed its certificate of need process.[2] Government officials in Pennsylvania struggled to find the way to slow the medical arms race among hospitals that occurred after CON laws were repealed in 1996. There was a definite need to control spiraling health care costs which were driven by increased usage.[3] The citizens of Illinois cannot afford to pay higher costs as a result of poor health care planning, nor should they suffer the consequences that would result from a repeal of the CON process.

Second, safety net hospitals serving our most vulnerable populations cannot generate the capital to effectively invest in infrastructure and add services. Consequently, they cannot attract better-paying privately insured patients and their every day struggle to stay afloat becomes even more difficult. Without the CON process to keep the medical arms race in check, safety net hospitals will fall further behind as more affluent hospitals expand their advantage. When safety nets struggle, key portions of the overall health care safety net are endangered. Indeed, this was the experience in Indiana and Pennsylvania following those states' repeals of the CON process.

The CON process ensures the preservation of critical services within communities.

Without the CON process, less profitable services such as trauma services and behavioral health services are at risk of disappearing from some communities without a plan to provide access. All hospitals should play a role in providing their fair share of services, including uncompensated care to the uninsured, especially those more financially able to do so. The CON process ensures that some hospitals do not abandon the community by discontinuing services which would then place a disproportionate burden on other hospitals, especially struggling safety net hospitals.

The CON process gives the public a voice as an important check on the health care system.

Given the importance of the health care system to the citizens of Illinois, the public has a right and a duty to provide input into the health care planning process. The addition or discontinuation of health care services, new construction and mergers and acquisitions can have a significant impact on the patients, workers and the community as well as the health care system. It is critical that the CON process provides a venue for patients, workers and the community to express their perspectives about significant changes to the health care system.

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[1] Mamula, Kris B. "Rendell Certificate of Need Plan Aims to Slow Health Care Arm Race" February 16, 2007. *Pittsburgh Business Times*

[2] Strupp, Dave. "Opponents of repeal say state needs certificate of need" Feb. 15, 2008. *Jacksonville Business Journal* (discussing 'The Cost of Caring, Key Drivers in Hoosier Healthcare Spending," February 2004, PriceWaterhouseCoopers).

[3] Mamula, Kris B. "Rendell Certificate of Need Plan Aims to Slow Health Care Arm Race" February 16, 2007. *Pittsburgh Business Times*

The opportunity for public input is particularly important for the hospital industry. The majority of Illinois hospitals are private non-profit hospitals that are tax-exempt. The significant tax exemptions that non-profit hospitals enjoy entail certain responsibilities to the public. The CON process serves as one important source of accountability to the covenant between non-profit tax-exempt hospitals and the citizens of Illinois.

RECOMMENDATIONS TO IMPROVE CON PROCESS:

While recognizing that the Board and the CON process make significant contributions to the health care system, we believe that there are opportunities to improve the function of the Board. SEIU-HCII's recommendations for the continued success of the Board include:

***Administrative Recommendations*:**

Eliminate the sunset provision of IHFPB

Because of the importance of the CON process to patients, workers and communities, SEIU-HCII supports the permanent establishment of the Board rather than forcing the Board and the CON process to undergo annual consideration and renewal by the Illinois General Assembly. This change should decrease staff turnover and streamline the CON applicant review process by promoting consistency. Eliminating the sunset provision would provide the opportunity for the program to reach its potential and meet its objectives.

Complete Board Appointments

SEIU-HCII supports immediate appointments to the Board to reach its designated five members. SEIU-HCII feels the current five-member structure creates the necessary public forum for the Board members to review and discuss CON applications. Additionally, the current five-member Board has demonstrated that it can work efficiently to meet its responsibilities.

The focus of appointments should be on qualified candidates, not categorical appointments. Categorical appointments may cause conflicts since categorically appointed members may be predisposed to voting in a certain way that may or may not be consistent with the overall planning process. We believe that with continued support from staff, the current Board structure allows members to meet the responsibilities of their appointments and safeguard the public's trust.

Improving Transparency in Communications with the Board

While the current rules on ex-parte communication provide important protections for the Board and staff, SEIU-HCII recognizes that there may be a need to streamline communications in order for the Board to fulfill its duties in the most efficient and effective manner. However, any changes in communication must provide for adequate transparency so that the public maintains its trust in the health care planning process. To that end, we recommend that any communications from applicants or the public that occur outside of the formal Board meetings must be provided in writing and sent to all members of the Board, the staff and available to the public via the Internet within 24 hours of receipt. Any responses from Board members or the staff should be made available to the same parties listed above. This process ensures that ample and timely communication occurs between all relevant parties while maintaining the highest ethical standards

that the public process deserves.

Reinstating CON review of nursing home changes of ownership

Until recently, the IHFPB was tasked with providing a CON for the establishment of nursing homes, the closure of facilities and the change of ownership of nursing homes. Last legislative session, the Nursing Home Care Act was amended and the Board no longer regulates nursing home change of ownership and closure through the CON process. As a result, nursing homes may now be bought and sold without a public review process taking place, and regulators and consumers may be left without information about who actually owns a facility, frustrating efforts to hold providers accountable for the care they provide.

This was exemplified last fall when the private equity firm, The Carlyle Group, purchased ManorCare, one of the largest long-term care providers in Illinois. Carlyle, a company with no known prior experience operating nursing homes, acquired 36 facilities with more than 4200[4] beds in Illinois before the state even had the opportunity to review or approve the transaction.

SEIU-HCII believes a thorough review process is necessary to ensure that only responsible providers are allowed to operate nursing homes, and for this reason proposes that CON review be reinstated for every nursing home change of ownership. SEIU-HCII also recognizes that certain smaller transactions may not require every element of the CON review process as it existed prior to 2007, and suggests transactions involving three or fewer facilities not be required to undergo a public hearing if requested. SEIU-HCII also believes that, as with health systems, a review of applicants for long-term care CONs should include the controlling entities and the patient care, staffing, and financial track records of all other health facilities under common ownership or control.

The CON process creates a structure for a review of healthcare providers' patient care track record and financial capacity, ensures transparency, and provides a formal process for stakeholder participation that is not built into the current medical facility licensure process. The Board has the experienced staff necessary to review these changes in health care delivery when changes of ownership take place. Illinois' current medical facility licensure review structure does not presently address quality or supply and does not reproduce the accountability that was an integral part of the CON process.

Recommendations on CON Approval Criteria

Considering the entire health system, not just individual facilities

SEIU-HCII believes that the CON process should consider the entire healthcare provider system as the CON applicant, not just the individual facility. Hospitals or nursing homes that belong to a system generally operate as a system. For example, facilities that are part of a system may have common operations such as purchasing. In terms of reporting, facilities may not file a separate IRS Form 990, for example. In general, the entire system is responsible for tax-exempt

[4] In the fall of 2007, ManorCare operated 7 Arden Courts facilities, 6 Heartland Health Care Ctrs, and 23 ManorCare facilities. These long-term care facilities have a combined 4,245 beds. www.idph.state.il.us/webapp/LTCApp/ltc.jsp, Accessed 7/10/2008.

debt obligations, not just individual facilities. Thus, financial disclosure documents are reported on consolidated basis, as a system. Given that the system tends to act as a system on such important matters, allowing only the individual hospital or facility to serve as the applicant does not provide an accurate picture of the operating reality and distorts the healthcare planning process. Requiring applicants to apply as a system rather than by individual facility provides the most realistic picture of the operating environment.

SEIU-HCII's position on CON submissions from health systems extends to the controlling entities of other institutions under Board review as well. When advocating for better care and wages, SEIU-HCII has found that patient care priorities and the historical and projected financial data of an institution's controlling entity are valuable indicators of the future quality and viability of the proposed healthcare facilities.

Increase Community Input

Under the current rules, Board members have the opportunity to address CON applicants regarding the information submitted on their proposed projects. This allows for the Board to gain valuable clarity regarding the application and allows an applicant to respond to staff reports regarding adherence to CON criteria. The Board does not have this same opportunity to dialogue with the public regarding information submitted through the public comment and hearing process. Given the importance of the health care system to affected communities and the valuable perspectives the public has as users of these services, the Board must have the opportunity to address the public during their decision making process. Increasing this opportunity for dialogue and clarification will also have a significant positive impact on the public's trust in the health care planning process. SEIU-HCII recommends creating a public input section at every Board meeting so that the Board can get the clarification they need to make an informed decision on these changes to the healthcare delivery system.

Consideration of Patient Care in CON Review Criteria

SEIU-HCII is committed to ensuring quality patient care. We believe quality care should be defined as good outcomes provided with a reasonable amount of resources. The public deserves a system that favors providers whose care processes and outcomes reflect the highest evidence-based medicine standards. The public also deserves a health care system that rewards providers who are cost efficient. Therefore, SEIU-HCII supports consideration of (1) care evaluation tools such as the hospital report card and long-term care patient care reports and (2) a measure of cost efficiency when approving CON applications. Quality, cost effective healthcare requires consistent and vigilant monitoring at a variety of levels and the CON process should serve as a further check on monitoring patient care. The quality of the health care system can be improved when it is considered as part of the CON process and the CON process becomes even more rational when it considers patient care.

Consideration of Charity Care in CON Review Criteria

The majority of Illinois hospitals are private non-profit hospitals that are tax-exempt. In return for these tax exemptions, hospitals are required to provide community benefits. The most important component of community benefits is charity care, or the care that a hospital provides without expectation of payment at the time of care. Since the CON process acts as an important

source of accountability and planning in the health care industry, SEIU-HCII recommends that the provision of charity care should be considered in applications to expand or contract services or facilities.

The expectation of adequate charity care also protects one of the centerpieces of the health care safety net: safety net hospitals. One issue safety net hospitals face is that they carry a large proportion of the burden of providing care to the un- and under-insured. The CON process can help with this issue by ensuring that all hospitals provide their fair share of charity care.

SEIU-HCII also supports the principle that the CON process should consider charity care standards that account for the individual situations of hospitals, such as geography and financial situation. Each hospital has a duty to contribute to carrying the burden of charity care. The CON process can help keep the overall charity care system in working order by ensuring that those who cannot provide adequate charity care contribute so that hospitals that carry more than their fair share of charity care are strengthened.

SEIU-HCII agrees with others who have testified and CHA/VHA guidelines on the reporting of charity care. Bad debt and Medicare shortfall should not count as charity care. Bad debt is simply a cost of doing business, whether a hospital is non-profit or for-profit. Additionally, Medicare is designed to reimburse costs and hospitals have a responsibility for keeping costs within that level. Medicaid shortfall should count as a community benefit given that Medicaid is often underfunded.

Requiring an Impact Study

The health care system is a complex system that benefits from the planning that the Board helps provide. Even small changes impact patients, workers, the community and other health care providers in important ways. Understanding the impact of proposed changes is critical to rational health care planning. Therefore, SEIU-HCII recommends that impact studies be required and the Board should give considerable weight to the impact studies. Such impact studies should include the impact that the project will have on patients, workers, the community and other health care providers. Additionally, those impacted by the project should be given ample opportunity to review and respond to any impact study presented to the Board.

Recommendations to Protect the Hospital Safety Net

Safety net hospitals play a key role in providing quality medical care to financially vulnerable patients and the public has a vested interest in protecting this valuable health care resource. SEIU-HCII members who work at these hospitals share the commitment of the institutions where they work. The CON plays an important role in protecting the critical medical services that safety net hospitals and their workers provide. As discussed previously, the CON process plays a crucial role in preventing the medical arms race---a competition that safety net hospitals are unable to effectively compete in due to a lack of access to capital. This medical arms race further exacerbates disparities between rich hospitals and poorer safety net hospitals, endangering a key component of the health care safety net. The continuation of the CON can help prevent a medical arms race that is detrimental to safety net hospitals and the health care system overall.

The following section further details the disparity in lack of access to capital between rich and poor hospitals. While the causes and solutions are multi-faceted, the Board can play an important role in diminishing this disparity.

Access to Capital: The Disparity

SEIU-HCII recognizes that decreasing the disparity in capital between Illinois' richest and poorest hospitals is critical to strengthening and protecting the overall health care system. The white paper "A Capital Crisis: The Financial Threat to Illinois' Health Care Safety Net" outlines the disparities in access to capital between Illinois' richest and poorest hospitals and how this endangers the health care safety net for Illinois' most vulnerable populations. While a brief summary of the white paper is provided here, more details and data can be found in the white paper itself.

Safety net hospitals play a critical role in serving our neediest Medicaid, underinsured and uninsured populations. Safety net hospitals are responsible for treating *nearly twice* the number of self-pay and charity care patients than expected considering their bed capacity. In contrast, the richest hospitals and health systems serve *less* than their fair share of the Medicaid, charity care and self-pay populations based on their bed capacity.[5] Regardless of who they serve, all hospitals need capital to invest in the renovation of buildings, modernization of equipment and expansion of services. In general, safety net hospitals operate in the oldest buildings and their need for capital is acute, yet they are least able to access capital.

Hospitals raise capital funds in three ways: generating cash from operations, fundraising or borrowing. The poorer-paying Medicaid and self-pay patients that safety net hospitals serve make it extremely difficult to generate cash from operations, especially when contrasted with richer hospitals who serve disproportionately more better-paying privately insured patients. Thus, richer hospitals are better able to generate cash from operations.

Additionally, rich hospitals have plenty of access to tax-exempt debt (bonds) while this market is virtually closed for safety net hospitals. The poorest 25% of hospitals and hospital systems held less than 1% of the tax-exempt debt outstanding in 2005 while the richest 25% of hospitals held 80% of the tax-exempt debt. Even after accounting for size, the disparity remains. The richest 25% of hospitals and systems had a median cash and investments of $417,000 per bed while the poorest 25% had a median of $0 cash and investment per bed.[6]

The result is that there is a vicious cycle that perpetuates the lack of capital for safety net hospitals, thereby exacerbating the existing differences between rich and poor hospitals. Without access to strong operating cash flows, donations, or low-interest borrowing, safety net hospitals are unable to invest in improvements to their facilities and equipment, making it more difficult to attract the well-insured patients who offset the low-paying Medicaid and uninsured patients. As a result, they cannot generate cash, and are unable to implement capital plans.

[5] "A Capital Crisis: The Financial Threat to Illinois' Health Care Safety Net" by The Service Employees International Union. April 2008.
[6] Ibid.

Public intervention is needed to open access to capital for safety net hospitals so that our safety net remains intact for our neediest populations. While a comprehensive solution requires action from many parties, the IHFPB and the CON process can play a significant role in helping to alleviate this disparity.

Protecting safety net hospitals

An intervention is required to ensure that safety net hospitals can maintain and upgrade their facilities and operations. There exists a range of options that should be considered by elected officials and policy makers. From establishing a capital construction fund to offering an enhanced loan program, the various avenues for supporting these hospitals should be evaluated and the most promising implemented. Until this step is taken, safety net hospitals will not get the capital support they so urgently need.

There is also room for the CON process to be proactive in helping safety net hospitals address their capital needs. Currently, the CON process application fees are used to fund the functions of the Board. SEIU-HCII believes there is an opportunity to increase the application fees and create a fund to help preserve safety net services in vulnerable communities.

CONCLUSION

The IHFPB and the CON process play a crucial role in protecting and strengthening the health care system in Illinois. However, some changes are necessary to improve the function of the Board and increase its ability to provide health care planning. Importantly, safety net hospitals play a crucial role in Illinois, but often face fierce barriers to capital expansions that hinder their ability to do more for the communities they serve. Indeed, in some cases safety net hospitals might perish altogether as they struggle to absorb the costs of treating an almost exclusively low-income population. If these looming threats come to pass, the public health safety net will be compromised. Yet even if safety net hospitals vanish, the patients in need of them will not. The costs of treating the poor and uninsured will most likely revert back to financially ailing public hospitals, where taxpayers will endure the hardship.