

MINUTES
STATE HEALTH FACILITIES COUNCIL
Initiated in the Lucas State Office Building, Room 523
Meeting Conducted Via Zoom

Wednesday, May 18, 2022

ELECTRONIC MEETING

This electronic meeting of the State Health Facilities Council was held in accordance with Iowa Code section 21.8 entitled “Electronic Meetings.” The Code states that a governmental body may conduct a meeting by electronic means only if circumstances are such that a meeting in person is impossible or impractical and access is provided to the public. An in-person meeting of the Council to handle this agenda was impractical due to the schedules of the Council members and the resources of the Department. The meeting was initiated in room 523 of the Lucas State Office Building and was conducted via Zoom, which offered both video conferencing and conference call capabilities. Notices and agendas were posted in the Lucas State Office building and on the Department’s web site under the Certificate of Need Program. The meeting was recorded.

9:05 AM Roll Call

MEMBERS PRESENT: Dr. Harold Miller, Chair; Kelly Blackford; Aaron DeJong; and Brenda Perrin

STAFF PRESENT: Becky Swift (present in the conference room)

OTHER STAFF PRESENT: Heather Adams, Counsel for the State

OTHERS PRESENT: Katie Cownie, Dorsey & Whitney LLC; Brian Dieter, President and CEO, Mary Greeley Medical Center; Andrew Perry, CEO, McFarland Clinic; Dr. Jean Hermsen, McFarland Clinic; Wendy Rindels, BSN, RN, Mary Greeley Medical Center; Anita Ley, RN, Mary Greeley Medical Center; John Haila, Mayor, City of Ames; Dan Culhane, President, Ames Chamber of Commerce; Tara Hall, Dentons Davis Brown; Ed Smith, President and CEO, St. Anthony Regional Hospital

I. APPROVAL OF MINUTES OF PREVIOUS MEETING (March 7, 2022)

A motion by DeJong, seconded by Perrin, to approve the minutes of March 7, 2022, carried unanimously by voice vote.

II. DETERMINATIONS OF NON-REVIEWABILITY AND THE DEPARTMENTS RESPONSE

The purpose of the Council's review under this portion of the agenda is to determine whether it affirms the Department's determination that a project is or is not subject to review under Iowa Code chapter 135. The Council will not hold a public hearing under this portion of the agenda.

1. Mercy River Hills Surgery Center, Des Moines, Polk County – Modernization and relocation of an ASC to a new facility in Grimes, Polk County.

Staff report by Becky Swift. A motion by Perrin, seconded by Blackford, to affirm the Department's determination carried 4-0.

2. HoldCo Prairie Rose LLC, Windsor Place Senior Living Campus, Sigourney, Keokuk County – Change in organizational structure and licensure of Windsor Place, a 41 bed nursing facility.

Staff report by Becky Swift. A motion by DeJong, seconded by Blackford, to affirm the Department's determination carried 4-0.

III. PROJECT REVIEW

1. Ames Surgery Center, LLC, Ames, Story County – Establishment of an Ambulatory Surgery Center.
\$12,623,456

Staff report by Becky Swift. The applicant was represented by Katie Cownie, Dorsey and Whitney LLC; Brian Dieter, President and CEO, Mary Greeley Medical Center; Andrew Perry, CEO, McFarland Clinic; Dr. Jean Hermsen, McFarland Clinic; Wendy Rindels, BSN, RN, Mary Greeley Medical Center; and Anita Ley, RN, Mary Greeley Medical Center. The applicant made a presentation and responded to questions posed by the Council. A motion by DeJong, seconded by Blackford, to enter the exhibit presented by the applicant in support of oral testimony into the record carried unanimously by voice vote.

John Haila, Mayor, City of Ames and Dan Culhane, President, Ames Chamber of Commerce, affected parties in support, each made remarks.

Affected parties in opposition included Tara Hall, Dentons Davis Brown and Ed Smith, President and CEO, St. Anthony Regional Hospital. The affected parties made a presentation and responded to questions posed by the Council. A motion by DeJong, seconded by Perrin, to enter the exhibit presented by St. Anthony Regional Hospital in support of oral testimony in opposition to the applicant into the record carried unanimously by voice vote.

The applicant provided rebuttal and answered questions posed by the Council. A motion by DeJong, seconded by Perrin, to enter the exhibit presented by the applicant in support of rebuttal testimony into the record carried unanimously by voice vote.

A motion by Perrin, seconded by Blackford to Grant a Certificate of Need carried 4-0.

The Council Chair stated that applications for the July meeting, which will be held the 13th and/or the 14th, are due on May 19. Swift will update the Council on how many applications are received. Swift noted that Heather Adams is not available in the morning on either of the July dates and asked Council members if the meeting(s) could begin at 1:00 pm. They all answered in the affirmative. Once the affected party letters have been received and there is a sense for how much time each application will take, it will be determined whether or not the meeting can be done in one day.

A motion by Perrin, seconded by DeJong, to adjourn carried unanimously by voice vote.

The meeting adjourned at 11:19 am.

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE APPLICATION OF)
)
 AMES SURGERY CENTER, LLC) **DECISION**
)
 AMES, IOWA)

This matter came before the State Health Facilities Council for hearing on Wednesday, May 18, 2022.

The applicant applied through the Iowa Department of Public Health for a Certificate of Need for the establishment of an ambulatory surgery center at an estimated cost of \$12,623,456.

The record includes the application prepared by the project sponsor and written analysis prepared by Iowa Department of Public Health staff and all the testimony and exhibits presented at the hearing. Becky Swift of the Iowa Department of Public Health summarized the project in relation to review criteria. The applicant was represented by Katie Cownie, Dorsey & Whitney LLC; Brian Dieter, President and CEO, Mary Greeley Medical Center; Andrew Perry, CEO, McFarland Clinic; Dr. Jean Hermsen, McFarland Clinic; Wendy Rindels, BSN, RN, Mary Greeley Medical Center; and Anita Ley, RN, Mary Greeley Medical Center. The applicant made a presentation and answered questions posed by the Council.

Affected parties in support included John Haila, Mayor, City of Ames and Dan Culhane, President, Ames Chamber of Commerce. The affected parties in support each made remarks.

Affected parties in opposition included Tara Hall, Dentons Davis Brown representing St. Anthony Regional Hospital and Ed Smith, President and CEO, St. Anthony Regional Hospital. The affected parties in opposition made a presentation and responded to questions posed by the Council.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 4-0 to GRANT a Certificate of Need. As a basis for their decision the Council, considering all the criteria set forth pursuant to Iowa Code Section 135.64 (1 and 2) (2021) made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The applicant proposes to establish Ames Surgery Center, LLC (“Ames Surgery Center”), a Medicare certified ambulatory surgery center (“ASC”), which will perform a variety of outpatient procedures.
2. The ASC will be a joint venture between Mary Greeley Medical Center and surgeon investors from McFarland Clinic, both located in Ames, Story County, Iowa. The physical structure will be constructed and owned by Health Ventures of Central Iowa, LLC (“Health Ventures”) an Iowa Limited Liability Company owned 50/50 by Mary Greeley Medical Center and McFarland Clinic.
3. Noted during testimony was that physicians have to perform more than 30 percent of their work at McFarland Clinic to be a surgeon investor.

4. Health Ventures will lease the building space to Ames Surgery Center to operate the ASC. In addition, Ames Surgery Center will also lease equipment from Health Ventures.
5. The total value of the equipment is \$10,753,456 and the annual lease cost is \$1,870,000, for a total cost of \$12,623,456.
6. The applicant noted that in recent years, the number of surgeries performed at Mary Greeley Medical Center has increased, making it more difficult to schedule less complex outpatient procedures and elective surgeries in a timely manner. Moving these procedures to an ASC will result in a better, more cost efficient patient experience for the residents of Ames and the surrounding service area.
7. Ames Surgery Center will seek Medicare certification as an ASC, and will be the first and only Medicare certified ASC in Story County.
8. It is expected that 38 percent of the projected patient mix at the ASC will be over the age of 65 or will be utilizing Iowa Medicaid.
9. The expected growth in Story County over the next 20 years is roughly 12,000 individuals with an increase in those aged 65 or older expected to grow by a minimum of 13 percent.
10. The project will primarily serve patients from Story County and the contiguous counties of Hamilton, Hardin, Boone, and Marshall. Of the contiguous counties, the applicant did not include Polk or Jasper Counties as Mary Greeley Medical Center does not currently see a significant number of patients from either of these counties.
11. The combined population of the primary and secondary service area is approximately 197,334.
12. The ASC will mostly serve individuals living in Ames and the surrounding areas – all of which are heavily rural areas. Placing the ASC in Ames helps to bring high quality and affordable care to these individuals and alleviates the need to travel longer distances to obtain services in an ASC.
13. The applicant noted that Mary Greeley Medical Center currently performs 76 percent of the outpatient surgeries within Story County.
14. The applicant stated that the Centers for Medicare and Medicaid Services (“CMS”) encourages, and some commercial payors have required, providers to perform certain low-risk outpatient surgical procedures in an ASC setting to reduce overall health care costs as compared to more expensive settings and to promote access to care. Noted is that United Healthcare has published a list of outpatient procedures that must be performed in an ambulatory surgery center unless they have been approved as medically appropriate to be performed in an outpatient hospital setting.
15. The applicant notes a payer mix of .03% self-pay; 31.6% Medicare; 6.4% Medicaid; 44% Blue Cross/Blue Shield; 9.5% commercial; 6.2% Medicaid replacement; 1.1% worker’s compensation; and 0.9% federal programs.

16. Mary Greeley Medical Center and McFarland Clinic have limited space and options to remodel on location and adding onto the hospital would not promote cost savings options as procedures would still be performed in a higher cost hospital site of service.
17. Ames Surgery Center anticipates this project will have a minimal impact on the service volume of providers in the contiguous counties. The applicant states that the owners of the proposed Ames Surgery Center currently perform the overwhelming majority of all outpatient surgery procedures in the service area and will continue to do so if this project is approved. They note that in addition, and if Mary Greeley outpatient surgical volumes are compared to the ASC's first four year's projections, they are not forecasting movement of all Mary Greeley Medical Center cases and are not anticipating any additional market capture from other service providers.
18. Mary Greeley Medical Center currently has state of the art facilities but is running at capacity with providers currently scheduling cases 6 months out. Noted in the application is that the operating room ("OR") is consistently running 9-10 rooms late into the afternoon with add on cases going on the schedule during the evening as there are no OR rooms available during the regular day schedule.
19. It was noted in the application that many payors, including Medicare, impose cost-sharing requirements in the form of co-payments or co-insurance. Given the high cost of services in the hospital, many low-income patients defer needed outpatient surgery due to the high cost. Ames Surgery Center will significantly help reduce barriers to care related to financial needs, but more so, to appropriately and timely provide health care access to all Iowans requiring surgical and procedural intervention. Without an ASC in the Ames area the patients located in the Ames Surgery Center service area will be forced to travel longer distances to seek treatment in other communities that have an ASC. The providers at McFarland Clinic in conjunction with the Mary Greeley leadership team believe this ASC is the best option to keep persons in the community with access to exceptional quality care in an efficient and safe, low-cost environment. Also noted is that COVID-19 has exacerbated scheduling and healthcare challenges which can result in missed or delayed diagnosis and disease progression leading to high costs of care.
20. The applicant projects the need for 15.8 staff in 2024, when the ASC is projected to open, with this number increasing to 70 by 2027. This number does not include physicians. The majority of new staff will be in the areas of nursing and surgical and endoscopy technologists. The applicant states that in addition to nurses and personnel employed by the ASC, the anesthesia group that staffs Mary Greeley Medical Center will provide anesthesia coverage to Ames Surgery Center. Also stated is that McFarland Clinic is currently recruiting physicians to fill any service specific positions required and believes the new ASC will help recruit physicians and their families to the region.
21. There were 11 letters of support submitted for this project. The letters were from Amerigroup Iowa, Inc.; McFarland Clinic; Mayor, City of Ames; City Manager, City of Ames; Leadership Team, Danfoss Ames Campus; Senior Director, Danfoss Ames Campus; Iowa Specialty Hospitals and Clinics; Iowa State University; Mary Greeley Medical Center; Primary Health Care; and Wellmark. The letters cite shorter wait times for services that are not required to be performed in a hospital; a more convenient and comfortable location for patients and their families; lower costs; a resource and benefit to the community; an increasing population base in Ames; difficulty experienced in scheduling less complex outpatient surgeries at Mary Greeley Medical Center; the new ASC having Medicare and Medicaid certification and a charity care policy allowing access to critical procedures for elderly and low-income citizens; and the ASC being the

first of its kind in the community as reasons for their support. Additionally, there were two affected parties at the hearing who spoke in support of the project.

22. There was one letter of opposition submitted. The letter, from St. Anthony Regional Hospital in Carroll, Carroll County, which is not contiguous to Story County, cited concerns about Ames Surgery Center potentially siphoning off surgical procedures from the hospital which is stressed due to lower patient volumes and a worsening reimbursement environment. They also noted a duplication of services. Also cited was that there are several McFarland Clinic physicians based in Carroll, and the concern that the ASC would incentivize and encourage these physicians to refer patients in their community to a McFarland owned surgery center in Ames. Two representatives of St. Anthony Regional Hospital spoke in opposition at the hearing reiterating these same concerns during their testimony.
23. Ames Surgery Center responded to the letter of opposition by noting that Carroll County is not contiguous to Story County and therefore is not considered an affected party under Iowa Code section 135.61(1)(c) and 641 IAC 202.1 to the application. They also noted that the ASC would not be a duplication of services. They also stated that the ASC would be the first of its kind in Story County and a lower cost option that provides easier access to surgery services for patients in need of less complex services.
24. During rebuttal testimony at the hearing it was noted that, on average, Carroll County represents less than three percent of the total outpatient surgeries at Mary Greeley Medical Center.
25. The new surgery facility will be approximately 34,000 square feet (gross) including 7 operating rooms (one being a shell space operating room) and 4 procedure rooms. The surgical suites will be built to accommodate surgical integration and visualization at the operative field as well as appropriately sized operating rooms to accommodate a robot and high acuity positioning tables. In addition, the ASC will be designed to accommodate new technologies in the operating rooms as well as the perioperative areas related to communication.
26. Ames Surgery Center will cover the expenses associated with the leases from the initial investments of the owners and from a line of credit. The amount of the initial start-up expenses is expected to be \$3,800,000 and that of this amount, \$3,000,000 will be contributed by the owners of Ames Surgery Center, LLC and \$800,000 will be available through a line of credit from Mary Greeley. Following the initial start-up period, Ames Surgery Center will pay for the ongoing lease costs through its operations.

CONCLUSIONS OF LAW

In determining whether to issue a certificate of need, the Council considered the eighteen criteria listed in Iowa Code § 135.64(1)(a)-(r). In addition, the legislature has provided that the Council may grant a certificate of need only if it finds the following four factors exist:

- a. Less costly, more efficient or more appropriate alternatives to the proposed institutional health service are not available and the development of such alternatives is not practicable;

- b. Any existing facilities providing institutional health services similar to those proposed are being used in an appropriate and efficient manner;
- c. In the case of new construction, alternatives including but not limited to modernization or sharing arrangements have been considered and have been implemented to the maximum extent practicable;
- d. Patients will experience serious problems in obtaining care of the type which will be furnished by the proposed new institutional health service or changed institutional health service, in the absence of that proposed new service.

1. The Council concludes that less costly, more efficient or more appropriate alternatives to the proposed health service are not available and the development of such alternatives is not practicable. The Council notes that the Centers for Medicare and Medicaid Services has recognized that many surgical procedures can be performed safely in an ASC with lower cost and improved patient convenience and comfort. The Council also notes that patients and payers want access to more convenient, comfortable, and less expensive options for outpatient services closer to home, with shorter wait times and more personalized care. The Council further notes that the number of surgeries performed at Mary Greeley Medical Center has increased, making it more difficult to schedule less complex outpatient procedures and elective surgeries in a timely manner. They note that moving these procedures to an ASC will result in a better, more cost efficient patient experience for the residents of Ames and the surrounding service area. The Council therefore concludes that there are no more appropriate, less costly services available in the area. Iowa Code Sections 135.64(1) and 135.64(2)a.

2. The Council concludes that existing facilities providing health services similar to those proposed are being and will continue to be used in an appropriate and efficient manner and will not be impacted by this project. The Council notes that the project is a joint venture between Mary Greeley Medical Center and McFarland Clinic, both located in Ames, Story County, Iowa. The Council notes Mary Greeley Medical Center will continue to provide surgery and services to those needing hospital level care. Additionally, the Council notes that there were 11 letters of support received, including letters from Mary Greeley Medical Center, McFarland Clinic, and Wellmark, and that representatives of both Mary Greeley Medical Center and McFarland Clinic spoke in support of the project at the hearing. The Council also noted that the only facility in opposition to the project was St. Anthony Regional Hospital in Carroll, Carroll County, which is not in the Ames Surgery Center service area, and is unlikely to be negatively impacted by the project given the small percentage of Carroll County residents who would receive care at the Ames Surgery Center. The Council specifically notes that no hospitals or ASC's in the service area objected to the project. Iowa Code Sections 135.64(1) and 135.64(2)b.

3. The Council concludes that the applicant will construct a new surgery facility that will be approximately 34,000 square feet including seven operating rooms (one being a shell space operating room) and four procedure rooms. The surgical suites will be built to accommodate surgical integration and visualization at the operative field as well as appropriately sized operating rooms to accommodate a robot and high acuity positioning tables. The Council additionally notes that the ASC will be designed to accommodate new technologies in the

operating rooms as well as the perioperative areas related to communication. The Council notes that Mary Greeley Medical Center and McFarland Clinic have limited space and options to remodel on location and adding onto the hospital would not promote cost savings options as procedures would still be performed in a higher cost hospital site of service. The Council concludes that alternatives including modernization and sharing arrangements have been considered and implemented to the maximum extent practicable. Iowa Code Sections 135.64(1) and 135.64(2)c.

4. The Council notes that Mary Greeley Medical Center currently has state of the art facilities but is running at capacity with providers currently scheduling cases 6 months out. They further note that the operating room ("OR") is consistently running 9-10 rooms late into the afternoon with add on cases going on the schedule during the evening as there are no OR rooms available during the regular day schedule. The Council also notes that Ames Surgery Center will be the first, and only ASC, in Story County. Noted by the Council is that some low-income patients defer the higher cost of outpatient surgery in a hospital setting, which can lead to missed or delayed diagnosis or disease progression. Therefore the Council concludes that patients will experience problems in obtaining care of the type which will be furnished by the proposed health service, in the absence of that proposed service. Iowa Code Sections 135.64(1) and 135.64(2)d.

The facts, considered in light of the criteria contained in Iowa Code Section 135.64 (1 and 2) (2021), led the Council to find that a Certificate of Need should be awarded.

It is required in accordance with 641 Iowa Administrative Code 202.12 that a progress report shall be submitted to the Iowa Department of Public Health six (6) months after approval. This report shall fully identify the project in descriptive terms. The report shall also reflect an amended project schedule if necessary.

The Certificate of Need is valid for a twelve (12) month period from the date of these findings. This is subject to the meeting of all requirements of the Iowa Department of Public Health. Requests for extension of a Certificate of Need must be filed in writing to the Iowa Department of Public Health from the applicant no later than forty-five (45) days prior to the expiration of the Certificate. These requests shall fully identify the project and indicate the current status of the project in descriptive terms.

No changes that vary from or alter the terms of the approved application including a change in the approved dollar cost shall be made unless requested in writing to the department and approved. Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73 (641 Iowa Administrative Code 202.14).

Dated this 24 day of June 2022


H.W. Miller, M.D., Chairperson

State Health Facilities Council
Iowa Department of Public Health

cc: State Health Facilities Council
Iowa Department of Inspections and Appeals, Health Facilities Division