



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

_____)	
In the matter of)	
)	
Evanston Northwestern Healthcare Corporation,)	PUBLIC
)	
and)	Docket No. 9315
)	
ENH Medical Group, Inc.)	
_____)	

COMPLAINT COUNSEL’S NOTICE OF SUPPLEMENTAL AUTHORITY

Complaint Counsel submit this notice of supplemental authority relating to the appeal of the Initial Decision dated October 20, 2005, in which Judge Stephen J. McGuire held that the consummated merger of Evanston Northwestern Healthcare Corporation and Highland Park Hospital violated section 7 of the Clayton Act, 15 U.S.C. § 18.

On appeal, Respondents contend that, after the merger, the hospitals were incapable of increasing their prices for services because, *inter alia*, “competitor hospitals [are] able to expand their capacity and service offerings” Respondents’ Corrected Appeal Brief dated January 12, 2006, at 44. To support this contention, Respondents correctly noted that, at the time they filed their brief, the Illinois Certificate of Need program – which established significant legal barriers both to market entry by new facilities and to the major expansion of existing facilities – was scheduled to expire on July 1, 2006. *Id.*

We advise the Commission that since Respondents filed their brief, and after oral argument, the State of Illinois has thrice extended its Certificate of Need program.¹ Most

¹ By Public Act 94-983, the State first extended the scheduled sunset date of the Illinois Certificate of Need law from July 1, 2006, to April 1, 2007. By Public Act 95-0001, the State then extended the scheduled sunset date of the statute from April 1, 2007, to May 31, 2007.

recently, in Public Act 095-0005, which was enacted on May 31, 2007, the State extended the Certificate of Need program to August 31, 2008.

Public Act 095-0005 also establishes a task force to assess long term reforms to the State Certificate of Need program. The task force is specifically directed to make recommendations regarding, *inter alia*, the impact of a sunset provision in the Certificate of Need Act and “[r]eforms that will enable the Illinois Health Facilities Planning Board to focus most of its project review efforts on ‘Certificate-of-Need’ applications involving new facilities, discontinuation of services, major expansions, and volume-sensitive services, and to expedite review of other projects to the maximum extent possible.” Section 5, Public Act 095-0005, *codified at* 20 Ill. Code § 3960/15.5(c)(4).

A copy of Public Act 095-0005 is attached as Exhibit A.

Respectfully submitted,



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Dated: June 19, 2007

Exhibit A

Public Act 095-0005

Public Act 095-0005

SB0244 Enrolled

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AN ACT concerning State government.

WHEREAS, The 94th General Assembly funded a study by the Lewin Group, "An Evaluation of Illinois' 'Certificate of Need' Program", which recommended that "... the Illinois legislature move forward to continue the 'Certificate-of-Need' program with an abundance of caution...". Given the potential for harm to specific critical elements of the health care system, non-traditional arguments for maintaining "Certificate-of-Need" laws deserve consideration, until the evidence on the impact that specialty providers and ambulatory surgery centers may have on safety-net providers and services can be better quantified. In response to the Lewin analysis and additional concerns regarding health planning in Illinois, the 95th General Assembly enacted Senate Bill 611 (Public Act 95-0001) that extended the "sunset" date of the Illinois Health Facilities Planning Act from April 1, 2007 to May 31, 2007 so that interested parties could agree on a strategy to further extend the "sunset" date, and develop a more comprehensive reform agenda; therefore

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Health Facilities Planning Act is amended by changing Section 19.6 and by adding Sections 12.5 and 15.5 as follows:

(20 ILCS 3960/12.5 new)

Sec. 12.5. Update existing bed inventory and associated bed need projections. While the Task Force on Health Planning Reform will make long-term recommendations related to the method and formula for calculating the bed inventory and associated bed need projections, there is a current need for the bed inventory to be updated prior to the issuance of the recommendations of the Task Force. Therefore, the State Agency shall immediately update the existing bed inventory and associated bed need projections required by Sections 12 and 12.3 of this Act, using the most recently published historical utilization data, 10-year population projections, and an appropriate migration factor for the medical-surgical and pediatric category of service which shall be no less than 50%. The State Agency shall provide written documentation providing