WEST VIRGINIA

HEALTH CARE AUTHORITY

In re: Stonewall Jackson Memorial Hospital Company, Applicant.

CON File #21-7-12157-H

DECISION

I. JURISDICTION

From 1977 until September 30, 1986, West Virginia participated in the federally funded health planning functions provided for by the National Health Planning and Resources Development Act of 1974. After October 1, 1986, Congress ceased funding the various state agencies known as State Health Planning and Development Agencies and in late 1986, repealed the former provisions of 42 U.S.C. § 300k, *et seq*. However, West Virginia has continued with its state health planning and development functions. Pursuant to W. Va. Code § 16-2D-1, *et seq*., the state's Certificate of Need (CON) program was created and jurisdiction over that program is vested in the West Virginia Health Care Authority (hereinafter sometimes referred to as the "Authority").

The CON law in West Virginia, W. Va. Code § 16-2D-1, *et seq*., provides that any proposed new health service as defined therein, shall be subject to review by the Authority prior to the offering or development of the service. The law became effective July 8, 1977.

II. ISSUES

The general issue to be decided is whether the Applicant is subject to CON review and, if so, whether the Authority shall issue a CON for the Applicant's proposed new health service.

III. PROJECT DESCRIPTION

Stonewall Jackson Memorial Hospital Company (Stonewall) is a 70-bed acute care hospital located on U.S. Route 33 on the western edge of Weston, Lewis County. Stonewall is a wholly-owned subsidiary of Monongalia Health System, Inc. (MHS). MHS became the Sole Member of Stonewall, and entered into a Management Services Agreement, dated October 1, 2017, that provides for the provision of executive management personnel, other management services, billing and collections, financial reporting and budgeting, insurance, and purchasing support. MHS has certain reserved powers including, but not limited to, the appointment of members of the board of directors, approval of capital expenditures, strategic planning, and management services.

The hospital is located 1.7 miles west of downtown Weston on Route 119/US 33 and 4.1 miles west of I-79, exit 99. Route 119/US 33 is a narrow, winding, two-lane road that travels through downtown Weston, with multiple stoplights. Stonewall is accessed via Hospital Drive, adjacent to Sharpe Hospital Road, which is the only access to that hospital. The two roads are approximately 0.10 miles apart. The construction of Stonewall's current facility, which began in 1970 and concluded in 1972, was conceived and constructed as a

state-of-the-art facility. Stonewell asserts the hospital is now fifty years old, outdated according to current building codes and construction standards, and is no longer well-suited to current or future demands of a modern hospital.

Stonewall is seeking a certificate of need to relocate and replace its current facility with a new 29-bed facility to be located 4.2 miles from the current site and just east of the I-79 intersection with U.S. Route 33. Upon completion of this project, Stonewall would continue to provide the same inpatient and outpatient services it currently provides including, but not limited to, cardiology, pulmonology, surgery, urology, family medicine, emergency medicine, pediatrics, obstetrics/gynecology, orthopedics, internal medicine, neurology, podiatry, and oncology.

The capital expenditure associated with this proposal is $55,950,000.00 and would be funded through conventional financing, cash, and land equity.

IV. PROCEDURAL HISTORY

The Letter of Intent was received on September 3, 2021 (Exhibit 1). On September 3, 2021, the Authority acknowledged receipt of the same (Exhibit 2).

On September 13, 2021, the CON application and appropriate filing fee were received (Exhibit 3). On September 13, 2021, the Authority acknowledged receipt of the same (Exhibit 4). On September 15, 2021, the Authority received replacement pages (Exhibit 5), received additional information regarding Stonewall's floor plan (Exhibit 6), received a replacement page (Exhibit 7) and declared the application complete (Exhibit 8).

The Notice of Review was issued on September 16, 2021 (Exhibit 9).

On October 14, 2021, the Authority received a request for affected party status and request for administrative hearing on behalf of St. Joseph's Hospital of Buckhannon d/b/a St. Joseph's Hospital (SJB) (Exhibit 10) and acknowledged receipt of the same (Exhibit 11). On October 29, 2021, the Authority issued the Notice of Prehearing Conference and Administrative Hearing (Exhibit 12) and the Hearing Order (Exhibit 13).

On December 3, 2021, the Authority received the Certificate of Service (COS) for Stonewall's Requests for Admission, Interrogatories, Requests for Production of Documents to SJB. (Exhibit 14) and the COS for SJB's Requests for Admission, Interrogatories, and Requests for Production of Documents (Exhibit 15).

On January 4, 2022, the Authority received the COS for Stonewall's Responses to SJB's Requests for Admission, Interrogatories, and Requests for Production of Documents (Exhibit 16). On January 5, 2022, the Authority received the COS for Answers to Requests for Admission, Interrogatories, and Requests for Production of Documents on Behalf of SJB (Exhibit 17). On January 12, 2022, the Authority received Stonewall's Motion to Compel (Exhibit 18). On January 18, 2022, the Authority received the Response to Motion to Compel (Exhibit 19), Stonewall's Witness List, Summary of Proposed Anticipated Testimony and Documents Intended to be Submitted (Exhibit 20), and SJB's List of Witnesses and Exhibits (Exhibit 21).

On January 28, 2022, the Authority received the Prehearing Transcript (Exhibit 22).

The Authority received the Hearing Transcript on February 11, 2022 (Exhibit 23). On March 16, 2022, the Authority received the Brief of Legal Issues Filed on Behalf of Stonewall (Exhibit 24). On April 15, 2022, the Authority received the Response Brief in Opposition to the CON Application of Stonewall (Exhibit 25). On April 29, 2022, the Authority received SJB's Proposed Decision (Exhibit 26). On May 2, 2022, the Authority received Stonewall's Reply Brief (Exhibit 27) and Stonewall's Proposed Decision (Exhibit 28).

V. ANALYSIS OF CRITERIA AND FINDINGS OF FACT

West Virginia Code § 16-2D-12(a) states that a Certificate of Need may only be issued if the proposed new health service is:

1. Found to be needed, and
2. Consistent with the State Health Plan, unless there are emergency circumstances that pose a threat to public health.

The two findings above are independent of one another; that is, both must be met and the absence of one of the above requires the Authority to deny the application. *See Princeton Community Hospital v. State Health Planning and Development Agency,* 174 W. Va. 558, 328 S.E.2d 164 (1985).

Definition of the Proposed Service Area:

Stonewall submits that the proposed service area is comprised of Lewis and Gilmer counties. The population projections are presented in the table below:

Stonewall Jackson Memorial Hospital Service Area Population Projections						
County	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**
Gilmer	8,131	8,111	8,092	8,072	8,052	8,032
Lewis	16,312	16,280	16,247	16,215	16,182	16,149

Source: West Virginia Population Projection by Counties 2000-2030, Summary Table. Released March 2017 by Bureau of Business and Economic Research, College of Business and Economics, WVU (Exhibit 3: CON Application, Section E, Exhibit E-2.)

Stonewall submits that the applicable review criteria for this project are contained in W. Va. State Health Plan Renovation-Replacement of Acute Care Facilities and Services Standards approved by the Governor on June 2, 2010, and Operating Rooms Standards approved by the Governor on October 5, 1992. These Standards are set forth in bold below and the Applicant's responses follow:

RENOVATION-REPLACEMENT OF ACUTE CARE FACILITIES AND SERVICES

I. DEFINITIONS – Omitted.

II. CURRENT INVENTORY – Omitted.

III. NEED METHODOLOGY

A. The Authority will consider for approval proposals for renovation or replacement of hospital beds or services, if the applicant submits reliable, probative, and substantial evidence that the project is necessary. Such necessity may only be proven by establishing one or more the following:

1. The service(s) provided by the applicant requires space, or the facility requires replacement or renovation to meet minimum requirements documented by written recommendations from appropriate accreditation or licensing agencies or documentation based upon comparisons to the minimum departmental square footage requirements of comparable services.

Stonewall submits that the original hospital was constructed in 1972. Since that time, many improvements in the delivery of health care and in the design of hospitals providing inpatient and outpatient services have resulted. Over the past fifty years major renovations and improvements have occurred, but at this point, the facility has outlived its useful life without incurring significant renovation costs. An extensive analysis of the facility is included in the Application, as Exhibit C-1, which enumerates the facility's issues that prevent compliance with selected guidelines from the Guideline for Design and Construction of Hospitals and Outpatient Facilities, adopted by the State of West Virginia.

The Internal Facilities Assessment, Exhibit C-1, is extensive; however, a summary of the major issues includes:

- Poor accessibility for patients;
- Site constraints for expansion;
- Space deficiencies and poor layout;
- Structural deficiencies:
    - MRI trailer location;
    - Vein Center entrance;
    - Emergency Department entrance;
    - Materials loading dock;
    - Kitchen receiving entrance;
    - Helipad;
    - Size of operating rooms;
    - Support and supply storage;
    - Vertical movement (elevators);
    - Horizontal movement (hallways);

- Fire safety;
- Airborne infection isolation; and
- Laboratory size.

Engineered Systems issues include, but are not limited to:

- Mechanical (chillers, air handling units, HVAC, boilers and condensate tanks, supply and wastewater pipes, medical gas valves and bulk liquid oxygen tank);

- Electrical (emergency power supply and lack of three branches of power); and

- Medical communication (voice and data cabling are dated, telephone system is at full capacity, Nurse Call/Code Blue system is outdated, pager system is outdated, and security/surveillance/access control systems are outdated).

2. There are significant operating problems that can most effectively be corrected by the proposed replacement or renovation as documented by data regarding specific projected cost savings that would be achieved if the project were completed, and the proposed level of investment is appropriate in relation to such projected cost savings.

Stonewall submits that the problems identified in Exhibit C-1 and outlined above would only temporarily be resolved as the result of a major renovation project. The current layout of the existing facility and location do not allow for changes to improve patient access, patient flow, and result in greater efficiencies in terms of staffing and other operating costs (Exhibit 3, Section E., p.3).

Additionally, Kevin Stalnaker, Stonewall's CEO, testified regarding a plethora of

major issues with Stonewall's existing facility (Exhibit 3, p. 36-46). Mr. Stalnaker stated he believed the cost of maintaining the aging facility had become so expensive it is not even a good solution much less the best solution (Exhibit 3, p. 51).

SJB does not oppose Stonewall building a new facility and understands the need to replace the aging structure (Exhibit 3, pp. 203, 205). However, SJB opposes the construction of a new facility at the proposed location. SJB contends that the building of a new facility at the proposed site could have a catastrophic impact on SJB. Consequently, SJB contends building a new facility at the proposed location is not the superior alternative.

3. The replacement or renovation is being proposed to correct deficiencies that place the facility's patients' or employees' health and safety at significant risk. Such deficiencies must be demonstrated by reference to the minimum requirements of licensing, regulatory, and accrediting organizations.

Stonewall submits that this criterion is not applicable to this proposal.

B. Regardless of the provisions of Section III (A) above, the Authority will not approve a renovation or replacement if the proposed project will perpetuate or result in excess capacity of acute care beds. For the renovation or replacement of a patient care area, the following requirements also apply:

1. The Authority will not approve any renovation or replacement to a patient care area of a hospital where the number of licensed acute care beds, after completion of the renovation or replacement project, will equal or exceed 160% of the average daily census of the hospital for the past twelve (12) months. The Authority may consider an adjustment by the hospital to its average daily census for observation equivalent days and swing bed days. The Authority may also consider the impact of a distinct part unit on the hospital's average daily census.

Stonewall submits that its calculated need for acute care beds, based on the last

twelve months, is demonstrated in the table below:

Average Daily Census (ADC)	Last 12 Months
ADC	18.40
160% of ADC	29.44
Existing licensed acute care beds	0
Projected unmet need	29.44

Source: (Exhibit 3: Application, Exhibit E-3.)

2. **An applicant must remove acute care beds from its license to meet the 160% requirement. The applicant must submit an amended license to demonstrate the reduction in acute care beds during substantial compliance review.**

Stonewall submits that it plans to request a reduction of its licensed beds from 70 to 29 upon completion of the proposed project, which will only include the construction of 29 patient rooms.

3. **If the removal of acute care beds from the hospital's license would cause a breach of a covenant in a bond instrument, or other debt instrument to which the applicant is a party, the removal of beds from service may be used to meet the requirements of these standards. In this case, the applicant must meet the requirements of the "Addition of Acute Care Beds Standards" to return said beds to service.**

Stonewall submits that this criterion is not applicable to this proposal.

4. **The Authority may grant an exception to the reduction of beds to meet the 160% average daily census requirement if the applicant has experienced significant fluctuations in its occupancy levels and (a) the applicant is the sole hospital in a county or (b) the applicant has exceeded an 85% acute care occupancy level for two consecutive months during the past twelve (12) months.**

Stonewall submits that this criterion is not applicable to this proposal.

5. **An acute care facility which has removed acute care beds from its license pursuant to the requirements of Section III (B)(1) of these Standards, may restore acute care beds to its license if it meets the following requirements:**

   a. **The facility has experienced significant fluctuations in its occupancy levels;**

   b. **The facility has exceeded an 85% acute care occupancy level for two consecutive months during the past twelve (12) months;**

   c. **The facility may add up to 10% of the number of acute care beds on its current license on an annual basis without undergoing certificate of need review, however it may not exceed the number of acute care beds on its license immediately prior to the reduction of beds pursuant to Section III (B)(1) of these Standards; and,**

   d. **The facility must notify the Authority a minimum of ten (10) days prior to requesting an amendment increasing acute care beds on its license.**

Stonewall submits that this criterion is not applicable to this proposal.

C. Critical access hospitals are not subject to the requirements of Section III (B).

Stonewall submits that this criterion is not applicable to this proposal.

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IV. QUALITY

The applicant making the proposal for renovation or replacement for hospital beds must be in compliance with applicable licensing or certification organization requirements or have in place a substantive and detailed plan to come into compliance with applicable licensing or certification requirements.

Stonewall submits that it is in compliance with all applicable licensing and certification requirements. A copy of its hospital license is included in the Application, as Exhibit A-1. Stonewall further submits that it complies with all standards and requirements for hospital licensure, as well as Medicare and Medicaid certification. Additionally, the new facility would also be compliant with all applicable building codes, licensure, and certification requirements to ensure cost-effective and quality patient care.

V. CONTINUUM OF CARE

A. The applicant must demonstrate that the replacement or renovation under consideration is the most cost effective or otherwise most appropriate alternative to provide the needed services to the population to be served.

Stonewall submits that, as outlined in the Application's Sections C and G, the existing hospital is more than fifty years old. Management has determined that additional substantial investments in the facility are not feasible, since they would be inadequate in addressing the existing issues. Management has reviewed three options that include, 1) maintaining the status quo, 2) major renovation of the existing facility, and 3) replacing the existing facility with a new, modern, state-of-the-art facility. Stonewall further submits that, after years of analysis and careful consideration, management decided that the superior alternative is to replace the existing facility (Exhibit 3, Section G).

B. The applicant must demonstrate that it has an effective utilization review, peer review, quality assurance and discharge planning process.

Stonewall submits that its policy for Utilization Management is included in the Application, as Exhibit I-2. Peer review policies are incorporated into the Peer Review Policies and Procedures, which are included in the application as Exhibit I-3.

VI. COST

A. The applicant must demonstrate financial feasibility of the facility following completion of the replacement or renovation. The applicant must also demonstrate that the capital related costs of the project are consistent with the Authority's rate setting methodology in effect as of the date of application. The applicant must further demonstrate that the charges and costs used in projecting financial feasibility are equitable in comparison to prevailing rates for similar services in similar hospitals are defined by the Authority.

Stonewall submits that the financial feasibility of the project was determined by preparing prospective financial statements for the construction period and for the first four years after the new facility is operational. Although seven years of projections were included in the application, only the four years after the new facility will be operational are presented in the table below:

Stonewall Jackson Memorial Hospital				
Projected Statements of Operations (In Thousands)				
	2024	**2025**	**2026**	**2027**
Revenue				
Inpatient	$27,893	$28,228	$28,567	$28,910
Outpatient	105,818	111,109	116,108	120,172
Total Patient Revenue	**133,711**	**139,337**	**144,675**	**149,082**
Deductions from Revenue	86,423	89,899	93,159	95,767
Net Patient Service Revenue	**47,288**	**49,438**	**51,516**	**53,315**
Other operating revenue	2,649	2,712	2,781	2,850
Total Operating Revenue	**49,937**	**52,150**	**54,297**	**56,165**

Operating Expenses				
Salaries and wages	20,087	20,442	20,801	21,163
Management fees	2,449	2,525	2,600	2,667
Payroll taxes and benefits	3,013	3,066	3,120	3,174
Supplies and other expenses	19,837	20,541	21,232	21,855
Interest	1,216	1,200	1,186	1,171
Depreciation and amortization	3,058	3,846	3,784	3,726
Total Operating Expenses	**49,660**	**51,620**	**52,723**	**53,756**
Operating Income	**277**	**530**	**1,574**	**2,409**
Nonoperating Gains (Losses)				
Non-operating revenue	509	540	573	619
Capital asset write down	(1,203)	-	-	-
Total nonoperating gains (losses)	**(694)**	**540**	**573**	**619**
Excess (deficiency) of Revenue over Expenses	**$(417)**	**$1,070**	**$2,147**	**$3,028**
Increase (decrease) in unrestricted net assets	**$(417)**	**$1,070**	**$2,147**	**$3,028**
Unrestricted net assets, beginning of year	**$49,400**	**$48,983**	**$50,053**	**$52,200**
Unrestricted net assets, end of year	**$48,983**	**$50,053**	**$52,200**	**$55,228**

(Exhibit 3: Application, Section N, Exhibit N-2, p. 3.)

Stonewall submits that the capital costs of the project are based on the estimated cost of constructing a one-floor hospital designed for maximum operational efficiency. The design of this facility incorporates the reduced number of inpatient beds while increasing the areas for outpatient and all supporting ancillary departments. The proposed facility's design and cost estimate is based on the previous Preston Memorial Hospital project,[1] which will reduce the cost in some architectural and engineering fees.

Stonewall submits that, in evaluating the overall financial feasibility of the project, various financial benchmarks were evaluated and compared to historical amounts and

[1] *See In re: Monongalia Health System, Inc.*, CON File #13-6-10004-A, (Dec. 10, 2013).

industry standards. Included in the financial feasibility study are benchmarks such as:

- Net revenue per adjusted patient day;
- Operating expense per adjusted patient day;
- Operating EBIDA;
- Debt service coverage ratio;
- Compensation ratio; and
- FTEs per adjusted occupied bed.

SJB argues the project is not financially feasible. SJB submitted the testimony of Natasha Hunerlach, partner at Ernst and Young, LLP, Ms. Hunerlach analyzed Stonewall's financial projections, as well as other relevant sections of the Application, and testified that certain cost assumptions did not properly account for current operating conditions (Exhibit 22, at Att. X; Exhibit 23, pp.234-235). Ms. Hunerlack pointed out two cost assumptions contained in the Financial Projections that she opined did not properly account for current operating conditions in Stonewall's region and nationally (Exhibit 23, pp. 233-263, 271). More specifically, Ms. Hunerlach believed that the Financial Projections vastly understated salary and wage expenses (Exhibit 23, p. 240). Ms. Hunerlach found the Financial Projections assumed a very nominal increase in overall salary and wage expenses, amounting to an average salary and wage growth rate of approximately 1.7 to 1.8 percent per year (Exhibit 23, p. 239-240). Ms. Hunerlach stated that when these salary and wage figures are measured in equivalent patient days, salary expense per equivalent patient day is actually dropping every year. This indicated the Financial Projections assume no inflation of wages and salaries (Id.). Ms. Hunerlach testified that Stonewall's own numbers

showed an actual increase in wages and salary of 2.1 percent in FY 2021 and 4.9 percent in FY 2022 (Id.). Ms. Hunerlach also felt Stonewall's flat projections were inconsistent with West Virginia specific and national market trends (Exhibit 23, pp. 240-241).

Ms. Hunerlach also found that while Section L of the Application identifies a total of 15 FTE employees will be cut as part of the project, the Financial Projections assume a cut of 25 FTEs (Exhibit 3, Exhibit N-2, P. 11; Exhibit 3, Section L at p.1; Exhibit 23, p.246-247). Ms. Hunerlach stated this discrepancy results in a significant understatement in projected salaries, payroll taxes, and benefits in the Financial Projections of approximately $1 million annually (Exhibit 23, p. 248).

Ms. Hunerlach opined that if more accurate inflation rates were applied to the labor and supply expenses, the proposed project would incur operating losses between $6.2 and $7.9 million by the third year of operation. Ms. Hunerlach further testified that this unprofitability would only increase for Stonewall if the Financial Projections follow the Application's plan to cut only 15 FTE employees instead of 25 FTEs as set forth in the Financial Projections and if Stonewall does not attain the 15 percent increase in utilization/revenues assumed in the Financial Projections (Exhibit 23, p. 261). SJB also argued that Stonewall had not been profitable in multiple recent years, that it had budgeted for losses in FY 2022, and that any potential future efficiencies cannot be guaranteed nor are likely to be realized. SJB also asserts that the Financial Projections materially understate salaries, wages, supplies, and other related expenses, (Exhibit 23, pp. 240, 244-247), and assume a very nominal increase in overall salary and wage expenses,

(Exhibit 3, at Exhibit N-2; Exhibit 23, pp. 239-240).

Stonewall noted that, while it had sustained losses in previous years due to some operational issues, the operating results for 2021 and 2022 are the result of a very successful cost reduction effort and from recruiting and replacing lost providers that had previously impacted Stonewall's utilization, and that currently Stonewall is turning a profit. (Exhibit 23, pp. 27-33). With regard to Ms. Hunerlach's concerns about the difference in the in projected FTEs in the Application, 15 vs. 25. Stonewall submitted that Section E of the Application proposed a reduction of 15 FTEs directly as a result of this project, while the financial projections contained a reduction of 25 FTEs over the period of the financial projections. Therefore, Stonewall asserts, the labor cost projection is accurate.

The Authority finds it troubling that Stonewall offered no expert witness testimony to rebut SJB's financial experts, but instead relied on the financial information submitted in the Application. However, after careful review and consideration of the facts, evidence, and arguments of both parties, the Authority finds that the financial projections are based upon reasonable and historical utilization, expense, and revenue assumptions (Ex. 3, Section N, Ex. N-2).

The Authority further finds that the financial projections demonstrate that the project satisfies the financial feasibility of the Renovation-Replacement of Acute Care Facilities and Services standards. Additionally, the Authority notes that in its Application Stonewall submits that the project will be profitable beginning in 2024; however, if the construction timeframe is three years, profitability may be delayed accordingly.

B. The applicant must demonstrate that the project is the superior alternative, after considering in significant detail the costs and effectiveness of the following alternatives:

1. Maintaining extant facilities;

Stonewall submits that the existing facility is old, outdated, and requires substantial capital investment to address the many short-term issues outlined in Sections C and E of the Application. Stonewall further submits that the superior alternative, which is also the most cost-effective, is to replace the existing facility with a new modern hospital.

2. The alternative project, if any, which is likely to result in the greatest increases in operating and cost efficiencies;

Stonewall submits that there are no other alternatives, other than those previously outlined, which included maintaining the status quo and undertaking a major renovation of the existing facility. Stonewall further submits that its management has determined that additional substantial investments in the facility are not feasible, since they would be inadequate in addressing the existing issues.

3. The alternative project, if any, which would use the lowest cost construction methods complying with licensing, accreditation, and building code requirements;

Stonewall submits that this criterion is not applicable to this proposal.

4. A combined analysis of items two and three above considering and analyzing the trade-offs between increases in operational efficiency juxtaposed with lower cost construction alternatives;

Stonewall submits that this criterion is not applicable to this proposal.

5. Merger, consolidation of facilities or sharing of services, and/or delivery of the service in an alternative setting; or

Stonewall submits that the only options to ensure its long-term viability is to complete a major renovation of the existing facility or to replace it. Stonewall further submits that the only viable option is to replace the existing facility.

6. Closure of the service and/or such other alternative as may be suggested by the Authority.

Stonewall submits that closure of the hospital is not an option; residents of Lewis County and the surrounding areas rely on the hospital to provide necessary inpatient and outpatient services.

C. The applicant shall submit reliable, probative and substantial evidence to demonstrate that the proposed square footage, construction cost per square foot and cost of fixed equipment for all nursing units, ancillary services and support areas directly affected by the replacement and/or renovation are appropriate and reasonable for the types and volumes of patients which are projected to utilize the hospital's services in the fifth year following completion of the project.

In preparing this objective analysis, the applicant must show that it has given prudent consideration to internal and external factors that will impact the operating environment of the hospital upon completion of the project.

The factors to be considered must include:

1. Trends in the demand for specific hospital services and recent demographic and/or medical practice changes that are likely to modify the trends.

Stonewall submits that historical utilization for all services was considered when preparing assumptions for projecting patient service revenue. Those assumptions are

identified in the financial feasibility study. National trends related to increased demand for outpatient services, along with a market demand study performed by a qualified outside consultant provided the basis for the volume and revenue projections.

2. The forecast of demand for the hospital's services based upon the most probable assumptions. The applicant must submit a comprehensive listing of the assumptions underlying the forecast.

Stonewall submits that a copy of the financial feasibility study and a comprehensive listing of the assumptions is included in the Application, as Exhibits N-3 and N-4, respectively.

3. If the physical layout of the hospital, following completion of the replacement or renovation, will be conducive to efficient staffing and transportation of patients.

Stonewall submits that the design of the new facility will allow more efficient staffing and transportation of patients. Some of the key features of the project include:

- Separation of the emergency walk-in entrance from the outpatient patient and the emergency entrance;
- Entry for the ambulance directly into the patient treatment area; and
- Improved design of new inpatient units with centralized nurses' stations to improve efficiency.

4. If the physical layout of the hospital, following completion of the replacement of renovation, will seek to maximize the amount of net usable square footage available for patient care.

Stonewall submits that the physical layout of the proposed facility is designed for patient care. The square footage of administration and other non-patient care areas will be kept to a minimum.

5. **A search of the literature and an architect's certification regarding the amount of net usable square feet required for the performance of hospital activities at projected volume levels. The literature search shall include, but not be limited to, the requirements for state licensing or JCAHO Accreditation.**

Stonewall submits that this project was first designed to accommodate the reduction of inpatient beds from 70 to 29. Although the number of inpatient beds will be significantly reduced, the total square footage for the new facility (83,000) will be similar to that of the existing facility (80,819) due to an emphasis on outpatient services, which aligns more appropriately with current hospital patient care delivery models.

Stonewall submits that the project is consistent with and will comply with all applicable construction guidelines. Stonewall further submits it will meet the requirements of state licensing, as well as Medicare and Medicaid requirements for the proper use of space.

6. **How the cost per square foot for replacement projects compares to the normal cost of good quality hospital construction as evidenced by recognized trade journals. For renovations, the applicant must consider how the cost per square foot for renovation of hospital areas compares to – and should not exceed – the normal cost of replacement. Where practicable, the applicant should reference recognized trade journals, such as Means Square Foot Costs, BOECKH, Engineering News Record or Marshall and Swift. In determining normal cost adjustment, consideration should be given for the hospital departments involved, terrain, geographic area and other factors relevant to the source(s) utilized.**

Stonewall submits that, based upon the design of the new facility and previous experience with similar projects, the cost per square foot will be approximately $411. As previously mentioned, this design follows that used for Preston Memorial Hospital with minor modifications to the design for the increase in beds from 25 at Preston to 29 at Stonewall. The cost estimates have been adjusted for recent increases in the cost of materials and supplies, partially due to the COVID pandemic, plus a contingency reserve of 10% to allow for future cost increases.

7. If the facility design and construction methods employed in the proposal will allow for flexibility to accommodate future changes in the mix of inpatient versus outpatient utilization at the hospital and the mix of services by the hospital.

Stonewall submits that the new facility is designed to place greater emphasis on the current and future demands for hospital outpatient services. Stonewall further submits that the location and design will provide maximum flexibility to accommodate future changes in health care delivery, changes in payer mix, and changes in technology.

8. How the hospital will accommodate disruption of normal operations during the period of construction and how savings in operating cost relate to increased capital cost incurred to minimize such disruptions.

Stonewall submits that, as this proposal is to relocate the hospital, this criterion is not applicable.

9. The steps the hospital is taking to transfer inactive storage and other non-patient activities to less expensive off site areas.

Stonewall submits that it does not have off-site storage nor any other non-patient activity areas; therefore, this criterion is not applicable.

10. Such other factors as may be requested by the Authority.

Stonewall submits that it will address any questions or issues posed by the Authority.

VII. SPECIALIZED ACUTE CARE

A hospital may change its bed complement, within its approved licensed beds, among specialized units for services that are currently offered by the hospital and which do constitute the addition of a new institutional health service, or the deletion of an existing health service.

In addition to the criteria set forth elsewhere for the replacement or renovation of acute care facilities, proposals involving specialized acute care units must comply with the following requirements:

A. Tertiary Pediatric Care Unit: An application for the replacement or renovation of a tertiary pediatric care unit shall be in substantial compliance with the following:

Tertiary pediatric care units will be operated in only three West Virginia hospitals: West Virginia University Hospitals, Inc., Charleston Area Medical Center, and Cabell-Huntington Hospital.

Stonewall submits that this criterion is not applicable to this proposal.

B. Neonatal Intensive Care Unit: An application for the replacement or renovation of Neonatal Intensive Care Unit (NICU) beds shall be in substantial compliance with the following guidelines.

1. **The number of NICU beds shall not exceed four beds per 1000 live births in the service area.**

2. **Level III NICU services shall be centralized at West Virginia University Hospitals, Inc., Charleston Area Medical Center and Cabell-Huntington Hospital.**

3. Level II NICU services shall be considered for approval only at hospitals performing at least 1100 deliveries per year.

Stonewall submits that this criterion is not applicable to this proposal.

C. Obstetric Unit: An application for the replacement or renovation of obstetric unit beds shall be in substantial compliance with the following guidelines.

Stonewall submits that, for the year ending June 30, 2021, it performed a total of 171 deliveries, which included 103 normal deliveries and 68 C-section deliveries.

1. Level II and Level III obstetric units shall perform at least 1100 deliveries per year.

Stonewall submits that it has had fewer than 1100 deliveries per year; therefore, this criterion is not applicable.

2. Level I obstetric units shall perform at least 750 deliveries per year.

Stonewall submits that it has had fewer than 750 deliveries per year; therefore, this criterion is not applicable.

3. New Level I obstetric units may be considered for approval based upon less than 750 deliveries per year if the absence of the service would result in a population of at least 5000 being more than 30 minutes normal driving time from another obstetric unit.

Stonewall submits that it has been previously approved as an obstetrics provider, under the terms outlined in this section due to populations that have more than a 30-minute drive time to other facilities. An analysis of the service area by zip code, including drive times from the existing and proposed locations, is included in the Application as Exhibit I-4.

D. Critical Care Unit: An application for the replacement or renovation of Intensive Care Unit (ICU) beds or Coronary Care Unit (CCU) beds (collectively referred to as critical care units) shall be in substantial compliance with the following guidelines.

1. An ICU or CCU shall be staffed with qualified personnel under the direction of one or more appropriately trained on-site physicians. A hospital offering ICU or CCU services shall have a physician on-site for immediate consultation twenty-four hours a day. A CCU shall have a cardiologist or internist with adequate training in cardiology available for immediate consultation twenty-four hours a day.

Stonewall submits that it has an intensive care unit (ICU) which currently has six beds. The proposed new facility will have two ICU beds.

2. Hospitals providing ICU or CCU services shall have in place with surrounding hospitals established protocols for the referral of stabilized patients. Hospitals which do not have ICU or CCU should have protocols to see that patients requiring such service be transferred as soon as possible after stabilization.

Stonewall submits that it has established protocols for referral, as appropriate. A partial listing of the most significant transfer agreements has been included in the Application as Exhibit H-1.

E. Psychiatric Unit: An application for the replacement or renovation of psychiatric beds shall be in substantial compliance with the following guidelines.

1. A unit within a general acute care facility shall be specifically designated for the treatment of psychiatric patients and shall be designed to accommodate the special privacy, security and treatment requirements of the patients.

2. The applicant must demonstrate that each patient will have a treatment plan which includes a prioritization of major problems, stated in specific terms, with clear, concise and realistic goals and coordinated treatment modalities.

3. **The applicant must clearly demonstrate that individuals requiring inpatient treatment will be discharged as soon as they are able to function in a less restrictive setting.**

Stonewall submits that this criterion is not applicable to this proposal.

VIII. ACCESSIBILITY

The proposal shall not adversely affect the continued viability of an existing hospital or health care services that serves a population of at least 10,000 not having 30-minute access to another hospital or critical access hospitals (CAH).

Stonewall submits that there are no existing hospitals or health care services potentially impacted by this proposal that serve a population of at least 10,000 that do not have a 30-minute access to another hospital; therefore, this criterion is not applicable.

SJB argues the criterion is applicable because "30-minute access" means more that driving time between two facilities, but includes a host of other factors that could include traffic congestion, weather, ambulance response time, etc. SJB also asserts that the criterion provides that no proposal shall adversely affect the continued viability of a critical access hospital regardless of population or access time.

The Authority expressly rejects SJB's interpretation of this criterion. The Authority finds that "30-minute access" means the average drive time from one location to another. Additionally, the Authority finds that "critical access hospitals" as used in this criterion means 30-minute access to a critical access hospital.

IX. OTHER CONSIDERATIONS

The applicant must demonstrate that the renovation or replacement is in concert with the applicable sections of the applicant's long-range facility and strategic plan.

Stonewall submits that this project is consistent with its long-range strategic plan, as evidenced by the years of analysis and discussion around the future of the existing facility, and the prudent planning and setting aside of reserve funds for the replacement of the existing facility.

X. **DEMONSTRATION PILOT PROJECT** – Omitted.

OPERATING ROOMS

In addition to the standards set forth elsewhere in the replacement and/or renovation of acute care facilities proposals involving operating room suites must comply with the following:

The intent of this standard is to provide a vehicle for the Certificate of Need (CON) Review which is mandated for new construction, renovation, or replacement of operating room beds, hereinafter referred to interchangeably as operating rooms, operating suite beds, or surgical suite beds, for use in instances where the cost of the process is in excess of the threshold for reviewability, as defined in the CON statute contained in chapter 16 of the West Virginia Code. In instances where such expenditures are below the threshold, they shall not be reviewable, except when expenditures over a two (2) year period exceed the expenditure ceiling.

I. **DEFINITIONS** – Omitted.

II. **CURRENT INVENTORY** - Omitted

III. **NEED METHODOLOGY**

Proposals involving the building of new surgical services, or the replacement or renovation of existing surgical capacity at the facility (based on the criteria set forth below) which would duplicate existing under-utilized surgical capacity and are likely to lead to increases in the total cost of health care to a community may be denied by the HCCRA. In addition to meeting the 40 hour utilization minimum for

new operating rooms at the facility, and the 36 hour minimum for the replacement or renovation of existing operating rooms at the facility, the applicant must submit reliable, probative and substantial evidence documenting that it is not practical for the existing operating rooms at the facility to be utilized to achieve the required patient surgical requirements.

A. For New Operating Suites: Additional inpatient surgical suites shall not be added unless all existing comparable operating rooms at the facility are utilized on average for surgery at least 40 hours per week, including billable hours, reasonable turn-around time, and reasonable open heart standby time while therapeutic catheterization procedures are performed, based on the most recent 12 month study period for which data is available.

Stonewall submits that this criterion is not applicable to this proposal. The application is for the replacement of the existing, old, outdated, hospital and its two existing operating rooms. The number of operating rooms in the replacement hospital will be the same as the existing hospital. Additionally, Stonewall further submits it is adding a Cesarean (C-section) procedure room to the obstetric (OB) suite, which is required by the applicable hospital building code. The room is attached to the OB suite and is not available for general surgery procedures.

Stonewall submits that the afore-mentioned building codes are from the Facility Guidelines Institute (www.fgiguidelines.org), which the West Virginia Office of Health Facility Licensure and Certification (OHFLAC) uses for building and construction code adherence. The applicable section of the code is at 2.2-2.9.11, Cesarean Delivery Suite. West Virginia currently utilizes the 2018 edition of the FGI standards and will upgrade automatically to the 2022 edition in 2022. The year construction is approved determines the construction guidelines to be followed.

B. **For Renovation or Replacement of existing Operating Suites: Renovation or replacement of inpatient surgical suites shall not be approved unless all existing comparable operating rooms at the facility are utilized for surgery on average at least 36 hours per week, including billable hours, reasonable turnaround time, and reasonable open heart standby time while therapeutic catheterization procedures are performed, based on the most recent 12 month study period for which data is available. In order to achieve an approvable project, an applicant may permanently remove from service such number of operating rooms (suites) as may be necessary to enable it to achieve the average number of hours of service set forth in this methodology. To justify the renovation or replacement of a specialty operating room that is utilized at less than the necessary 36 hours, clear and convincing evidence must be submitted showing compelling need for the service. Notwithstanding this provision, rural hospitals shall be permitted to maintain one major operating room and one minor procedure room.**

Stonewall submits that it has two operating rooms that are being replaced as part of the overall replacement project. Stonewall further submits that the application of the specific standards above does not fit this project as planned for the following reasons:

1. Total costs of replacing the operating rooms is below the capital expenditure threshold and, as noted in the standards, "The intent of this standard is to provide a vehicle for the Certificate of Need (CON) Review which is mandated for new construction, renovation, or replacement of operating room beds, hereinafter referred to interchangeably as operating rooms, operating suite beds, or surgical suite beds, for use in instances where the cost of the process is in excess of the threshold for reviewability, as defined in the CON statute contained in chapter 16 of the West Virginia Code. In instances where such expenditures are below the threshold, they shall not be reviewable, except when expenditures over a two (2) year period exceed the expenditure ceiling."

2. The replacement of the two existing operating rooms is a part of the renovation and replacement project of which those standards are met, as illustrated in this application.

3. The hospital utilizes its two operating rooms for both inpatient and outpatient surgeries, as well as emergency surgeries.

4. Efficiency would be seriously impeded without at least two operating rooms.

5. Emergency cases could be delayed with fewer than the two existing operating rooms, which may jeopardize patient safety.

6. As illustrated in Exhibit E-7, the two existing operating rooms have been underutilized. While the issues outlined in previous sections highlight the causes for the underutilization, including the operating rooms being outdated and inefficient, it is now difficult to recruit and maintain the employment of surgeons.

Stonewall asserts the addition of the procedure room discussed above and the replacement of the existing operating rooms is not required to be addressed in the Operating Room Standards. Stonewall argues the intent of the Standards is to provide a vehicle for CON review for the new construction, renovation, or replacement of operating rooms. Stonewall asserts the Standards provide that in instances where the construction/replacement is below the expenditure minimum threshold, it is not reviewable. Stonewall concedes the OR Standards are applicable to the project. However, it asserts the costs of constructing the two operating rooms as well as the cesarian room does not exceed the expenditure minimum, and is therefore not reviewable.

SJB argues that the replacement of the operating rooms is an inseparable component of the hospital replacement project, and the capital expenditure of the entire project should apply. Moreover, even if the capital expenditure of the operating rooms could be segregated from the entire project, the capital expenditure would need to include not only direct construction and equipment costs, but also all capital costs attributable to the replacement of the operating rooms such as land, architectural drawings, engineering studies, other consultant costs, etc. Once such costs are added, the cost of replacing or constructing the new operating rooms would rise above the minimum threshold and require review.

The Authority finds the intent of the Operating Room Standards is to provide a mechanism for the Authority to conduct CON Review in instances where the process of construction, renovation, or replacement of operating room suites in and of themselves is in excess of the threshold for reviewability. Where the construction, renovation, or replacement, of the operating rooms is a component of an overall hospital replacement project, the capital expenditure, as it applies in this Standard, includes only the direct construction and equipment costs and not the associated capital costs attributable to the project as a whole. Consequently, the Authority finds the addition of the C-Section procedure room which is now required by OHFLAC and is below the capital expenditure, is not a new operating suite as contemplated by this criterion. The Authority further finds the replacement of the two existing operating rooms is below the expenditure minimum and, is therefore, not reviewable.

IV. QUALITY

The applicant making the proposal for operating rooms (suites) must be in compliance with applicable licensing and/or certification organization requirements or have in place a substantive and detailed plan to come into compliance with applicable licensing and/or certification requirements.

Stonewall submits that the replacement of the two existing operating rooms is part of this project to replace the hospital facility. Stonewall also submits that, as previously stated, it is in compliance with all applicable licensing and certification requirements.

V. CONTINUUM OF CARE

The applicant should demonstrate that the proposal under consideration is a less costly or more appropriate alternative to provide the needed services to the population, including a discussion of the availability of other services (such as day surgical services) in the area and information concerning any cooperative agreements the applicant may have regarding the transfer of patients in instances in which a higher level of care is warranted.

Stonewall submits that the replacement of the two existing operating rooms is part of this project to replace the hospital facility, which is more than fifty years old and is, clearly, outdated. Stonewall also submits that its policy for Utilization Management is included in the Application as Exhibit I-2. Peer review policies are incorporated into the Peer Review Policies and Procedures, which are included as Exhibit I-3.

VI. COST

The general acute care standards and, as appropriate, acute care renovation and replacement standards will apply.

Stonewall submits that, as illustrated in the Application's Exhibit C-4, the estimated costs of replacing the two existing operating rooms is $3,080,295.00 which is below the expenditure threshold. The financial analysis of the operating rooms is included in the overall analysis of the project, as the Application's Exhibit N-2. Stonewall further submits that the revenues and related charges, as well as the operating costs, will be consistent with recent historical operations with the exception of certain efficiencies that will be gained by being in a modern facility.

VII. ACCESSIBILITY

Accessibility to inpatient operating suites should be such that the continued viability of an existing hospital's operating/surgical department that serves a population of at least 10,000 (within 30 minutes travel time) is not unduly adversely affected.

Stonewall submits that its service area will not change as a result of this project. No additional operating room are being proposed. Stonewall further submits that this project will not have an adverse effect on the financial viability of any existing hospital or other health care provider, as a result of replacing the existing hospital and its two operating rooms.

VIII. ALTERNATIVES

The general acute care standards and, as appropriate, acute care renovation and replacement standards will apply.

Stonewall submits that this application is for the renovation and replacement of its existing hospital; therefore, the standards for the Renovation-Replacement of Acute Care

Facilities and Services have been addressed throughout the Application.

Based upon the evidence presented, the Authority finds that the Applicant has adequately addressed and is consistent with the Standards pertinent to the proposed project. Additionally, the Authority determines that, as evidenced in the financial projections, the project is financially feasible.

Other Required Findings:

In addition to the Authority finding that the project is needed and consistent with the State Health Plan under W. Va. Code § 16-2D-12(a), the Authority must make other required findings under W. Va. Code § 16-2D-12(b) and (c). W. Va. Code § 16-2D-12(b) states that the Authority may not grant a certificate of need unless, after consideration of the appropriateness of the use of existing facilities within this state providing services similar to those being proposed, the Authority makes each of the following findings in writing:

First, under W. Va. Code § 16-2D-12(b)(1), the Authority must find that superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist and the development of alternatives is not practicable. Stonewall submits that it carefully considered four alternatives: maintaining the status quo, renovating the current facility, replace the existing operating rooms, and this proposal, which is replacing and relocating the hospital. The status quo was determined not to be a viable alternative, due to the facility's age, outdated design, poor access, and its placement in a floodplain.

Renovating the facility would require an investment in excess of $10 million and would only address the short term, critical needs of the hospital. Additionally, the attempt to renovate the existing facility while continuing ongoing operations would include all the risks and dangers of a major construction project in a hospital setting. The project would need to be completed in stages and would increase the costs and extend the timeframe. Consequently, renovating the existing facility was determined not to be a viable alternative.

Stonewall submits that replacing the two existing operating rooms also was not considered a viable alternative to the proposed project. The constraints of the current facility are an impediment to converting the existing operating rooms into modern state-of-the art operating rooms. Stonewall asserts replacing the operating rooms in a new facility will be more efficient, cost effective, and will provide for improved clinical outcomes.

Stonewall submits that replacing and relocating the existing hospital is the superior alternative. After several years of analysis and management's careful consideration of the alternatives, Stonewall has determined that building a replacement hospital is the best alternative to address the healthcare needs of the community and would be a more effective and efficient use of capital resources than the other alternatives.

Stonewall argues that the new facility and the chosen location are the superior alternative in terms of cost, efficiency and appropriateness. The site for the replacement facility is flat and close to existing infrastructure and public road access, which enhances the project's cost effectiveness. Stonewall CEO, Kevin Stalnaker, testified Stonewall had

not explored other sites for the project than the proposed location. (Exhibit 3, p. 54).

SJB argues that Stonewall's proposed project is not the superior alternative. SJB submits that it obtained critical access hospital (CAH) designation from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) on April 2, 2014. (Exhibit 23, p.140-141; Exhibit 21, Att. N., p. 001188). The CAH designation enables it to be reimbursed on a cost-basis for providing services to Medicare and Medicaid patients, as opposed to being reimbursed on a prospective payment basis. (Exhibit 21, Att. V). However, one of the requirements for CAH designation is that the CAH hospital cannot be located closer than 15 (mountainous terrain) miles from another hospital. SJB submits that if Stonewall is allowed to relocate its facility to the proposed site, which is about 12 miles from SJB, it will cause SJB to lose its CAH designation. Prior to operating as a CAH hospital, SJB operated as a prospective payment system (PPS) hospital until 2014. (Exhibit 23, p.140); Exhibit 21, Att. V). From 2007 through 2013, SJB struggled financially and experienced a negative operating margin for five out of those seven years. (Id.) Mr. Keith Seeloff, Partner at Dixon Hughes Goodman LLP, testified that SJB was on the brink of bankruptcy in 2013 with only 21 days cash on hand (Exhibit 23, pp. 140-141). Once SJB received it CAH designation which allowed it to bill on a cost basis, SJB became financially viable. SJB asserts that if Stonewall is allowed to build its new facility on the proposed site, SJB will lose its CAH designation. SJB asserts this would have a catastrophic impact on the hospital.

Stonewall contends that since obtaining its CAH designation, SJB has become a

member of the largest health care system in West Virginia, the West Virginia United Health System (WVUHS). And, with that membership, SJB now has access to capital and management that was unavailable previously. Stonewall further states that SJB is directly owned by another member of WVUHS, United Hospital Center, which reported revenues over expenses of $112,000,000 in 2020 and $87,000,000 2019. (Ex. 20, Att. 3-5) Stonewall disputes SJB's projections and submits the scenario proposed by SJB discounts the ability of WVUHS to manage the hospital and instead argues that the loss of revenue means closure. Stonewall submits this is not necessarily the case as two other hospitals in that system, Camden Clark Medical Center and Reynolds Memorial Hospital, have remained open despite losses over the last four years. (Ex. 20, Att. 3-5)

The Authority finds that the proposed project is not the superior alternative in terms of cost, efficiency and appropriateness. Moreover, the Authority finds Stonewall has failed to prove that that development of alternatives is not practicable.

While the proposed project may be the superior alternative in terms of cost, efficiency, and appropriateness as it relates to Stonewall, the review of the project does not end with the Applicant. The Authority must also determine whether the proposed project is the superior alternative as it relates to an Affected Person and the citizens of the State of West Virginia. *See* W. Va. Code § 16-2D-1.

Stonewall asserts that it chose the proposed site because it was near the Route 33/Interstate 79 intersection and because the land was more economically developed than other locations in the county. Stonewall bought one parcel of land in this area in the late

1990s and another in 2017. Both parcels are within 15 miles of SJB. SJB became a CAH hospital in 2014. Consequently, Stonewall bought this second parcel of land knowing it was within 15 miles of a CAH. Stonewall additionally asserts that if it is granted a CON for the project SJB could just relocate to a location that is 15 miles away from the new facility.

It is undisputed that should Stonewall locate the project at the proposed site SJB will lose its CAH status. SJB provided evidence that it was struggling financially and was on the verge of bankruptcy prior to receiving CAH status. After becoming a CAH hospital, SJB became a financially viable hospital. This is due in large part to the fact that CAH hospitals are allowed to bill CMS on a cost basis rather than a prospective payment basis. SJB presented expert testimony that the loss of CAH status would have a significant impact on its financial viability. Stonewall asserts SJB's dire financial prognostications are overstated because it is now a part of the West Virginia United Health System, Inc. (WVUHS), and WVUHS will shore up the facility even if it operates as a loss.

The Authority finds that Stonewall's proposed project would cause SJB to lose its CAH status which would have a significant detrimental financial effect on SJB. The evidence of record showed that the loss of CAH status would result in SJB suffering significant annual monetary losses. Stonewall produced no evidence from WVUHS that it would supplement any financial losses incurred by SJB.

The Authority further finds that Stonewall has not proved that the development of alternatives is not practicable. Stonewall admitted it had not explored other sites for the project other than the proposed location. (Exhibit 23, p. 54). Stonewall produced no

evidence that it had completed a market analysis of the surrounding area to determine if any other suitable property might exist. The burden of proof is on the Applicant to show that the development of alternatives to the project are not practicable. Stonewall has failed to meet this burden.

Second, under W. Va. Code § 16-2D-12(b)(2), the Authority must find that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner. Stonewall submits that there are no other providers of inpatient and outpatient hospital services in its service area. Based upon the evidence, the Authority finds that this criterion is not applicable to the proposed project.

Third, under W. Va. Code § 16-2D-12(b)(3), the Authority must find that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable. Stonewall submits that alternatives to this proposal have been considered and discussed previously. Stonewall's management determined that replacing and relocating the existing hospital is the best alternative to adequately address the needs of its service area. Based upon the evidence, the Authority finds that alternatives have been considered and have been implemented to the maximum extent possible.

Fourth, under W. Va. Code § 16-2D-12(b)(4), the Authority must find that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed health service. Stonewall submits that it is the only acute care hospital and the primary provider of outpatient hospital services in Lewis and Gilmer counties.

Stonewall also submits that this proposal is not a new service, but a replacement of an existing facility. Based upon the evidence, the Authority finds that this criterion is not applicable to the proposed project.

Finally, for each proposed new health service it approves, the Authority must make a written finding, which shall take into account the extent to which the proposed health service meets the criteria in W. Va. Code § 16-2D-12(c), regarding the needs of medically underserved population. Stonewall submits that its Financial Assistance policy, included in the Application as Exhibit F-3, states that "SJMH [Stonewall] will provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility for financial assistance or for government assistance." Additionally, Stonewall notes that uncompensated care and charity care projections are included in the financial projections included in Section N of the Application. Based upon the evidence, the Authority finds that the proposed project will be accessible to the medically underserved population.

VI. CONCLUSIONS OF LAW

1. The proposed project is reviewable under West Virginia Certificate of Need law.

2. The proposed project is needed.

3. Superior alternatives to the proposed project do exist.

4. The project is consistent with the State Health Plan.

5. The project will serve the medically underserved population.

VII. DECISION

The West Virginia Health Care Authority ***FINDS*** the Applicant is subject to CON review and has failed to demonstrate that superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist within this state and the development of alternatives is not practicable as required by W. Va. Code § 16-2D-12(b)(1). Consequently, the Authority ***DENIES*** the application submitted by ***Stonewall Jackson Memorial Hospital*** for the relocation and construction of a new 29-bed acute care hospital to be located at Staunton Drive in Weston, Lewis County.

APPEALS

Appeal from this Decision may be taken in accordance with the provisions of W.Va. Code § 16-2D-16, and must be requested in writing and received by the West Virginia Health Care Authority, Office of Judges, Post Office Box 3585, Charleston, West Virginia 25328, within thirty (30) days after the date of this Decision.

Done this 13th day of June, 2022.

Robert Gray, Chairman

Darrell Cummings, Board Member

Sandy Dunn, Board Member

Charlene Farrell, Board Member

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West Virginia Insurance Commission

GCDF/MAF

CON Case File #21-7-12157-H