

**DIVISION OF HEALTH PLANNING
AND RESOURCE DEVELOPMENT
NOVEMBER 2008**

**CON REVIEW # HG-RLS-0608-017
BAPTIST MEMORIAL HOSPITAL-DESOTO, INC.
d/b/a BMH- DESOTO
TRANSFER OF RADIATION THERAPY EQUIPMENT AND SERVICES
LOCATION: SOUTHAVEN, MISSISSIPPI (DESOTO COUNTY)
CAPITAL EXPENDITURE: \$0**

STAFF ANALYSIS

I. PROJECT SUMMARY

A. Applicant Information

Baptist Memorial Hospital-Desoto, Inc. d/b/a Baptist Memorial Hospital-DeSoto (BMH-D) is a 309-bed acute care, not-for-profit hospital located in Southaven, DeSoto County, Mississippi. The hospital is presently governed by four corporate officers and eight board members. Baptist Memorial Health Care Corporation (BMHCC) is the sole member of the facility. As of June 19, 2008, the Secretary of State's Office certified that BMH-D of DeSoto County is in good standing with the State of Mississippi. The facility participates in the Medicaid and Medicare programs, and insurance programs.

Regarding the above referenced project, Baptist Memorial Hospital-DeSoto (BMH-D), Baptist Memorial Health Services, Incorporated (BMHSI), Humphreys Cancer Center, LLC (HCC), and The West Clinic, P.C. (TWC) are the four entities involved in the proposed project/business venture. First, Baptist Memorial Health Care Corporation (BMHCC) is the sole member of BMHSI; however, BMHSI fully owns HCC. The West Clinic, P.C. currently operates as a for-profit Professional Corporation and anticipates becoming a member of HCC. Through BMHSI, BMHCC will continue to own more than 50% of HCC. These entities are also in good standing with the State of Mississippi.

B. Project Description

Baptist Memorial Hospital-Desoto, Inc. d/b/a Baptist Memorial Hospital-DeSoto requests CON authority to transfer its linear accelerator equipment and other radiation services to Humphreys Cancer Center, LLC. The transfer will allow The West Clinic (TWC) to become the service provider and operate the linear accelerator service at BMH-D's Cancer Center. The West Clinic will lease existing space and the radiation therapy service from BMH-D.

In turn, BMH-D will transfer its existing service (operation, management, and billing) to TWC. Thus, The West Clinic will acquire radiation service from BMH-D while HCC's agreement will be inclusive of a linear accelerator machine through a transfer. Based on the market value to provide the linear accelerator service, HCC will lease resources to TWC. Thus, radiation therapy services, equipment, and personnel from other entities will merge together and legally be under the umbrella of HCC.

Briefly, The West Clinic is a physician group consisting of 44 doctors who specialize in oncology, hematology, interventional radiology, and cardiology. The West Clinic has a local office in Southaven; however, the clinic home office is in Memphis, Tennessee. Under the new business structure, the clinic will operate separately from BMH-D and treat patients on an outpatient basis. However, patients who are hospitalized at BMH-D and who require radiation treatment/services will be billed by BMH-D for those services.

Baptist Memorial Hospital-DeSoto has existing linear accelerator resources, and offers radiation therapy to area patients. The *Report on Hospitals* indicate that BMH-D owned and operated one 6-18 MV linear accelerator unit in fiscal year 2007; however, in 2006, BMH-D owned and operated two 6-18 MV linear accelerators machines. Through the lease agreement, BMH-D will not relinquish sole ownership of the above referenced linear accelerator equipment; however, it will surrender the radiation service and operation to TWC. The center is located in General Hospital Service Area (GHSA) 2 in the facility of BMH-D and will continue to exist at the same site as The West Clinic, P.C. d/b/a the Baptist-DeSoto Cancer Center (TWC d/b/a B-DCC).

Since the proposed project involves HCC to acquire or control the above referenced radiation therapy equipment and TWC to become a service provider and operator of the radiation therapy service, the Mississippi State Department of Health is required to review any project involving such equipment and service.

Baptist Memorial Hospital-DeSoto will lease existing space and the existing linear accelerator machine to The West Clinic for five years at an estimated cost of \$239,008 and \$310,039, respectively. No new personnel will be hired for this project; however, HCC will utilize/lease existing personnel from BMH-D so that TWC can operate the established radiation therapy service.

The proposed project does not involve the establishment of new services, relocation of services, construction or renovation; however, TWC will be a new provider of radiation therapy services in GHSA 2. Upon completion of the transfer, BMH-D will cease to have radiation therapy service authority. The Mississippi State Department of Health, Division of

Licensure and Certification, has approved the site for radiation therapy. Upon CON approval, the expected completion date for this project is 30 to 90 days from the date of approval.

II. TYPE OF REVIEW REQUIRED

The Mississippi State Department of Health reviews applications to acquire or otherwise control linear accelerator equipment and offer radiation service in accordance with Section 41-7-191, subparagraphs 1(d),(vi),(f),(i), and (j) Mississippi Code 1972 Annotated, as amended, and duly adopted rules, procedures, plans, criteria, and standards of the Mississippi State Department of Health.

In accordance with Section 41-7-197(2) of the Mississippi Code of 1972 Annotated, as amended, any affected person may request a public hearing on this project within 20 days of publication of the staff analysis. The opportunity to request a hearing expires December 4, 2008. In addition, this project is reviewed under the FY 2007 State Health Plan, in effect on June 2, 2008, when the application was received. The FY 2009 State Health Plan became effective on August 11, 2008.

III. CONFORMANCE WITH THE STATE PLAN AND OTHER ADOPTED CRITERIA AND STANDARDS

A. State Health Plan (SHP)

The *FY 2007 State Health Plan* contains criteria and standards which the applicant is required to meet before receiving Certificate of Need (CON) authority to acquire or otherwise control therapeutic radiation equipment and to offer therapeutic radiation services. This application is in substantial compliance with applicable criteria and standards.

SHP Criterion 1- Need

The applicant believes that BMH-D will continue to enhance its existing radiation therapy and services by combining The West Clinic's physician group of 44 with BMH-D. The applicant believes the new venture will upgrade the cancer program, increase the delivery/quality of patient care, and increase efficiency. Since the applicant will use existing resources and radiation services instead of applying for an additional radiation machine, the applicant believes that the proposed project will prevent under-utilization. In turn, the applicant believes the change will provide quality service to the residents of DeSoto County, while making it convenient for residents to continue to receive radiation therapy services at a familiar hospital site.

The CON criteria and standards for the acquisition or otherwise control of radiation therapy equipment and services outlined in the *FY 2007 Mississippi State Health Plan* state that an entity desiring to offer radiation therapy services must document a need for radiation equipment by complying with one of the following Need Criterion 1a – 1d:

a. the need methodology as presented in this section of the *Plan*; b. demonstrating that all existing machines in the service area in question have averaged 8,000 procedures per year or all machines have treated an average of 320 patients per year for the two most recent consecutive years; c. demonstrating that the applicant's existing therapeutic equipment has exceeded the expected level of patient service, i.e. 320 patients per year/unit, or 8,000 treatments per year/unit for the most recent 24-month period; or d. demonstrating to the satisfaction of the MSDH staff that the applicant (i) is a hospital having a minimum of 175 licensed acute care beds as of January 1, 2001; (ii) is located more than a forty (40) mile radius from an existing provider of therapeutic radiation services; and (iii) has the patient base needed to sustain a viable therapeutic radiation program, as defined by the Therapeutic Radiation Need Methodology. Policy Criterion # 3 does not apply to this Need Criterion #1 (d).

Humphreys Cancer Center, LLC and The West Clinic of Southaven report no utilization levels for the past three years; however, BMH-D has an existing radiation service that services surrounding cities and GHSA 2. Staff determined that other radiation therapy centers and facilities are located approximately 72 to 145 miles from Southaven, and it takes an estimated 80 to 143 minutes to drive from Southaven to one of the facilities listed in the *FY 2007 MSHP*.

According to the *FY 2007 Plan* and the Annual Survey of Hospitals for FY 2007, Baptist Memorial Hospital-DeSoto, Incorporated reported that the cancer center performed 6,375, 7,061, and 6,227 radiation therapy treatments (visits) during FY 2005, FY 2006, and FY 2007, respectively. The applicant also found that the *FY 1999 and FY 2007 Plans* indicate that the cancer incidence rate for 2000 and 2010 increased from 4.52 to 5.08 cases per 1,000 based on a projected population of 2,827,703 and 2,975,551.

If the proposed project is approved, the applicant projects that TWC d/b/a B-DCC will see 255 to 281 patients who will receive 6,366 to 7,019 treatments in year 1 to year 3.

For FY 2007, BMH-D states the FY 2008 Hospital Report shows that patients were discharged to the following counties: DeSoto, Tate, Marshall, and Tunica. BMH-D determined that the total projected populations for the four referenced counties will be 224,020, 240,804, and 255,134 for 2010, 2015, and 2020, respectively. Thus, the number of new cancer cases and patients who will receive radiation services will be 1,299 to 1,480 and 585 to 666, respectively. Therefore, BMH-D asserts that there will continue to be a need for radiation equipment and services in Southaven.

Based on the CON criteria and standards contained in the *FY 2007 Mississippi State Health Plan*, the applicant used their projections and the Plan's formula to determine the number of projected treatments TWC will perform. In projected year 1, 2, and 3, the applicant expects to treat 255, 261, and 281 cancer patients, respectively. For the same projected years, TWC d/b/a B-DCC estimates it will provide 6,366, 6,685, and 7,019 radiation treatments.

In GHSA 2, Baptist Memorial Hospital-DeSoto is currently providing radiation services at their facility and performed less than 8,000 treatments per unit in FY 2007 and FY 2006. In addition, the average treatments for the same period are estimated at 4,434 and 3,801, respectively. For FY 2007 and FY 2006, the existing therapeutic equipment is less than the expected level of 320 patients per unit. Based on the formula in the *MSHP* and staff's calculations of actual treatments being divisible by 25 treatments per patient, the actual number of patients for FY 2007 and FY 2006 were 249 and 282, respectively. Thus, BMH-D less than 320 minimum patients per unit and the facility did not exceed 8,000 treatments per year/unit for the most recent 24-month period. Under 1c of the Need Criterion, the unit's utilization does not meet the 8,000 treatments per year/unit nor exceeds and meets the 320 minimum patients per unit.

However, the proposed project does not involve the establishment of new services, relocation of services, construction or renovation; rather, the transfer existing radiation therapy equipment and services to HCC and TWC, respectively in GHSA 2. Upon completion of the transfer, BMH-D will cease to have radiation therapy service authority. Staff contends that BMH-D is in compliance with the need criterion.

SHP Criterion 2 – Access to Diagnostic Services

The applicant affirms that access to diagnostic X-ray, CT scan, and ultrasound services is readily available within 15 minutes normal driving time of the therapeutic radiation unit's location.

SHP Criterion 3 – Staffing of Services

Baptist Memorial Hospital-DeSoto affirms that TWC's service will have, at a minimum, the following full-time dedicated staff: one board-certified radiation oncologist-in-chief, one dosimetrist, one certified radiation therapy technologist certified by the American Registry of Radiation Technologists, and one registered nurse. Also, the service will have, at a minimum, access to a radiation physicist certified or eligible for certification by the American Board of Radiology. The applicant asserts that one individual may act in several capacities; however, the applicant affirms that when a staff person acts in more than one capacity, that staff person will meet, at a minimum, the requirements for each of the positions they fill.

SHP Criterion 4 – Access to Brachytherapy Staff

The applicant states that access will be available as needed to brachytherapy staff, treatment aides, social workers, dietitians, and physical therapists.

SHP Criterion 5 – Medical Staff's Residence within 60 Minutes of the Facility

Baptist Memorial Hospital-DeSoto states the facility will document that all physicians who are responsible for therapeutic radiation services in a facility, including the radiation oncologist-in-chief, will reside within 60 minutes normal driving time of the facility.

SHP Criterion 6- Simulator Capabilities

The applicant affirms that the applicant will have access to a modern simulator capable of precisely producing the geometric relationships of the treatment equipment to a patient. This simulator must produce high quality diagnostic radiographs. The applicant asserts that the facility will adhere to the remaining conditions associated with this criterion.

SHP Criterion 7- Access to a Computerized Treatment Planning System

The facility asserts that the applicant will have access to a computerized treatment planning system with the capability of simulation of multiple external beams, display isodose distributions in more than one plane, and perform dose calculations for brachytherapy implants. In addition, the system will have the capability of performing CT-based treatment planning.

SHP Criterion 8- Staffing of a Board Certified/Board Eligible Radiation Oncologist

Baptist Memorial Hospital-DeSoto affirms that all treatments will be under the control of a board certified or board eligible radiation oncologist.

SHP Criterion 9 - Site, Plan and Equipment Approval by the Division of Radiological Health

The applicant affirms that the proposed site, plans, and equipment will receive approval from the MSDH Division of Radiological Health before service begins.

SHP Criterion 10 – Quality Assurance Programs

Within 12 months of initiation of the proposed project, the applicant states that the applicant will establish a quality assurance program for the therapeutic radiation program and service. Also, the applicant asserts that the facility will comply with the minimum guidelines and standards set forth by the American College of Radiology (ACR).

SHP Criterion 11 – Compliance with Criterion 10a and b

The applicant affirms that Baptist Memorial Hospital-DeSoto will comply with criterion #10 (a) and (b), and understands and agrees that non-compliance may result in revocation of the CON (after due process) and subsequent termination of authority to provide therapeutic radiation services.

B. General Review (GR) Criteria

Chapter 8 of the *Mississippi Certificate of Need Review Manual, February 23, 2008*, addresses general criteria by which all CON applications are reviewed. This application is in substantial compliance with general review criteria.

GR Criterion 1 – Consistency with the State Health Plan

According to BMH-D, the acquisition/offering of therapeutic radiation equipment and service is directly addressed by the *Plan* to ensure appropriate distribution of service, quality, and cost. The proposed project is in compliance with all criteria and standards for the acquisition/offering of therapeutic radiation equipment as contained in the *Plan*.

GR Criterion 2 - Long Range Plan

Baptist Memorial Hospital-DeSoto believes that transfer of the linear accelerator equipment to HCC and leasing the radiation service to TWC d/b/a B-DCC is consistent with the hospital's expansion plan to provide effective, quality healthcare to residents of DeSoto County.

GR Criterion 3- Availability of Alternatives

The applicant states that BMH-D considered keeping the therapeutic radiation equipment and service the same or purchasing an additional linear accelerator and establish another service under another ownership with additional construction.

The first option was rejected because it would cause the service to be stagnant and would not allow for improvement to the current radiation service/program. The second alternative was chosen by BMH-D as the best, most cost effective option because the new business arrangement will combine existing service with experienced personnel to enhance the current radiation service at the B-DCC in GHSA 2.

GR Criterion 4 - Economic Viability

The applicant provided a three-year projected operating statement and projected that net patient revenue over a three-year period will be \$3,618,312, \$3,860,739, and \$4,032,777. In addition, the statement shows that the net income will be \$112,325, \$176,880, and \$188,728 in each of the three years (See Attachment 1).

Based on the operating statement, the net income will increase during the second and third year of operation. Since TWC will be the operator of the radiation oncology part of the business partnership, BMH-D asserts that the TWC has the resources to undertake the proposed project.

The proposed project does not have a capital expenditure that exceeds \$2,000,000; however, the applicant provided TWC's financial statements to show the proposed project will be financially viable. Based on the statements, the project appears to be economically viable.

GR Criterion 5 - Need for the Project

The applicant contends that BMH-D currently owns a linear accelerator unit and provides radiation therapy service to residents of Southaven. Staff determined that other entities offering radiation therapy services are 72 to 145 miles from Southaven; thus, the applicant feels that linear accelerator equipment and radiation therapy services will continue to be needed at the same location.

In GHSA 2, there were two operational linear accelerator machines in Southaven (DeSoto County), and both units performed 7,061 procedures in FY 2006. On April 24, 2006, in FY 2007, one linear accelerator was sold and removed from BMH-DeSoto by a Texas based company. In FY 2007, one unit in DeSoto County performed 6,227. Updated data indicate there are five radiation therapy machines located in the following counties: DeSoto, Coahoma, Leflore, and Washington. Each machine performed over 2,200 treatments (visits) in fiscal years 2006 and 2007, and averaged 3,801 and 4,424 treatments (visits), respectively. Therefore, the staff contends that TWC d/b/a B-DCC can meet the needs of radiation therapy patients in GHSA 2 without causing an adverse impact on existing providers in the area.

Baptist Memorial Hospital-DeSoto states that the community as well as area healthcare professionals presently support the radiation therapy services offered at the BMH-D location. If the proposed project is CON approved, the applicant believes the same community will support the radiation equipment and services under the new organizational structure. The application includes letters of support from area physicians supporting the proposed radiation therapy service project.

According to the applicant, BMH-D complies with all federal regulations regarding community service and will serve all patients in GHSA 2, regardless of race, creed, sex, or ability to pay.

GR Criterion 6- Access to the Facility

The applicant affirms that TWC d/b/a B-DCC will provide services to all residents of DeSoto County on Monday through Friday from 8:00 AM to 4:30 PM and after hour emergency care will be available. Upon CON approval to change radiation therapy service authority, TWC d/b/a B-DCC and BMH-D will continue to accept Medicaid patients; however, the Division of Medicaid will reimburse TWC for radiation therapy treatment (visits) according to its State Plan. The applicant indicates the expected payor mix by type of payor will be as follows: Medicaid 13%; Medicare 50%; private pay, commercial pay, and self pay, 37%.

GR Criterion 7- Information Requirement

Baptist Memorial Hospital-DeSoto affirms that TWC d/b/a B-DCC will record and maintain the information required by this criterion and shall make the data available to the Mississippi State Department of Health within fifteen (15) business days of request.

GR Criterion 8 - Relationship to Existing Health Care System

As reported in the FY 2007 MSHP and updated data for FY 2007, BMH-D is located in GHSA 2, where there are currently five linear accelerators. Since the radiation therapy services will be located in the same location under new business arrangements, the applicant does not anticipate that this project will have an adverse impact on any of the providers in the service area. Given that the hospital complies with criterion 1d in the *MSHP*, staff concludes that the project can be viable without causing an adverse impact on existing providers in the area.

GR Criterion 9 - Availability of Resources

The applicant affirms that a full-time dedicated staff listed in SHP Criterion 3 will be employed at the facility. The applicant indicates no new personnel will be hired as a result of the proposed project; however, existing staff at BMH-D will be utilized to operate the radiation therapy center.

GR Criterion 10- Relationship to Ancillary or Support Services

Baptist Memorial Hospital-DeSoto affirms that the hospital or cancer center will not require additional ancillary services; however, access to the existing support services will be continued through the established existing radiation therapy equipment/service. Thus, the applicant asserts that the proposed project will not have an impact on ancillary and support services.

GR Criterion 11- Health Professional Training Programs

Under BMH-D, health professional training programs were offered and the applicant states that TWC d/b/a B-DCC will continue to work with BMH-D to offer the same programs under its administration.

GR Criterion 12- Access by Health Professional Schools

The applicant affirms that BMH-D will continue to allow local health professional schools access to the proposed service for training purposes provided that students are under the supervision of registered and/or licensed personnel.

GR Criterion 16 - Quality of Care

The applicant asserts that the BMH-D is presently accredited by the Joint Commission on Accreditation of Healthcare Organizations. Upon approval of the change of ownership through the proposed project, professional personnel will be licensed and the center will obtain

accreditation through the American College of Radiology. Also, BMH-D will ensure that residents and patients of GHSA 2 continue to receive quality radiation services.

IV. FINANCIAL FEASIBILITY

A. Capital Expenditure Summary

Cost Item	Estimate Cost	%of the Total
SITE		
1. Land cost	\$0	0.0%
2. Site preparation and/or improvement	0	0.0%
3. Other (specify)	0	0.0%
BUILDING		
1. New construction	0	0.0%
2. Renovation	0	0.0%
3. Capital improvements	0	0.0%
4. Fees (architectural, consultant, etc.)	0	0.0%
5. Contingency reserve	0	0.0%
6. Capitalized interest*	0	0.0%
7. Other (specify)	0	0.0%
EQUIPMENT		
1. Fixed equipment	0	0.0%
2. Non-fixed equipment	0	0.0%
PROJECT DEVELOPMENT		
1. Legal and accounting fees	0	0.0%
2. Other (contingency)	0	0.0%
TOTAL PROPOSED CAPITAL EXP. COSTS	\$ 0	0.0%

B. Method of Financing

The applicant states The West Clinic will operate the radiation therapy services and will use the company's financial resources to fund operations for the proposed project.

C. Effect on Operating Costs

For the first, second, and third year of operation, the applicant projects gross revenues of \$8,058,600, \$8,553,985, \$8,981,684; expenses of

\$3,505,987, \$3,683,859, \$3,844,049; and net income of \$112,325, \$176,880, \$188,728, respectively. Utilization, cost, and charges are included in the applicant's Three-Year Projected Operating Statement (see Attachment 1).

D. Cost to Medicaid/Medicare

Payor	Utilization Percentage	First Year Gross Revenue
Medicaid	50.0%	\$4,029,300
Medicare	13.0%	\$ 1,047,618
Other	37.0%	\$2,981,682
Total	100.0%	<u>\$8,058,600</u>
TWC d/b/a B-DCC projects 8% bad debt. Medically indigent and charity care are approximately 5% of gross patient revenues each.		

V. RECOMMENDATION OF OTHER AFFECTED AGENCIES

The Division of Medicaid was provided a copy of this application for comment. According to the Division of Medicaid, outpatient services will be paid as outlined in the *Medicaid State Plan*. The Division does not oppose the application.

VI. CONCLUSION AND RECOMMENDATION

This project is in substantial compliance with the criteria and standards for the acquisition or otherwise control of radiation therapy equipment and the offering of radiation therapy services as contained in the *2007 Mississippi State Health Plan*; Chapter 8 of the *Mississippi Certificate of Need Review Manual, February 23, 2008 Revision*; and all adopted rules, procedures, and plans of the Mississippi State Department of Health.

The Division of Health Planning and Resource Development recommends approval of this application submitted by Baptist Memorial Hospital-Desoto, Inc. d/b/a Baptist Memorial Hospital-DeSoto transfer its linear accelerator and related equipment to Humphreys Cancer Center, LLC and radiation therapy service authority to the The West Clinic, P.C. d/b/a the Baptist-DeSoto Cancer Center.

ATTACHMENT 1

**Baptist Memorial Hospital-DeSoto Incorporated
 d/b/a Baptist Memorial Hospital-DeSoto
 (The West Clinic, P.C. d/b/a the Baptist-DeSoto Cancer Center)**

THREE-YEAR PROJECTED OPERATING STATEMENT

	Proposed Year 1	Proposed Year 2	Proposed Year 3
Revenue			
Inpatient Care Revenue	\$ -	\$ -	\$ -
Outpatient Care Revenue	\$ 8,058,600	\$ 8,553,985	\$ 8,981,684
Gross Patient Care Revenue	\$ 8,058,600	\$ 8,553,985	\$ 8,981,684
Charity Care	\$ 402,930	\$ 427,699	\$ 449,084
Deductions from Revenue	4,037,358	4,265,547	4,499,823
Net Patient Care Revenue	\$ 3,618,312	\$ 3,860,739	\$ 4,032,777
Other Operating Revenue			
Total Operating Revenue	\$ 3,618,312	\$ 3,860,739	\$ 4,032,777
Operating Expense			
Salaries	\$ 1,078,635	\$ 1,135,030	\$ 1,168,499
Benefits	199,532	207,513	215,814
Supplies	50,021	54,098	56,803
Services	230,402	254,018	266,719
Lease	508,517	543,312	565,554
Depreciation			
Interest			
Other	1,438,880	1,489,888	1,570,660
Total Operating Expense	\$ 3,505,987	\$ 3,683,859	\$ 3,844,049
Net Operating Income (Loss)	\$ 112,325	\$ 176,880	\$ 188,728
	Proposed Year 1	Proposed Year 2	Proposed Year 3
Procedures	6,366	6,685	7,019
Charge per procedure	\$ 1,266	\$ 1,280	\$ 1,280
Cost per procedure	\$ 551	\$ 551	\$ 548