

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

September 25, 2012

IN THE MATTER OF:

An Application for a Certificate of Need filed
Pursuant to Section 19a-638, C.G.S. by:

**Eastern Connecticut Health Network, Inc.
and Mandell & Blau, M.D.s, P.C.**

Notice of Final Decision
Office of Health Care Access
Docket Number: 11-31737-CON

**Acquisition by Eastern Connecticut Health
Network, Inc. of Open MRI Scanners
Currently Operated by Mandell & Blau,
M.D.,s, P.C. in Enfield, Glastonbury,
Middtown and South Windsor.**

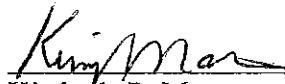
To:

Dennis McConville
Senior Vice President for Planning,
Marketing & Communications
Eastern Connecticut Health Network, Inc.
71 Haynes Street
Manchester, CT 06040

Jeffrey Blau, M.D.
President
Mandell & Blau, M.D.s, P.C.
40 Hart Street
New Britain, CT 06052

Dear Mr. McConville & Dr. Blau:

This letter will serve as notice of the Final Decision of the Office of Health Care Access in the above matter, as provided by Section 19a-638, C.G.S. On September 25, 2012, the Final Decision was rendered as the finding and order of the Office of Health Care Access. A copy of the Final Decision is attached hereto for your information.



Kimberly R. Martone
Director of Operations

Enclosure
KRM:swl

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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner



Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of Health Care Access Certificate of Need Application

Final Decision

Applicants: Eastern Connecticut Health Network Inc.
71 Haynes Street, Manchester, CT 06040

Mandell & Blau, M.D.s, P.C.
40 Hart Street, New Britain, CT 06052

Docket Number: 11-31737-CON

Project Title: Acquisition by Eastern Connecticut Health Network, Inc. of the Open MRI Scanners Currently Operated by Mandell & Blau, M.D.s, P.C. in Enfield, Glastonbury, Middletown and South Windsor

Project Description: Eastern Connecticut Health Network ("ECHN") is proposing to acquire four Magnetic Resonance Imaging ("MRI") scanners currently owned by Mandell & Blau, M.D.s, P.C. (the "Practice") and located in the towns of Enfield, South Windsor, Glastonbury and Middletown.

Procedural History: On December 9, 2011, the Office of Health Care Access ("OHCA") received a Certificate of Need ("CON") application from ECHN and the Practice (ECHN and the Practice are herein collectively referred to as the "Applicants") for the above-referenced project. A notice to the public concerning OHCA's receipt of the Applicants' Letter of Intent was published by the Applicant on September 30, October 1 and 2, 2011 in *The Middletown Press* and on October 3, 4 and 5, 2011 in *The Hartford Courant*.

On February 9, 2012, the Applicants were notified of the date, time, and place of a public hearing regarding the CON application. On February 11, 2012, a notice to the public announcing the hearing was published in the *Manchester Journal Inquirer* and *The Middletown Press*. Commissioner Jewel Mullen designated Attorney Marianne Horn as the hearing officer in this matter on March 2, 2012. Thereafter, the public hearing was held on March 15, 2012.



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The hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Connecticut General Statutes) and § 19a-639 of the Connecticut General Statutes ("the Statutes").

The Hearing Officer heard testimony from the Applicants and in rendering this proposed final decision, considered the entire record of the proceeding. OHCA's authority to review, approve, modify, or deny this proposal is established by §§ 19a-638 and 19a-639 of the Statutes. These provisions, as well as the principles and guidelines set forth in § 19a-639 of the Statutes, were fully considered by OHCA in its review.

FINDINGS OF FACT

1. ECHN is a health care system that is the parent corporation of Rockville General Hospital ("RGH") and Manchester Memorial Hospital ("MMH") and operates two outpatient diagnostic imaging centers, Evergreen Imaging Center ("EIC") and Tolland Imaging Center ("TIC"). Ex. A, pp. 9-10, 47.
2. The Practice is a private radiology practice that currently owns and operates four open MRI scanners in the towns of Enfield, South Windsor, Glastonbury and Middletown. Ex. A, pp. 9-10, 23.
3. ECHN proposes to acquire all four MRI scanners that the Practice currently operates in the towns of Enfield, South Windsor, Glastonbury and Middletown ("Practice's MRI scanners"). Ex. A, pp. 9-10.
4. "The four MRIs come as a package because of their infrastructure with regard to billing, IT and the radiologist." Testimony of Kevin Murphy, Public Hearing, March 15, 2012; Ex. I, p. 95.
5. The Practice acquired its MRI scanners as follows:
 - Pursuant to a CON determination issued in 2000 under Docket Number 00-G3, OHCA determined that a CON was not required for the leasing of a MRI scanner at Open MRI of Glastonbury;
 - Pursuant to a CON determination issued in 2002 under Docket Number 02-L, OHCA determined that a CON was not required for the acquisition of a MRI scanner at Open MRI of Enfield;
 - Pursuant to a CON Final Decision issued in 2004 under Docket Number 03-30205-CON, OHCA granted CON approval for the acquisition of a MRI scanner at Open MRI of Buckland Hills in South Windsor; and
 - Pursuant to a CON determination issued in 2005 under Docket Number 05-30526-DTR, OHCA determined that a CON was not required for the leasing of a MRI scanner at Open MRI of Middletown.

Since OHCA determined that CONs were not required for the acquisition of three of the four above-referenced MRI scanners, the Practice was not required to satisfy the guidelines and principles contained in § 19a-639 of the Statutes¹ at the time of acquisition.

6. The population to be served through the proposed acquisition of the Practice's MRI scanners by ECHN includes patients originating from the ECHN primary service area. According to the Applicants, the primary service area is identified as the towns where 75% of a location's activity originates. Ex. A, pp. 13-15.
7. ECHN currently operates four MRI scanners within its system at the following locations:

Table 1: ECHN's Existing MRI Scanner by Location:

Practice Sites	Address	Tesla
MMH	71 Haynes Street, Manchester, CT	Closed 1.5 T
RGH	31 Union Street, Vernon, CT	Closed 1.5 T
TIC	6 Fieldstone Commons, Tolland, CT	Open 0.7 T
EIC	2800 Tamarack Ave., South Windsor, CT	Closed 1.5 T

Ex. A, p. 12.

8. The Applicants have identified the primary service areas for the MRI services offered at the hospitals' main campuses and the imaging centers are as follows ("ECHN primary service area"):
 - MMH: Towns of Bolton, Coventry, East Hartford, Glastonbury, Manchester, South Windsor and Vernon/Rockville.
 - RGH: Towns of Coventry, Ellington, Stafford/Union, Tolland and Vernon/Rockville.
 - TIC: Towns of Coventry, Mansfield, Stafford/Union, Tolland, Vernon/Rockville and Willington.
 - EIC: Towns of Bolton, Coventry, East Hartford, Ellington, Manchester, South Windsor, Tolland, Vernon/Rockville.

Ex. C, pp. 77 - 78.

¹ In 2009, under Docket Numbers 09-31543-WVR and 09-31455-WVR, the MRI units in Middletown and Glastonbury were approved for replacement by OHCA.

9. The following table, provided by the Applicants, indicates the location of each of the four Practice MRI scanners including a description of each MRI by site:

Table 2: The Practice's MRI Scanners by Location

Practice Sites	Address	Model	Tesla
Open MRI at Buckland Hills	491 Buckland Street, South Windsor, CT	Philips Panorama	0.6 T Open MRI
Open MRI of Glastonbury	124 Hebron Avenue, Glastonbury, CT	Oasis	1.2 T Open MRI
Open MRI of Enfield ²	15 Palomba Drive, Enfield, CT	Hitachi Altaire	0.7 T Open MRI
Open MRI of Middletown	140 Main Street, Middletown, CT	Hitachi Altaire	0.7 T Open MRI

Ex. A, pp. 10 -11.

10. The Applicants have identified the primary service areas for the MRI services offered at the four Practice sites as follows ("Practice primary service area"):
- Enfield: East Windsor, Enfield, Somers Stratford/Union, Suffield, and Windsor Locks.
 - Glastonbury: Colchester, East Hampton, East Hartford, Enfield, Glastonbury, Hartford, Hebron, Manchester, Marlborough, Newington, Portland, Rocky Hill, So. Windsor, Vernon/Rockville, West Hartford, Wethersfield, and Windham.
 - Middletown: Cromwell, Durham, East Haddam, East Hampton, Haddam, Meriden, Middlefield, Middletown, New Britain, Old Saybrook and Portland.
 - So. Windsor : Coventry, East Hartford, East Windsor, Ellington, Manchester, South Windsor, Vernon/Rockville, and Windsor.

Ex. C, pp. 14 15.

11. The Applicants assert that the principal basis for the acquisition is not to accommodate anticipated patient overflow from ECHN's four existing scanners. Rather, the Applicants claim the following as the basis for the proposed acquisition of the Practice's MRI scanners by ECHN:

- To acquire and integrate the additional open magnets to provide ECHN patients with more options and greater access to open MRIs located in the community.
- To make more efficient use of all eight scanners within ECHN's system and reduce imaging duplication.
- To improve the quality of care by providing a greater number of radiologists ready access to prior scans and test results available from the same clinical information system.

² In September 2001, OHCA was notified by the Practice that was replacing and upgrading its MRI unit in Enfield.

- To increase access to community-based open MRIs for the uninsured and underinsured.
- To add an important revenue source for ECHN to help support its hospital services to the community.
Ex. L, p. 170.

12. ECHN stated that they had a feasibility study done by Gemstar Consultants. The very favorable profit and loss statement in the study showed that over the next three or four years, the acquisition of four additional MRI units would be financially favorable and help offset losses that are going to occur in the future. Testimony of Kevin Murphy, Public Hearing, March 15, 2012.
13. The Applicants represented that the integration and alignment of care practices, staff, education, policies, procedures and programs, as well as economies of scale and access to hospital vendor relationships, will promote more efficient care and enhanced patient care coordination, which in turn will result in improved care and greater cost efficiencies. Control of the service by a non-profit health system will further allow profits to be invested back into other essential health services. Ex. A, p. 24.
14. The Applicants expect the payer mix of the Practice and ECHN to remain constant at FY 2011 distribution:

Payer	Practice	ECHN
Non-Government	75%	55%
Medicare	19%	31%
Medicaid	6%	14%
Other Government	0%	0%

Ex. A, p. 28.

15. ECHN intends to relocate the Practice's current MRI scanner at Buckland Hills in South Windsor to the Evergreen Imaging Center in South Windsor. The other three of the Practice's MRI scanners will continue to be operated at their current locations in Enfield, Glastonbury and Middletown. Ex. A, pp. 9-10.

16. ECHN's historical utilization for all four of its MRI scanners, is as follows:

Table 3: ECHN's Historical MRI Utilization:

	FY 2009	FY 2010	FY 2011
EIC	1,867	1,934	1,949
TIC	912	1,403	1,745
RGH	2,049	1,896	1,833
MMH	3,841	3,840	3,731
Total	8,699	9,073	9,258

Ex. I, p. 115.

Based upon Table 3, ECHN has experienced declining MRI utilization at both of its hospital locations. Ex. I, p. 115.

17. The Applicants asserted that the physician referral patterns are not expected to change as a result of the acquisition of the proposed MRI scanners. Ex. A, p. 17.
18. ECHN does not track referrals for its patient population from one MRI location to another. ECHN does offer TIC to its patient population seeking an open MRI, but location, commuting patterns, and patient preference are limiting factors. Many patients are also guided by their physicians in scheduling an MRI, and those preferring an open MRI are often scheduled at a facility with which the referring physician has a relationship. Ex. L, p. 168.
19. ECHN does not keep any formal records, at any of its facilities, of medical imaging patients who are unable to use a closed MRI due to obesity or claustrophobia. There is no available data addressing this issue for the MRIs at MMH or RGH. The hospitals' technologists do not capture this data nor can it be extracted from the hospitals' radiology information system. Ex. L, p. 168.
20. ECHN provided the following utilization table based on informal handwritten notations, recording 107 or 5.2% of total MRI scans performed at ECHN's EIC location that were cancelled due to claustrophobia or obesity.

Table4: EHCN's EIC FY 2011 MRI Scan Information (Based on informal records)

Total exams performed	1,949
Total recorded cancellations due to claustrophobia/obesity	107
Total exams performed plus claustrophobic and obese cancellations	2,056
Percentage of recorded claustrophobic/obese patients	5.2%

Ex. L, p. 168.

21. ECHN's projected utilization for all four of its existing MRI scanners is as follows:

Table 5: ECHN's Projected MRI Utilization:

	FY 2012	FY 2013	FY 2014	FY 2015
EIC	1,988	2,028	2,068	2,110
TIC	1,780	1,815	1,852	1,889
RGH	1,833	1,833	1,833	1,833
MMH	3,731	3,731	3,731	3,731
Total	9,332	9,407	9,484	9,563

Note: The projected utilization is based on the Practice's historical utilization and additional increases assumed to result from equipment upgrades and efficiencies obtained from the coordination of Eastern Connecticut Imaging and the Practice, under the direction of ECHN.
Ex. I, p. 115; Ex. A, p. 19.

22. In light of historical utilization, ECHN has not demonstrated a sufficient basis to support its projected MRI growth utilization. Ex. I, p. 115; Ex. A, p. 19.
23. Based on the historical and projected utilization, ECHN can accommodate their patients' MRI needs within the ECHN primary service area with the scanners it currently operates. Ex. I, p. 115; Ex. A, p. 19.
24. Based on the continued decline of MRI utilization at the two ECHN hospitals, the Applicants have failed to demonstrate that there is a clear public need for ECHN to acquire the Practice's four MRI scanners to serve its patient population. Moreover, there are several other existing providers in the ECHN primary service area to ensure access for ECHN's patient population to all types of MRI services, including open MRIs, for residents of the area. Ex. I, p. 115; Ex. A, pp. 15-17; Ex. L, p. 174.
25. The Practice's historical utilization for the four Practice MRI scanners is as follows:

Table 6: Practice's Historical MRI Utilization:

	FY 2009	FY 2010	FY 2011
Enfield	1,547	1,474	1,321
Glastonbury	1,587	1,567	1,993
Middletown	2,513	2,302	2,557
So. Windsor	3,714	3,673	3,527
Total	9,361	9,016	9,398

Ex. I, p. 115.

Based upon Table 6, the Practice's MRI scanners at all locations experienced declines in FY 2010 and two of those sites experienced continued and increasing declines in utilization in FY 2011. Ex. I, p. 115.

26. The Practice is projecting the following utilization for the four Practice MRI scanners by location:

Table 7: Practice's Projected MRI Scanners by Location

	FY 2012	FY 2013	FY 2014	FY 2015
Enfield	1,356	1,392	1,482	1,466
Glastonbury	2,046	2,100	2,155	2,212
Middletown	2,625	2,694	2,765	2,838
South Windsor	3,620	3,716	3,814	3,915
Total	9,464	9,901	10,162	10,431

Note: The projected utilization is based on the Practice's historical utilization and additional increases assumed to result from equipment upgrades and efficiencies obtained from the coordination of Eastern Connecticut Imaging and the Practice, under the direction of ECHN.
 Ex. I, p. 115; Ex. A, p. 19.

27. In light of historical utilization, the Practice has not demonstrated a sufficient basis to support its MRI growth projections. Ex. I, p. 115; Ex. A, p. 19.
28. The following table lists the number of MRI units located in the Applicants' primary service areas:

Provider	Town	# of MRIs
ECHN (Applicant)		
Evergreen Imaging Center	South Windsor	1 (1.5 Tesla)
Manchester Memorial Hospital	Manchester	1 (1.5 Tesla)
Rockville General Hospital	Vernon	1 (1.5 Tesla)
Tolland Imaging Center	Tolland	1 (0.7 Tesla)
<i>Total ECHN MRIs:</i>		<i>4</i>
Practice (Applicant)		
Open MRI of Buckland Hills	South Windsor	1 (0.6 Tesla)
Open MRI of Enfield	Enfield	1 (0.7 Tesla)
Open MRI of Glastonbury	Glastonbury	1 (1.2 Tesla)
Open MRI of Middletown	Middletown	1 (0.7 Tesla)
<i>Total Practice MRIs</i>		<i>4</i>
Other Existing Providers		
Jefferson Radiology	Glastonbury	1 (1.5 Tesla)
	Enfield	1 (1.5 Tesla)
Johnson Memorial Hospital	Enfield	1 (1.5 Tesla)
Middlesex Hospital	Middletown	1 (1.5 Tesla)
		1 (1.5 Tesla)
Middlesex Orthopedic Surgeons	Middletown	1 (1.5 Tesla)
Radiology Associates of Hartford	Glastonbury	1 (1.5 Tesla)
	Enfield	1 (1.5 Tesla)
<i>Total Other Providers in the PSA</i>		<i>8</i>

Ex. I, p. 115; Ex. A, p. 19

29. According to the Applicants, there are 16 existing MRI scanners in the Applicants' primary service areas; 9 are located in the towns of the Practice's scanners. Ex. L, p. 174.
30. The total capital expenditure for the acquisition of the Practice's four MRI scanners by ECHN is \$3,200,000 to be financed through debt financing. Ex. A, p. 24.
31. ECHN projects the following incremental gains from operations based on projected increase in MRI utilization:

Table 8: ECHN Financial Projections Incremental to the Proposal

Description	2011	2012	2013	2015
Incremental Revenue from Operations	\$6,403,738	\$6,620,542	\$6815,451	\$7,016,852
Incremental Total Operating Expense	\$4,856,120	\$4,917,523	\$4,980,461	\$5,044,972
Incremental Gain from Operations	\$1,574,618	\$1,703,019	\$1,834,990	\$1,971,879

Ex. A, p. 68.

32. The Applicants submitted the following studies and articles related to MRI patient claustrophobia, anxiety and obesity: *Reduction of claustrophobia during resonance imaging: methods and design of the "CLAUSTRO" randomized controlled trial*, published in BMC Medical Imaging, 2011; *Anxiety-Related Reactions Associated with Magnetic Resonance Imaging Examinations*, published in JAMA, Vol. 270, No. 6, 1993; and *Impact of Obesity on Medical Imaging and Image-Guided Intervention*, published in AJR 188, 2007. Exhibit I, pp. 134-161.
33. OHCA has considered the articles and studies submitted by the Applicants and has examined the utilization specific to ECHN's claustrophobic and obese patients. This review does not support a need for ECHN to acquire four open MRI units. There are alternate methods available for ECHN to manage the small percentage of patients who are claustrophobic and/or obese. ECHN could replace any one of its three closed MRI units with an open MRI, with notification to OHCA. Furthermore, the patients of the practice and ECHN will be able to continue accessing these imaging services, respectively, as all eight of these MRI scanners are currently operating and will continue to do so, regardless of this proposal. Ex. I, pp. 115, 134-161.
34. Providing ECHN patients with the convenience of accessing additional MRI service locations within the region does not demonstrate that the proposal would improve access to health care delivery in the region.
35. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any regulations adopted by OHCA. (C.G.S. § 19a-639(a)(1))
36. OHCA is currently in the process of developing a statewide facilities and services plan. Therefore, OHCA has not made any findings as to this proposal's relationship to the plan. (C.G.S. § 19a-639(a)(2))

37. The Applicants have failed to establish that there is a clear public need for their proposal. (C.G.S. § 19a-639(a)(3))
38. The Applicants have not satisfactorily demonstrated how this proposal will impact the financial strength of the health care system in this state. (C.G.S. § 19a-639(a)(4))
39. The Applicants have failed to satisfactorily demonstrate that their proposal would improve the accessibility of health care delivery in the region but they have satisfactorily demonstrated a potential improvement in quality and cost effectiveness. (C.G.S. § 19a-639(a)(5))
40. The Applicants have shown that there would be no change to the provision of health care services to the relevant populations and payer mix. (C.G.S. § 19a-639(a)(6))
41. The Applicants have satisfactorily identified the population to be served by their proposal but have failed to satisfactorily demonstrate that this population has a need as proposed. (C.G.S. § 19a-639(a)(7))
42. The historical utilization of MRIs in the service area does not support this proposal. (C.G.S. § 19a-639(a)(8))
43. The Applicants have failed to satisfactorily demonstrate that their proposal would not result in an unnecessary duplication of existing MRI services in the area. (C.G.S. § 19a-639(a)(9))

DISCUSSION

CON applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considers the factors set forth in § 19a-639(a) of the Statutes and the Applicant bears the burden of proof in this matter by a preponderance of the evidence. Goldstar Medical Services, Inc., et al. v. Department of Social Services, 288 Conn. 790 (2008); Steadman v. SEC, 450 U.S. 91, 101 S.Ct. 999, reh'g den., 451 U.S. 933 (1981); Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984); Sea Island Broadcasting Corp. v. FCC, 627 F.2d 240, 243 (D.C. Cir. 1980).

The Applicants' proposal is for ECHN to acquire four MRI scanners currently owned and operated by the Practice in the towns of Enfield, South Windsor, Glastonbury and Middletown. ECHN currently operates four MRI scanners, which are located at RGH in Vernon, EIC in South Windsor, MMH in Manchester and at TIC in Tolland. FF 6, 11. Kevin Murphy, testifying on behalf of ECHN, stated that "[t]he four MRIs come as a package because of their infrastructure with regard to billing, IT and the radiologist."

FF4. The Applicants asserted that the proposed acquisition for the additional MRI scanners would provide for greater access to open MRIs located in the community; make more efficient use of all eight scanners within ECHN's system and reduce imaging duplication; improve the quality of care through use of the same clinical information system; and add an important revenue source for ECHN to help support its hospital services to the community. Additionally, the transfer of radiology services to a non-profit ECHN system could ensure the profits are reinvested in the other essential health services. FF 13.

The two MRI scanners located at RGH and MMH have each experienced declining volumes over the last three fiscal years. FF 24. The evidence shows that physician referral patterns will remain unchanged, patient preference is a limiting factor, and there is declining MRI utilization at the two ECHN hospitals. FF 16, 17. However, ECHN stressed the need to acquire all four MRI scanners concurrently as part of this one proposal. FF 4. Although the acquisition of the four additional MRIs may provide a convenience to ECHN's patients, based on the historical and projected utilization of ECHN's existing four MRI scanners, ECHN has not demonstrated a clear public need to acquire all four additional MRI scanners. OHCA's determination on the acquisition of an MRI is based, in part, on the demonstrated need for the acquisition, not whether an MRI is open or closed or may provide a more convenient location for the patient.

With the exception of the South Windsor site, OHCA finds that the three other ECHN imaging sites serve residents of towns quite different from the proposed service area of the Practice's MRI services with their own distinct service areas. FF 8, 10. Two of the four MRI scanners proposed for acquisition from the Practice are currently operating in the towns of Middletown and Enfield, which are not within ECHN's imaging service area. FF 8, 10. Even so, there are several other existing providers of MRI services in ECHN's imaging service area. There are currently nine additional existing MRI scanners located in the towns of the Practice's scanners and there are twelve additional existing MRI scanners in the Practice's primary service area. FF 10, 29. The patients currently accessing the nine MRI scanners in the Practice's primary service area will continue to receive services at these locations regardless of this proposal. Additionally, the operation of the eight MRI scanners currently operated by ECHN and the Practice will continue regardless of this proposal. Based on the significant number of existing providers of MRI services in ECHN's primary service area and on ECHN's historical and projected MRI utilization, OHCA concludes that there is not currently a lack of access to these services for patients residing within ECHN's primary service area.

While the Applicants have provided evidence to show that their proposal would be a cost-effective, efficient and more convenient manner of providing MRI services, the preponderance of evidence indicates that the need to provide the proposed service in the area is lacking.

Order

Based upon the foregoing Findings and Discussion, the Certificate of Need application of Eastern Connecticut Health Network and Mandell & Blau, M.D.'s P.C. for the acquisition of Four Additional Magnetic Resonance Imaging Scanners by ECHN is hereby **DENIED**.

9/25/2012
Date

(Lisa A. Davis)
Lisa A. Davis, MBA, BSN, RN
Deputy Commissioner

MH:sl