Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-145

JANUARY TERM, 2002

In re Application of Four C's, Inc.	}	APPEALED FROM:
	}	
	}	Commissioner of Banking, Insurance,
	}	Securities and Health Care Administration
	}	
	}	
	}	DOCKET NO. 99-031-H

In the above-entitled cause, the Clerk will enter:

VerDelle Village, a nursing home granted interested party status in the instant proceeding, appeals a decision by the Commissioner of Banking, Insurance, Securities and Health Care Administration approving the application of Four C's Inc. (d/b/a Holiday House Nursing Home) for a certificate of need to relocate and construct a new skilled nursing home facility. We affirm.

Holiday House and VerDelle Village are two of the three skilled nursing facilities located in Franklin County. In July 1999, Holiday House commenced this proceeding by filing a letter of intent to replace its sixty-four-bed nursing home facility with a new facility at a different location. See 18 V.S.A. 9434(a) (no new institutional health service shall be offered or developed without determination of need and issuance of certificate to that effect). In November 1999, Holiday House entered into a memorandum of understanding under which the Agency of Human Services, the Department of Aging and Disabilities, and the Division of Rate Setting agreed to support Holiday House's proposal if it met specified conditions. Under the proposal, the new facility would retain the same number of beds, but twenty of those beds would be part of a rehabilitation unit. The proposal also called for Holiday House to convert its existing building into a licensed residential care facility. Licensed care facilities provide less skilled care, are less costly, and do not require a certificate of need. The capital expenditure for the new skilled nursing facility was expected to be approximately $4.2 million.

Claiming that its interests would be "substantially, adversely and directly affected" by Holiday House's proposal, VerDelle Village intervened and requested interested party status. See 18 V.S.A. 9440(b)(6) ("interested party" status shall be granted to persons demonstrating that they will be substantially, adversely and directly affected by new health service under review or that they will be able to provide nonduplicative evidence relevant to commissioner's determination). Apparently, VerDelle Village was concerned that Holiday House's new facility would draw a higher percentage of profitable private clients, as opposed to Medicaid clients, which might increase the ratio of Medicaid patients at VerDelle Village, thereby affecting its profitability. The Commissioner granted VerDelle Village's request for interested party status, stating that VerDelle Village "may" be adversely affected by the proposal and "may" materially assist review of the proposal. Both Holiday House and VerDelle Village filed written materials, and the Public Oversight Commission held a public meeting on the proposal on November 15, 2000.

Following the meeting, the Commission recommended, by a four-to-one vote, that the Commissioner deny the proposal because the expenditure of funds for new nursing home construction would not further the goals of Act 160 (18 V.S.A. 9431-9445), which concerns legislative priorities in long-term health-care funding. After accepting additional information from the parties and touring their facilities, the Commissioner issued a decision approving Holiday House's

application for a certificate of need. VerDelle Village appeals, arguing that (1) the Commissioner acted beyond her statutory authority by relying on the benefits of the residential care facility proposed for Holiday House's existing facility rather than on the need to spend $4.2 million to relocate and construct a new nursing home; (2) even if consideration of the proposed residential care facility was appropriate, the evidence was insufficient to satisfy the statutory criteria; and (3) the Commissioner failed to address each of the mandatory criteria and articulate a basis for her conclusions. Holiday House responds to each of theses claims of error and further contends that VerDelle Village has no standing to appeal the Commissioner's decision. Because none of VerDelle Village's substantive arguments convince us that it is necessary to disturb the Commissioner's decision, we do not address the standing question.

The standard of review in appeals seeking relief from a determination as to whether to grant a certificate of need is "very narrow." In re AssureCare of Vermont, Inc., 165 Vt. 535, 538 (1996) (mem.). Generally, decisions within an agency's area of expertise are presumed to be correct, valid, and reasonable, and thus will not be disturbed absent a "compelling indication of error." In re Prof'l Nurses Serv., Inc., 168 Vt. 611, 613 (1998) (mem.); AssureCare, 165 Vt. at 538; In re Prof'l Nurses Serv., Inc., 164 Vt. 529, 532 (1996). This is particularly true when the administrative body is deciding a highly technical matter within its statutory authority, In re Town of Sherburne, 154 Vt. 596, 607 (1990), as it is here. That being said, "[a]n agency must operate for the purposes and within the bounds authorized by its enabling legislation, or this Court will intervene." In re Agency of Admin., 141 Vt. 68, 75 (1982); see Town of Sherburne, 154 Vt. at 607 (agency has no discretion to ignore statutory policy, but retains discretion in determining relative weight to give each statutory criterion).

The policies and purposes underlying the certificate-of-need process are to avoid the unnecessary duplication of health care services, to contain costs while improving services, and to promote a rational allocation of services. 18 V.S.A. 9431. To further these goals, the Legislature has required that certain proposed expenses involving health care services be approved by the Commissioner. See 18 V.S.A. 9434(a) (identifying what proposed services require certificate-of-need approval). In determining whether a certificate of need should be granted, the Commissioner considers twenty-one general criteria set forth in 9436. In addition to considering those criteria, Commissioner may not issue a certificate of need unless she finds that (1) there are no practicable alternatives to the proposed service in terms of cost, efficiency, and appropriateness; (2) alternatives to new construction have been considered and implemented to the maximum extent practicable; (3) without the proposed service, patients would experience serious problems in terms of costs, availability, or accessibility; (4) a proposal for additional beds is consistent with the considerations identified in 9439(e); and (5) the proposed service is consistent with departmental certificate-of-need guidelines. Id. 9437. Each of the four mandatory criteria are relevant here, except for criterion four.

VerDelle Village first argues that the Commissioner exceeded the scope of her delegated authority by relying on the merits of the ancillary project, converting Holiday House's existing facility into a residential treatment facility, to justify the only aspect of the project that was subject to certificate-of-need review - replacing the existing skilled nursing facility with a new facility. According to VerDelle Village, because the ancillary project was not subject to certificate-of-need review, the Commissioner was required to consider the merits of the principal project independently under the general and mandatory criteria. Instead of doing so, VerDelle Village asserts, the Commissioner justified the building of a new skilled nursing home facility - the only project subject to review - by bootstrapping the promise of a residential-care facility to satisfy the statutory criteria.

We find no basis to reverse the Commissioner's decision. The jurisdictional reach of the certificate-of-need process did not compel the Commissioner to turn a blind eye toward aspects of the proposal that do not require approval under the statute but that nonetheless will further the policies and purposes of the statute. To the contrary, the statute requires the Commissioner to consider the total impact of proposed projects in light of those policies and purposes. As the Commissioner noted, criterion 9 of 9436 required her to consider the relationship of the new proposed health service "to ancillary or support services," criterion 7 of 9436 required her to review the relationship of the new service "to the existing health care system" of the proposed service area, and criterion19 of 9436 required the Commissioner to review "the impact of the proposal on Medicaid dollars." The fact that the mandatory criteria of 9437 are set forth separately does not suggest that the Commissioner is constrained to a narrow jurisdictional assessment of a proposal. The Commissioner's assessment of the effect of the proposal in its entirety on the state's health care system would have been thwarted had the Commissioner been compelled to ignore aspects of the proposal that, standing alone, would not have been subject to review under the statute. We will not interfere with the Commissioner's determination that it was

appropriate to examine all aspects of the proposal under the statutory criteria, including those that in isolation would not have been subject to review. See Prof'l Nurses Serv., Inc., 164 Vt. at 532 (standard of review is limited in cases involving administrative agency's interpretation of statutory provisions within its area of expertise); Agency of Admin., 141 Vt. at 74-75 ("construction of statutes by those charged with their execution will be followed unless there are compelling indications that the construction is wrong").

Next, VerDelle Village argues that there was insufficient evidence to demonstrate that (1) other practicable alternatives had been considered and implemented to the maximum extent possible; (2) patients would experience serious problems in the absence of the new proposed service; and (3) the proposal was consistent with departmental guidelines. For the most part, these contentions either challenge the Commissioner's weighing of evidence submitted by the parties and several independent agencies or rely upon a narrow jurisdictional assessment of the proposal rejected by the Commissioner. Suffice it to say that, upon review of the record, we conclude that there was sufficient evidence for the Commissioner, within her discretion, to determine that the proposal fulfills a serious need and is the most practicable alternative to satisfy statutory and departmental policies and guidelines.

Finally, we reject VerDelle Village's assertion that the Commissioner failed to address each of the mandatory criteria and articulate the basis of her decision in light of those criteria. Contrary to that assertion, the Commissioner's detailed decision examines all of the relevant criteria, including the mandatory criteria, and plainly states the grounds upon which her decision was reached. Accordingly, there is no basis for disturbing the decision. See Agency of Admin., 141 Vt. at 75 (this Court will not intervene as long as agency acts within bounds of its statutory authority).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice