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Can the state force a private hospital to stay open? It's complicated.

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WTTW News

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A state health board's decision to deny a Chicago hospital the right to close raises a thorny question: Can the government force a financially struggling private hospital to keep its doors open?

It's complicated, lawyers say.

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The Illinois Health Facilities & Services Review Board, which decides the fate of health care projects in the state, voted unanimously yesterday not to approve Mercy Hospital & Medical Center's application to close early next year. Catholic giant Trinity Health, which owns the South Side facility, plans to challenge the finding at the board's Jan. 26 meeting.

If the board affirms its denial, how does the state compel Mercy—which Trinity said is posting monthly operating losses of \$4 million—to remain open?

Closing a health care facility without approval can result in a fine of up to \$10,000, plus an additional \$10,000 a month while the violation continues. Additionally, a facility could lose the ability to collect payments from the state, such as outstanding hospital assessment payments and Medicaid reimbursements.

Low-income patients on Medicaid account for nearly half of Mercy's inpatient revenue and 35 percent of its outpatient revenue, according to the latest Illinois Department of Public Health data.

Still, as industry observers point out, such fines might be preferable to the millions of dollars the hospital said it's already losing each month.

Trinity has said that since buying Mercy in 2012, it's provided hundreds of millions of dollars to fund infrastructure improvements and meet operating needs. Trinity also previously said the aging facility will require at least \$100 million of additional capital investments in the next five years.

But sources say it's unlikely that Trinity will outright shutter Mercy without approval, falling out of favor with the board, considering it still owns three hospitals in the state: Loyola University Medical Center, Gottlieb Memorial Hospital and MacNeal Hospital.

"What I think will happen over the next couple weeks is what we saw happen at" recently shuttered Westlake Hospital in Melrose Park and MetroSouth Medical Center in Blue Island, said Juan Morado Jr., a partner at law firm Benesch Friedlander Coplan & Aronoff. "We'll see employees of the facility begin to look for employment elsewhere and, as the number of employees starts to dwindle, (Mercy's) ability to provide care at the level they would like to will diminish. You could see the hospital system submit notices of temporary suspension for particular categories of service."

In other words: If it's considered unsafe to do so, the state won't demand it continue operating.

A Trinity representative did not respond to questions about whether Mercy has started winding down certain services or whether workers already have started taking positions elsewhere.

"We remain focused on caring for our patients and will continue to work with surrounding health care providers within the regulatory structure of the Illinois Health Facilities Act and the Illinois Hospital Licensing Act," Trinity said in an emailed statement.

Trinity's situation is not unprecedented.

Cook County's application to close Oak Forest Hospital in 2011 was rejected by the state's health facilities board. The hospital eventually got approval to transform its large inpatient facility into an outpatient center.

The Oak Forest case "mirrors exactly what Mercy is talking about doing," Morado said. "The roadmap is there. . . .In a sense, we've been having the same conversation for a decade."

Trinity recently applied with the state to open Mercy Care Center, a \$13 million [outpatient clinic](#) that would be less than 2 miles from the hospital. The board is scheduled to vote on the outpatient project at its Jan. 26 meeting—the same meeting where it's expected to revisit the hospital's closure application.

Sources say Trinity could come back to the board at that meeting with a compromise that would entice members to vote to approve Mercy's closure. For example, they said, it could offer to keep the hospital open until the outpatient center is operational, scheduled for Sept. 30.

Trinity's plan to close Mercy between Feb. 1 and May 31—during a public health crisis—has prompted outrage from elected officials and community members. The health facilities board yesterday echoed concerns about the possibility of having roughly 400 fewer beds on Chicago's South Side, where people of color have long been disproportionately affected by chronic conditions and, now, COVID-19.

But the board's ability to deny Mercy's closure, in all likelihood, has less to do with the pandemic than it does with a recent Illinois Health Facilities Planning Act change that restored some power to appointed members. The change followed the board's controversial April 2019 decision to approve the closure of Westlake Hospital.

In the case of Westlake and other recently closed hospitals, the board essentially was required to approve any request to discontinue services if a hospital operator submitted a comprehensive application.

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