



VIA OHS ELECTRIC CON PORTAL

February 8, 2022

Barbara Durdy
Director, Strategic Planning
Hartford HealthCare
181 Patricia Genova Drive
Newington, Connecticut 06111

Re: **Windham Hospital's Termination of inpatient obstetric services**

Dear Ms. Durdy:

The Office of Health Strategy (OHS) is in receipt of information concerning a Certificate of Need (CON) from Windham Hospital (Hospital) dated September 3, 2020, seeking approval to terminate inpatient obstetrics services (Services) at its main hospital campus located at 112 Mansfield Avenue in Willimantic, Connecticut.

Connecticut General Statutes (C.G.S.) §19a-638(a) requires that “a certificate of need issued by [OHS] shall be required for”...“the termination of inpatient or outpatient services offered by a hospital.”¹ However, despite the Hospital’s assertion that it simply intended to suspend the Services beginning in June 2020², the record shows that a plan to terminate the Hospital’s Obstetric Services was presented to the Hospital’s Board of Directors (BoD) at the November 2019 BoD meeting. This plan was presented and unanimously approved by the BoD at the June 16, 2020, BoD meeting.³ Dr. David Kalla⁴ testified that the Hospital’s last birth occurred in June 2020. Only in September of 2020, did the hospital apply for an approval of termination.

On March 14, 2020 Governor Lamont signed Executive Order 7B which authorized the Executive Director of the Office of Health Strategy (OHS) to waive CON statutory and regulatory requirements for certain transactions in order to increase access to critical healthcare services for the management of the COVID-19 public health emergency covered under Chapter 368z of the Connecticut General Statutes. On May 20, 2021, Governor Lamont signed Executive Order 12B which extended the authority of the Executive Director of the Office of Health Strategy to continue to waive these requirements, but only through June 30, 2021.

¹ C.G.S. §19a-638(a)(5)

² 20-32394-CON, Testimony of Attorney Fusco, Hearing Transcript, p. 15

³ 20-32394-CON, Ex. R, Applicant’s Response to Order for Prefiled Testimony and Issues, p. 330

⁴ 20-32394-CON, Testimony of Dr. David Kalla, Hearing Transcript, p. 60

Effective July 1, 2021 the waiver of Sections 19a-610 through 19a-689 of the Connecticut General Statutes established in Executive Order 7B and continued under Executive Order 12B has expired, and all Connecticut hospitals and outpatient surgical facilities must comply with all applicable statutory and regulatory requirements.

The Hospital is aware of existing CON statutes and the obligation to obtain a CON *prior to* termination of such services and, by engaging in willful misconduct regarding its duty, has failed to do so. Willful misconduct is intentional activity(ies) a party engages in.⁵ The Hospital, in violation of applicable law, intentionally and willfully terminated the Service prior to the receipt of CON approval of its application to terminate the Service consistent with C.G.S. §19a-638(a)(5). Consequently, the Hospital is in violation of C.G.S. §19a-638(a)(5), which requires that a CON be issued by OHS prior to the termination of an inpatient or outpatient service.

C.G.S. §19a-653 authorizes OHS to assess a civil penalty of up to \$1,000/day for each the Hospital engages in any of the activities set forth in C.G.S. 19a-638(a) without certificate of need approval. The Hospital terminated the Service in violation of C.G.S. §19a-638(a)(5) and is subject to OHS' statutory authority to assess said penalty. The date on which the violation first occurred is July 1, 2021, resulting in 151 days in violation of statute, and a \$151,000.00 penalty. For each day that the Hospital remains out of compliance with statute an additional \$1,000.00 will be assessed. The Hospital retains the right to request a hearing concerning this matter consistent with C.G.S. §19a-653(c).

If you have any questions, please contact Demian Fontanella at demian.fontanella@ct.gov.

Sincerely,

Kimberly R. Martone
Deputy Director/Chief of Staff
Director, Health Systems Planning
Office of Health Strategy

⁵ Menzie v. Kalmonowitz, 107 Conn. 197, 139 A. 698 (1927)