



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

December 8, 2014

**VIA ELECTRONIC MAIL**

Kurt A. Barwis  
President and CEO  
Bristol Hospital and Health Care Group, Inc.  
41 Brewster Road  
Bristol, Connecticut 06010

Jeffrey Peterson  
Senior Counsel  
Tenet HealthCare Corporation  
1445 Ross Avenue  
Suite 1400  
Dallas, Texas 75202

Gayle Capozzalo  
Executive Vice President  
Yale-New Haven Health System  
20 York Street  
New Haven, Connecticut 06510

**Re: Bristol Hospital and Health Care Group, Inc. – Proposed Asset Purchase by Tenet Healthcare Corporation and Yale-New Haven Health Services Corporation – OHCA Docket No. 14-31928-486 and Attorney General Docket No. 14-486-03**

Dear Mr. Barwis, Attorney Peterson, and Ms. Capozzalo:

On November 19, 2014, the Certificate of Need (“CON”) Application of Bristol Hospital and Health Care Group, Inc. (“BHHCG”), including Bristol Hospital, Inc. (the “Hospital”), Tenet Healthcare Corporation, Inc. (“Tenet”) and Yale-New Haven Health Services Corporation (“YNHHS” and referred to collectively with BHHCG and Tenet herein as “Applicants”) was filed with the Office of the Attorney General (“OAG”) and the Office of Health Care Access, Department of Public Health (“OHCA/DPH”) for the transfer of substantially all of the assets of BHHCG and its related affiliates to a to be formed, for-profit affiliate of a joint venture company to be formed by Tenet and YNHHS.

The OAG and OHCA/DPH have determined that there are deficiencies in the Application that require clarification and/or additional production. Conn. Gen. Stat. § 19a-486a(d).

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*(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)*  
410 Capitol Ave., MS#13HCA, P.O.Box 340308, Hartford, CT 06134-0308  
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Accordingly, please respond to the following questions and/or submit the following materials to the OAG and OHCA by February 6, 2015.

1. On p. 2 of the Application, Applicants state that “Existing union contracts will also be honored” in the context of the new for-profit hospital offering employment to all employees of BHHCG and its affiliates. On p. 45 of Exhibit 22 to the Application, the Transcript of the Public Hearing held on August 14, 2014 (the “Hearing Transcript”), Kurt Barwis, President and CEO of Bristol Hospital, tells a questioner that the Asset Purchase Agreement (“APA”) has language saying that collective bargaining agreements will be honored. However, in the draft APA (Exhibit 1 to the Application), the Seller represents in Section 3.21(g) that “No employees of Seller are represented by, or have made demand for recognition of, a labor union or employee organization...” Please clarify whether the BHHCG and/or the Hospital currently have any collective bargaining agreements in place and if they do, what will happen to those agreements if the Asset Purchase is consummated.
2. In reference to the Board of Trustees (“Local Board”) for VHS Bristol Health System, LLC (“VHS Bristol”) described on p. 13 of the Application, please respond to the following:
  - (a) Please clarify the recommending authority of the Local Board that is described in Section 5.18(b) of the APA in relation to the Board of Directors of Tenet and the governing body of the joint venture Regional Provider Organization (“RPO”) that will be formed between Tenet and YNHHS, which will be the sole member of VHS Bristol. Please provide any draft bylaws or policies and procedures that would further delineate the powers and functions of these governing bodies as they relate to VHS Bristol’s operations.
  - (b) Please clarify the Local Board’s responsibilities in relation to the establishment of policies, maintenance of patient care quality and provision of clinical and community services for VHS Bristol and explain why the various powers of the Local Board are primarily limited to the first five years following the Closing.
  - (c) In Tenet’s joint venture to purchase the assets of the Greater Waterbury Health Network, the Local Board of the joint venture entity is to be responsible for “(i) adopting a vision, mission, and values statement for the Facilities; (ii) monitoring performance improvement at the Facilities; (iii) granting medical staff privileges; (iv) assuring medical staff compliance with the requirements of The Joint Commission; (v) providing advice and consultation regarding physician recruitment efforts; and (vi) fostering community relationships and identifying service and education opportunities.” Did the Applicants consider a similar broader role for the Local Board of VHS Bristol and how will the roles and responsibilities of these two Local Boards differ, if at all?

- (d) Did the Applicants consider establishing a Community Advisory Board and entering into a community benefit agreement, as suggested by a speaker at the August 14 Hearing? (See pp. 65-66 of the Hearing Transcript.) Please elaborate on why these suggestions were or were not considered.
3. Reference is made to p. 15 of the Application where (i) with respect to charity care, it is stated that "VHS Bristol will ensure that the Hospital Businesses maintain and adhere to the BHHCG's current policies on charity care, indigent care and community benefit or adopt other policies and procedures that are at least as favorable to the indigent and uninsured in the aggregate as BHHCG's existing policies" and (ii) with respect to community health programs, it is stated that "VHS Bristol will strive to provide care through community-based health programs, by cooperating with local organizations that sponsor health care initiatives to address community needs and improve the health status of the elderly, poor, and at-risk populations in the community." In relation to these statements, other statements in the Application referenced below and Section 5.19 of the APA please respond to the following:
- (a) Section 5.19 of the APA references the "significant levels of care for indigent and low-income patients" that the Hospital has historically provided and the response to Question 18 on p. 50 of the Application states that "the asset purchase will mean that the Hospital will continue to offer the same levels of charity care." Please clarify what is meant by the term "levels" as used in these two phrases and quantify in dollar amounts how much charity care the Hospital has provided in the last three fiscal years. Please also reference how such amounts are calculated.
- (b) Please confirm that there are no other BHHCG "policies on charity care, indigent care and community benefit" other than those produced in Exhibit 38 of the Application and, to the extent there are other policies, please provide copies.
- (c) Please provide the current BHHCG sliding scale for calculating the Patient Assistance Discount referenced in the Charity Care and Patient Assistance Policy (Exhibit 38).
- (d) Please indicate whether there will be any changes to the Hospital's collection policy, as set forth in Exhibit 38, as a result of the transaction. If so, please describe the changes and the reasons for them.
- (e) Does VHS Bristol intend to comply with the requirements of IRS Code Section 501(r) with respect to its financial assistance policy, limitations on charges and billing and collection activities?
- (f) If the answer to subsection (e) above is in the affirmative, please state for how long VHS Bristol intends to comply with such requirements and describe the circumstances under which it would choose to no longer comply.
- (g) If the answer to subsection (e) above is in the negative, please explain why this will be the case.
- (h) Please identify the local organizations that VHS Bristol intends to cooperate with in order to fulfill the promises set forth in Section 5.19(b) of the APA and include an

expanded narrative of the Hospital's present arrangement with the Wheeler Clinic (referenced on p. 75 of the Application) in the answer.

4. On p. 16 of the Application and in reference to the non-compete covenant of BHHCG found at Section 5.11 of the APA, please describe the types of "preventative care programs and services" and "health screening services" that Applicants would consider to be "not directly competitive with services to be provided by the Buyer." In particular, please respond to the following:
  - (a) Would the covenant permit BHHCG to provide immunization vaccines, mammogram screening, Pap smears, immunization vaccines, cancer screening and diabetes screening in the Restricted Area?
  - (b) If any of the above services are permitted, please discuss whether the services must be restricted to the community's indigent population or whether they can be offered to any members of the community.
  - (c) Please discuss the impact of the non-compete on the programs and activities of the Main Street Community Foundation, Inc. ("Main Street") and the use of the assets that will be transferred to Main Street by BHHCG.
5. Please describe the specific audit issues under the Medicare Recovery Audit Contractor ("RAC") Program that have resulted in the Hospital refunding \$1 million to CMS as referenced on p. 21 of the Application and the compliance programs Tenet has in place to limit the financial exposure of its hospitals to the particular issues identified and audits by third-party payors in general.
6. Please explain whether the Network Member Agreement entered into between BHHCG and YNHHS provided in Exhibit 6 of the Application will be assigned to VHS Bristol as part of the Asset Purchase. If the Network Member Agreement is to be assigned and assumed by VHS Bristol, please describe how its terms will impact YNHHS' provision, through service line agreements, of clinical protocols, evidenced-based practices, subspecialists and other clinical intellectual property to VHS Bristol as described on p. 61 of the Application.
7. In response to Question 9 of the Application (p. 29), please provide a fair value assessment of the management contract to be entered into between VHS Bristol and Tenet (or an affiliate), including any information available on the proposed management fee and how it will be calculated.
8. Please provide the days and hours of operation for each of the Satellite Service Locations listed on p. 52 of the Application.

9. Reference is made to the response to Question 24 of the Application (p. 63) where Applicants state the “New BHHCG Hospital will continue to fund community benefit programs such as health education, health promotion and disease prevention initiatives currently provided by BHHCG as evidenced by Applicants’ response to Question 54.” The answer to Question 54, in turn, references the projected amounts to be expended by VHS Bristol post-closing for “Financial Assistance and Certain Other Community Benefits at Cost” using the table at Part 1, Section 7 of Schedule H of the Hospital’s Form 990 for the 2013 tax year as a benchmark (Exhibit 41 of the Application). With respect to the above-referenced statement and the Exhibit, please respond to the following:
- (a) With regard to the expenses listed for the line items “Financial assistance at cost” and “Community health improvement services and community benefit operations” in the schedule for Financial Assistance and Certain Other Community Benefits at Cost in the Hospital’s Form 990 for the 2013 tax year, please describe the specific activities and the amount of spending allocated to each activity that generated these expenses.
  - (b) Please explain the reasons why these expenses are projected to increase over the three-year projection period of the FY 2014-2016 tax years and why there is a projected drop in offsetting Medicaid revenue for the FY 2015 and 2016 tax years.
  - (c) Please address how these projections show that VHS Bristol will continue to fund health education, health promotion and disease prevention initiatives currently provided by BHHCG and describe any contractual obligations VHS Bristol has to fund these or other community benefit activities, including those listed in the response to Question 55 of the Application.
  - (d) Please address whether VHS Bristol intends to conduct Community Health Needs Assessments (“CHNAs”) after the Closing and, if so, whether it intends to comply with the requirements of IRS Code Section 501(r) to conduct them every three years and adopt an implementation strategy to meet the needs identified.
10. Please address the specific question in Question 25 of the Application regarding VHS Bristol’s implementation strategies to address the needs of service area residents with respect to prevention and treatment of, specifically, heart disease, cancer and diabetes. In this response, please elaborate on how the Hospital’s strategies to address each of these health issues will be aided by approval of the proposed transaction.
11. With respect to the priority capital projects listed in the response to Question 35(b) of the Application, please elaborate on the room refurbishment upgrades, routine capital equipment replacement and the behavioral health, emergency department and patient access renovations needed and the estimated capital expenditure associated with each of these projects.

12. With regard to the priority service improvements listed in the answer to Question 35(b) please articulate VHS Bristol's plans to develop comprehensive orthopedic, thoracic and vascular surgery programs at the Hospital as mentioned on p. 240 of the Application.
13. With respect to the Tenet Medical Foundation described on p. 94 of the Application that will employ physicians providing services at VHS Bristol as well as each other Connecticut hospitals acquired by Tenet, please provide information on whether some of the employed physicians, particularly specialists and subspecialists, may have medical staff privileges at more than one of the Tenet-owned hospitals and how this would benefit patient care.
14. Please complete the response to Question 58 of the Application by describing the specific differences between the benefit plans currently offered at Bristol Hospital and those that will be offered by Tenet.
15. In reference to the following statement related to capital commitment on p. 12 of the Application and in Section 5.20 of the Asset Purchased Agreement, "In the event that any Legal Requirement is enacted or imposed after Closing that causes the Hospital Business to suffer a material decline in EBITDA on a consolidated basis, VHS Bristol shall consult with the Local Board to determine an alternate capital commitment approved by both the Local Board and VHS Bristol that is reasonable and appropriate in light of the changed circumstances," please address the following:
  - (a) Provide the annual percentage decline in EBITDA that the Applicants consider to be material on a consolidated basis;
  - (b) Provide the criteria that will be used by the Local Board and VHS Bristol to determine a reasonable and appropriate alternate capital commitment; and
  - (c) Describe the financial consequences of a decision to re-evaluate the capital commitment on the Hospital's future financial and service operations.
16. Please provide an explanation for BHHCG's projected negative net working capital amount of (\$0.673 million) as of September 30, 2014 and the reasons why this amount is substantially below the negotiated normalized net working capital of \$7 million described on p. 17 of the Application.
17. In responding to Question 5 on p. 20 of the Application, the Applicants indicated that the financial history of BHHCG over the last 10 years has been troubled, with difficult financial performance. The response also indicated that BHHCG has lost \$18 million in total from operations between FY 2004 and FY 2007 and further states that these losses continue to degrade the network's financial position. In reference to this response, please address the following:
  - (a) Explain the factors that contribute to the \$18 million in losses from operations; and

- (b) Elaborate on any plans BHHCG has made to address the impact of the operating losses to the network's financial position without the CON.
18. In responding to Question 26 on p. 71 of the Application, the Applicants indicated that the anticipated savings by expense category were presented under responses to Questions 39 and 40. However, the responses to Questions 39 and 40, in reference to Financial Attachment 1(A), do not clearly depict the anticipated savings related to each expense category listed on Question 26. In addition, the responses refer to other factors such as inflation as drivers of the amounts projected with the CON. Please submit a separate report that will include any anticipated savings associated with the expense categories listed on Question 26.
19. In reference to the statement "Tenet will use cash to purchase BHHCG's assets for \$50 million and cash also will be used for the \$45 million in capital expenditures" on p. 81 of the Application, please address the following:
- (a) Will the full \$95 million be paid from Tenet's cash from operations?
  - (b) Is YNHHS contributing cash to pay for the purchase price and/or capital expenditures?
  - (c) Will there be an intercompany line of credit set up to fund the \$45 million capital expenditures? How will VHS Bristol be assured that these monies will be made available?
- 
20. For Bristol Hospital only, not including affiliates, please provide a separate Financial Attachment 1(A) showing one year of actual results and three years of projections of total revenue, expense and volume statistics without, incremental to and with the CON proposal in the following reporting format:
- (a) Financial Attachment I(A) – for Bristol Hospital without the CON project (columns 1, 2 5, 8 & 11) and for Bristol Hospital with the CON project and incremental to the CON project (remainder columns);
  - (b) Provide the Assumptions used and explain any projected losses from operations; and
  - (c) Please submit the Financial Attachment I(A) using the same page and print layouts (size, font, page orientation, margins, etc.) as provided by OHCA.

21. In reference to Assumptions Utilized in Developing Financial Attachment 1(A), Exhibit 32, please answer the following:

- (a) Explain the rationale for assuming a modest outpatient growth of 1% with the CON and no projected increase in discharge volume with the CON, given that the Applicants' intention is to make significant capital investments that will drive additional volumes;
- (b) Elaborate on the projected 1% increase in other operating revenues each year with the CON;
- (c) Explain why the Applicants assumed a 0.5% increase in employee productivity without the CON as well as with the CON and why employee productivity is not expected to increase at a higher percentage rate with the CON than without it;
- (d) Applicants assumed a supply expense reduction of \$1.3 million related to the increase in purchasing power from affiliating with Tenet. In reference to this assumption, please address the following:
  - i. Explain how the total savings of \$1.3 million in supply expenses is expected to be achieved when, at the same time, Applicants assumed an increase of 3% in supplies and drugs pricing each year with the CON.
  - ii. Does the \$1.3 million include savings for drug supplies as well as for medical supplies? If yes, provide the breakdown. If not, provide the amount in savings for drug supplies related to the projected involvement with Tenet's national vendors.
  - iii. Elaborate on how the \$1.3 million in supply expense savings (drugs and medical) will translate into cost savings for Bristol Hospital's patients in terms of healthcare insurers and reduction in patient bill payments for drugs and medical supplies associated with their inpatient and outpatient care.
- (e) The Financial Assumptions project cuts of \$2.1 million in Medicaid payments and \$4.2 million in Medicare due to the wage index factor adjustment. What plans for Bristol Hospital under current BHHCG ownership have been made to account for the changes in state and federal hospital funding with and without the CON?

22. In reference to Financial Attachment I(A), Exhibit 31, please address the following:

- (a) The actual results for the fiscal year, in particular for other operating revenue, income from operations, non-operating revenue and excess of revenue over expenses, reported in the first column do not agree with BHHCG's audited financial statements filed with OHCA on February 28, 2014. Explain the differences and submit a revised Financial Attachment 1(A);
- (b) Explain the zeroes reported under the uninsured and lease expense categories.
- (c) Explain the upward projected trend in total operating expenses between FY 2015 and FY 2017.



- (d) Provide a breakdown of the amounts reported under the other operating expenses line item, without the CON and with the CON, for FYs 2015, 2016 and 2017.
  - (e) Confirm whether or not the financial projections include volume growth in revenue, patient volume and savings associated with the \$45 million in capital investments associated with this proposal. If not, explain.
23. Provide revised table 1 (Population Mix, p.85) that will include the numeric years associated with the labels "Current" and "Year 1, 2, and 3".
24. In reference to Exhibit 39, for both the Hospital and BHHCG, please address the following:
- (a) The decline of income from operations between prior year and year-to-date during the months of July, August and September;
  - (b) The decline in unrestricted assets between prior year and year-to-date during the month of July; and
  - (c) The prior year increase in unrestricted assets between the months of July and August.
25. Please provide monthly financial statistics reports for the months of October, November and December FY 2014, current month and year-to-date, and comparable period for FY 2013, for Bristol Hospital only, BHHCG and YNHHS. Thereafter, please provide this same data on a monthly basis for each month, until a public hearing in this matter is held. The following financial measurements/indicators should be addressed in the reports:

**Monthly Financial Measurement/Indicators**

<b>A. <u>Operating Performance</u></b>
Operating Margin
Non-Operating Margin
Total Margin
Bad Debt as % Gross Revenue
<b>B. <u>Liquidity</u></b>
Current Ratio
Days Cash on Hand
Days in Net Accounts Receivables
Average Payment Period
<b>C. <u>Leverage and Capital Structure</u></b>
Long-term Debt to Equity
Long-term Debt to Capitalization
Unrestricted Cash to Debt Times Interest Earned Ratio
Debt Service Coverage Ratio

Equity Financing Ratio
<b>D. Additional Statistics</b>
Income from Operations
Revenue Over/(Under) Expense
EBITDA
Patient Cash Collected
Cash and Cash Equivalents
Net working Capital
Unrestricted Assets
Credit Ratings (S&P, FITCH and Moody's)

26. Please provide a brief description of each affiliated entity listed on page 3 of the Application.
27. Please provide copies of draft Fund agreements between BHHCG and Main Street. If those agreements are not sufficiently formalized to provide copies, please describe, at a minimum, the control Main Street will exercise over the use and distribution of BHHCG's charitable funds, including any and all variance powers maintained by Main Street over those funds
28. Please provide copies of the formative documents relating to the 2003 transfer of funds from the Hospital to the Foundation, and also the subsequent (2007) transfer of the Henry C. Wright Trust from the Hospital to the Foundation.

Please mail one (1) complete hard copy and one (1) complete electronic copy of the requested materials for approval to the following address:

Office of the Attorney General  
55 Elm Street, P.O. Box 120  
Hartford, Connecticut 06141-0120  
Attn: Gary W. Hawes, AAG

Please mail seven (7) complete copies of the requested materials to the following address:


Office of Health Care Access, Dept. of Public Health  
**410 Capitol Avenue**  
**Hartford, Connecticut 06134**  
Attn: Steven W. Lazarus

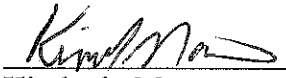
After receipt of these requested materials, the OAG and OHCA shall review the submission to determine whether the application for approval is complete. If not, they shall provide written notice of any deficiencies within twenty (20) days of receipt of the information requested.

Should you have any questions regarding these requests or any other issues relating to the Commissioner's and Attorney General's review, please do not hesitate to contact either Steven W. Lazarus at the Department of Public Health (860-418-7012; Steven.Lazarus@ct.gov) or Assistant Attorney General Gary W. Hawes at the Office of the Attorney General (860-808-5020; gary.hawes@ct.gov).

Very truly yours,

Very truly yours,

  
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Gary W. Hawes  
Assistant Attorney General  
Office of the Attorney General

  
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Kimberly Martone  
Director, Office of Health Care Access  
Department of Public Health

cc: Perry Zinn Rowthorn, OAG (via electronic mail)  
Steven Lazarus, OHCA (via electronic mail)  
Sandra Jarva Weiss, Norris McLaughlin & Marcus, P.A.(via electronic mail)