

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

Raul Pino, M.D., M.P.H.  
Commissioner



Dannel P. Malloy  
Governor  
Nancy Wyman  
Lt. Governor

Office of Health Care Access

### Certificate of Need Final Decision

**Applicants:** Constitution Surgery Center East, LLC  
174 Cross Road  
Waterford, CT 06385

The William W. Backus Hospital  
326 Washington Street  
Norwich, CT 06360

**Docket Number:** 16-32122-CON

**Project Title:** Transfer 51% ownership interest of Constitution Surgery Center East, LLC to The William W. Backus Hospital

**Project Description:** Constitution Surgery Center East, LLC ("CSCE") and The William W. Backus Hospital ("Backus"), herein collectively referred to as ("Applicants") seek authorization to transfer a 51% ownership interest in CSCE to Backus, with an associated capital expenditure of \$16,712,700.

**Procedural History:** The Applicants published notice of their intent to file a Certificate of Need ("CON") application in *The Day* (New London) on July 14, 15 and 16, 2016. On September 9, 2016, the Office of Health Care Access ("OHCA") received the CON application from the Applicant for the above-referenced project and deemed the application complete on October 25, 2016. OHCA received no responses from the public concerning the proposal and no hearing requests were received from the public per Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a(e). Deputy Commissioner Addo considered the entire record in this matter.



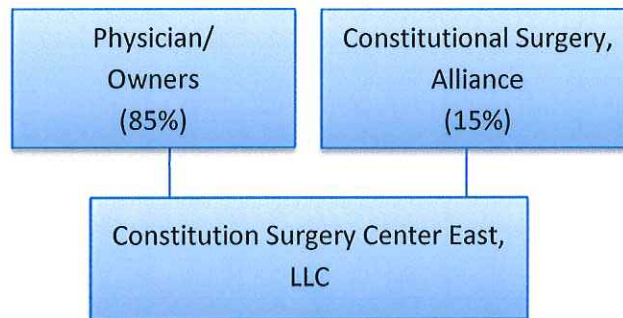
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*Affirmative Action/Equal Opportunity Employer*

## Findings of Fact and Conclusions of Law

1. CSCE is a licensed outpatient surgery facility located in Waterford, Connecticut that provides ophthalmic and orthopedic services. Ex. A, p. 14
2. CSCE currently utilizes two operating rooms, one procedure room, four pre-op and five post anesthesia care unit beds at its facility. Ex. A, p. 14
3. Backus is a 233- bed (including bassinets) acute care hospital located in Norwich, Connecticut and a member of the Hartford HealthCare (“HHC”) system. Backus provides primary, secondary and tertiary acute care services to residents of New London and Windham counties. Ex. A, p. 14
4. At present, CSCE is owned by 21 licensed and board certified physicians (“Physician/ Owners”) and the Constitution Surgery Alliance, an independent operator of outpatient surgery centers:

CSCE Ownership/membership structure

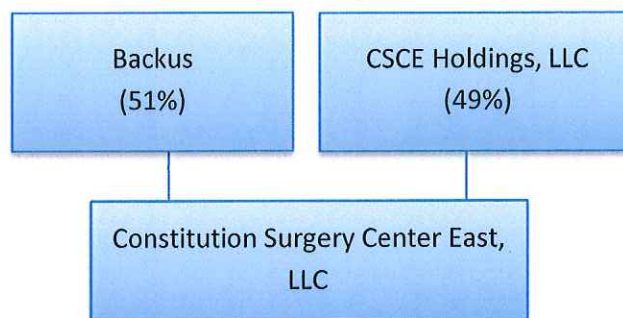


Ex. A, p. 14; <http://csasurgery.com/>

5. CSCE and Backus have requested authorization to transfer a 51% ownership interest in CSCE to Backus. Ex. A, p. 14
6. Following approval, the Applicants will complete the transfer in two transactions:
  - The current owners of CSCE will transfer 100% of their ownership interest to a new holding company called CSCE Holdings, LLC; and
  - Backus, or a wholly owned subsidiary of Backus, will then purchase a 51% majority ownership interest in CSCE, from CSCE Holdings, LLC.

7. The post-transaction organization structure of CSCE is reflected below:

**Post Transaction CSCE Ownership/membership structure**



Ex. A, p. 15

8. Following the change in ownership, a management committee will be formed and shall consist of six individual managers; three will be designated by CSCE Holdings, LLC and the remaining three by Backus. Ex. A, p. 15
9. All of the physicians involved in this proposal have active privileges at Backus or other local hospitals and will continue to perform inpatient procedures at these institutions, as well as hospital-based outpatient procedures for patients who have significant co-morbid conditions. Ex. A, p. 15
10. Integration with Backus and HHC will allow CSCE and its physicians greater opportunity to:
- participate on clinical quality councils and be actively engaged in hospital quality initiatives;
  - share data on outcomes and best practices;
  - access and evaluate new technologies;
  - investigate and participate in emerging, quality-based payer initiatives; and
  - coordinate the emerging migration of joint and spine orthopedic procedures from an inpatient to an outpatient setting.
- Ex. A, pp. 15-16
11. CSCE will use quality-related resources from Backus and HHC and adhere to specific quality metrics embedded in the proposed Management Agreement (“MA”) and Operating Agreement (“OA”). Specifically:
- The MA requires the development of quality performance benchmarks and supporting data;
  - The MA also contains incentives to maintain high patient satisfaction scores;
  - The OA compels CSCE to supply quality data as requested by Backus; and
  - The OA requires integration with Backus’ electronic health record system and participation in health information exchanges.
- Ex. A, pp. 22, 167; Ex. C, p. 250
12. The change in ownership and resulting affiliation is intended to strengthen CSCE’s ability to recruit physicians due to the breadth and depth of subspecialty clinical services offered by Backus and its parent corporation, HHC. Ex. A, p. 16

13. CSCE’s service area consists primarily of towns in New London County. The Applicants do not expect any change in the service area or the patient population served as a result of the proposal. Ex. A, p. 16
14. Patients will be notified of CSCE’s change in ownership by receiving a pre-operative intake package, which includes a patient information brochure that discloses the surgery center ownership. In addition, the CSCE Website will be updated to reflect the Backus affiliation. Ex. C, p. 248
15. No clinical services offered by the Applicant will be added, modified or terminated as a result of the change in ownership. Ex. A, p. 17
16. Historical utilization volumes are shown in the table below:

**TABLE 1  
 HISTORICAL UTILIZATION BY SERVICE**

Service	Actual Volume (cases)			
	FY 2013	FY 2014	FY 2015	FY 2016*
Ophthalmology	4,067	3,823	3,913	4,013
Orthopedic Surgery	1,712	1,780	1,919	1,894
<b>Total</b>	<b>5,779</b>	<b>5,603</b>	<b>5,832</b>	<b>5,910</b>

\*FY 2016 annualized and based on actual volume from October through June 2016  
 Ex. A, p. 35

17. Projected utilization volumes are shown in the table below:

**TABLE 2  
 PROJECTED UTILIZATION BY SERVICE**

Service	Projected Volume* (cases)		
	FY 2017	FY 2018	FY 2019
Ophthalmology	4,036	4,056	4,077
Orthopedic Surgery	1,927	1,961	1,995
<b>Total</b>	<b>5,963</b>	<b>6,017</b>	<b>6,072</b>

\*Projected volumes are based on historical annual growth trends of ophthalmologic and orthopedic cases.  
 Ex. A, p. 36



18. Currently, four percent of CSCE’s patient population is comprised of Medicaid patients. The Applicants do not anticipate any change in payer mix as a result of this proposal.

**TABLE 3  
APPLICANT’S CURRENT & PROJECTED PAYER MIX**

Payer	FY 2015		Projected							
			FY 2016		FY 2017		FY 2018		FY 2019	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Medicare*	2,974	51%	3,013	51%	3,041	51%	3,068	51%	3,097	51%
Medicaid*	222	4%	225	4%	227	4%	229	4%	231	4%
CHAMPUS	12	<1%	12	<1%	12	<1%	12	<1%	12	<1%
Other Govt.	0	0%	0	0%	0	0%	0	0%	0	0%
<b>Total Government</b>	<b>3,208</b>	<b>55%</b>	<b>3,250</b>	<b>55%</b>	<b>3,280</b>	<b>55%</b>	<b>3,309</b>	<b>55%</b>	<b>3,340</b>	<b>55%</b>
Commercial Insurers	2,210	38%	2,240	38%	2,260	38%	2,281	38%	2,301	38%
Uninsured	6	<1%	6	<1%	6	<1%	6	<1%	6	<1%
Self Pay	0	0%	0	0%	0	0%	0	0%	0	0%
Workers Compensation	408	7%	414	7%	417	7%	421	7%	425	7%
<b>Total Non-Government</b>	<b>2,624</b>	<b>45%</b>	<b>2,660</b>	<b>45%</b>	<b>2,683</b>	<b>45%</b>	<b>2,708</b>	<b>45%</b>	<b>2,732</b>	<b>45%</b>
<b>Total Payer Mix</b>	<b>5,832</b>	<b>100%</b>	<b>5,910</b>	<b>100%</b>	<b>5,963</b>	<b>100%</b>	<b>6,017</b>	<b>100%</b>	<b>6,072</b>	<b>100%</b>

\*Includes managed care activity.  
Ex. C, p. 249

19. Following adoption of the proposal, CSCE will adopt Backus’s charity care policy, which includes the provision of services for indigent populations. Ex. A, pp. 23

20. The total capital expenditure for the proposal is \$16,712,700 and will be funded by an HHC bond issuance. Ex. A, pp. 25, 33

21. The projected incremental loss is the result of CSCE adopting Backus’ charity care policies following the ownership change.

**TABLE 4  
CSCE PROJECTED INCREMENTAL REVENUES AND EXPENSES**

	FY 2017	FY 2018	FY 2019
Revenue from Operations	\$(122,291)	\$(125,604)	\$(128,975)
Total Operating Expenses	\$0	\$0	\$0
<b>Gain/Loss from Operations</b>	<b>\$(122,291)</b>	<b>\$(125,604)</b>	<b>\$(128,975)</b>

Ex. A, pp. 34, 233

22. Despite an incremental loss, CSCE will achieve overall operational gains with the proposal.

**TABLE 5**  
**CSCE PROJECTED REVENUES AND EXPENSES WITH CON**

	FY 2017	FY 2018	FY 2019
Revenue from Operations	\$12,106,855	\$12,434,762	\$12,768,509
Total Operating Expenses <sup>1</sup>	\$8,570,321	\$9,018,426	\$9,240,662
<b>Gain/Loss from Operations</b>	<b>\$3,536,535</b>	<b>\$3,416,336</b>	<b>\$3,527,847</b>

<sup>1</sup>Operating expenses include salaries and fringe benefits, depreciation/amortization, supplies and drugs, lease expense and other operating expenses required to operate the surgery center and support the forecasted volumes

Ex. A, pp. 34, 233

23. Backus projects operational gains through FY 2019, following adoption of the proposal.

**TABLE 6**  
**PROJECTED REVENUES AND EXPENSES WITH CON**

	FY 2017	FY 2018	FY 2019
Revenue from Operations	\$315,714,980	\$325,425,349	\$332,241,548
Total Operating Expenses <sup>1</sup>	\$277,640,604	\$285,871,801	\$290,880,131
<b>Gain/Loss from Operations</b>	<b>\$38,074,176</b>	<b>\$39,553,548</b>	<b>\$41,361,417</b>

<sup>1</sup>Operating expenses include salaries and fringe benefits, depreciation/amortization, supplies and drugs, lease expense and other operating expenses required to operate the hospital.

Ex. A, pp. 29, 36

24. The transfers of ownership will not negatively affect patient health care costs. No additional facility fees will be imposed as a result of the proposal. Ex. A, p. 24

25. 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 not yet adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1))

26. This CON application is consistent with the Statewide Health Care Facilities and Service Plan. (Conn. Gen. Stat. § 19a-639(a)(2))

27. The Applicants have established that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3))

28. The Applicants have demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4))

29. The Applicants have satisfactorily demonstrated that the proposal will likely improve quality and accessibility and maintain the cost effectiveness of health care delivery in the region. (Conn. Gen. Stat. § 19a-639(a)(5))

30. The Applicants have shown that there would be no change in the provision of health care services to the relevant populations and payer mix, including access to services by Medicaid

recipients. Enhanced charity care policies will improve access for the indigent. (Conn. Gen. Stat. § 19a-639(a)(6))

31. The Applicants have satisfactorily identified the population to be affected by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7))
32. The Applicants' historical provision of treatment in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))
33. The Applicants have satisfactorily demonstrated that this proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9))
34. The Applicants have demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. (Conn. Gen. Stat. § 19a-639(a)(10))
35. The Applicants have demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the region. (Conn. Gen. Stat. § 19a-639(a)(11))
36. The Applicants have satisfactorily demonstrated that the proposal will not result in any consolidation that would affect health care costs or access to care. (Conn. Gen. Stat. § 19a-639(a)(12))

## 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. The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

CSCE is a licensed outpatient surgery facility located in Waterford, Connecticut that provides both ophthalmic and orthopedic services. *FF1* CSCE currently utilizes two operating rooms, one procedure room, four pre-op and five post anesthesia care unit beds at its facility. *FF2* Backus is a 233-bed (including bassinets) acute care hospital located in Norwich, Connecticut and a member of the HHC system. Backus provides primary, secondary and tertiary acute care services, primarily to residents of New London and Windham counties. *FF3* At present, CSCE is owned by 21 licensed and board certified physicians (“Physician/Owners”) and the Constitution Surgery Alliance, an independent operator of outpatient surgery centers. *FF4* The proposal requests authorization to transfer a 51% ownership interest in CSCE to Backus. *FF5* The transfer will occur in two transactions: first, the current owners of CSCE will transfer 100% of their ownership interest to CSCE Holdings, LLC; second, Backus, or a wholly owned subsidiary of Backus will purchase a 51% majority ownership interest from CSCE Holdings, LLC to conclude the transaction. *FF6*

All of the physicians involved in this proposal have active privileges at Backus or other local hospitals and will continue to perform inpatient procedures at these institutions, as well as hospital-based outpatient procedures for patients with significant co-morbid conditions. *FF9* Through increased alignment with Backus and HHC, CSCE will enhance patients’ ability to navigate between the inpatient and outpatient settings for surgical services. Integration with Backus and HHC will allow CSCE and its physicians greater opportunity to participate in clinical quality councils, be actively engaged in hospital quality initiatives, share data on outcomes and best practices, access and evaluate new technologies, investigate and participate in emerging quality-based payer initiatives and coordinate the emerging migration of joint and spine orthopedic procedures from an inpatient to an outpatient setting. *FF10* CSCE will use quality-related resources from Backus and HHC and adhere to specific quality metrics embedded in the proposed management and operating agreements. *FF11* In addition, the change in ownership and resulting affiliation is intended to strengthen CSCE’s ability to recruit physicians due to the breadth and depth of subspecialty clinical services offered by Backus and its parent corporation. *FF12*

CSCE’s service area consists primarily of towns in New London County. The Applicants do not expect any change to the service area or patient population served as a result of the proposal. *FF13* No clinical services offered by the Applicant will be added, modified or terminated following the ownership change. *FF15* CSCE performed approximately 6,000 surgical cases in FY 2015. Based on historical trends, projected volumes are expected to increase 0.5% for ophthalmology and 1.5% for orthopedic cases. *FF16- FF17*

The total capital expenditure for the proposal is \$16,712,700 and will be funded by an HHC bond issuance. *FF20* Following adoption of the proposal, CSCE will adopt Backus’s charity care



policy, which includes the provision of services for indigent populations *FF19* CSCE projects a slight incremental loss following adoption of the new charity care policies. However, CSCE projects overall operational gains in FYs 2017-2019. *FF21-FF22* Further, no additional facility fees will be imposed as a result of this proposal. *FF24* Therefore, the Applicants have satisfactorily demonstrated that the proposal is financially feasible and will not adversely affect health care costs.

The transfer of CSCE's majority interest to Backus will improve access and quality of services for all patient populations (including Medicaid). CSCE's integration with Backus and HHC will provide greater opportunity to share best practices, participate in hospital quality initiatives and gain access to the evaluation and use of new technologies. As a result, these benefits are consistent with the Statewide Health Care Facilities and Services Plan.

Notably, the Applicants have satisfactorily demonstrated that the proposed transaction was the result of a voluntary offer for sale. As a result, there is a presumption in favor of approving this application pursuant to Conn. Gen. Stat. § 19a-639(b).

## Order

Based upon the foregoing Findings and Discussion, the Certificate of Need application requesting authorization to transfer a 51% ownership interest in CSCE to Backus, with an associated capital expenditure of \$16,712,700 is hereby APPROVED.

All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

By Order of the  
Department of Public Health  
Office of Health Care Access

12/15/2016  
Date

  
Yvonne T. Addo, MBA  
Deputy Commissioner