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May 8, 2017

Via Electronic Mail & Hand Delivery

Micheala Mitchell
Staff Attorney
Office of Health Care Access
410 Capitol Avenue
Hartford, Connecticut 061340308

Re: OHCA Docket No. 16-32135-CON, Affiliation of Charlotte Hungerford Hospital with Hartford Health Care Corporation

Dear Attorney Mitchell:

This letter responds to your May 4, 2017 correspondence addressed to Barbara Durdy of Hartford HealthCare Corporation (“HHC”) and Brian Mattiello of The Charlotte Hungerford Hospital (“TCHH”) regarding the above-referenced Certificate of Need (“CON”) proceeding and providing that “[i]n addition to responding to the issues set forth in the April 7, 2017 request for pre-filed testimony, the Applicants should be prepared to present evidence and testimony relative to the cost and market impact review associated with this transaction” at the May 8, 2017 public hearing on the CON. In particular, the letter directs the Applicants “to present witnesses able to answer questions about the effect of the transaction on: healthcare costs; healthcare quality; and access to services/treatment.”

While both HHC and TCHH will present witnesses to answer OHCA’s questions on these topics at the May 8 public hearing for purposes of informing OHCA’s deliberations on the CON and based on the evidence and testimony presented in the CON proceeding, we note that questions, if any, directed to the cost and market impact review may be in violation of C.G.S. §19a-639f. Our chief concerns are set forth below.

First, subsection (k) of §19a-639f provides that “[a]ny employee of the office who directly oversees or assists in conducting a cost and market impact review shall not take part in factual deliberations or the issuance of a preliminary or final decision on the certificate of need application concerning the transfer of ownership of a hospital that is the subject of such cost and market impact review.” This provision of the statute would appear to require that the CMIR process and the CON process be handled separately as the subject of inquiry for each differs. Up until your May 4 letter, the CMIR and CON with respect to this proposed affiliation were proceeding along separate tracks with different staff assigned to each as consistent with the

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statute. However, to use the CON public hearing forum to address the CMIR process and commingle the agency's staff responsible for overseeing and assisting in the CMIR with those performing the CON function is inconsistent with this same statutory requirement.

Second, §19a-639f(c) directs that for purposes of CMIR:

The office shall keep confidential all nonpublic information and documents obtained pursuant to this section and shall not disclose the information or documents to any person without the consent of the person that produced the information or documents except in a preliminary report or final report issued in accordance with this section if the office believes that such disclosure should be made in the public interest after taking into account any privacy, trade secret or anti-competitive considerations. Such information and documents shall not be deemed a public record, under section 1-210, and shall be exempt from disclosure. (emphasis added)

In response to OHCA's document and information requests concerning the CMIR, HHC and TCHH produced voluminous documentation. This documentation was marked confidential by the parties as it contained strategic, trade secret or other competitively-sensitive information.¹ These confidentiality designations were supported by statute, and discussed with you without challenge. Now, in a public hearing that will be transcribed and broadcast live on the internet, the Applicants have been informed that OHCA wants them to furnish further evidence and answer questions related to the CMIR because the consultant OHCA has retained to conduct the CMIR analysis is requesting additional information. As such, HHC and TCHH have no assurances that the questions OHCA is preparing to ask are not based on the confidential information already furnished or whether their witnesses will be forced to disclose confidential information when answering them.

Instead of running the risk of confidential information being disclosed in a public forum or the Applicants' having to repeatedly cite confidentiality concerns at the public hearing, we would like to suggest an alternative. To assist the CMIR process, HHC and TCHH representatives would be willing to meet with the CMIR consultants after the public hearing is closed, to answer questions relevant to the CMIR.

Having a discussion of the CMIR outside of the public record is also consistent with OHCA's letter dated March 10, 2017 informing both HHC and TCHH that they had "substantially complied" with the requests for documentation and information relating to the CMIR. Pursuant

¹ We note that HHC and TCHH produced this documentation to OHCA separately and did not review each other's submissions in keeping with legal prohibitions against their sharing such information until after the closing of their proposed affiliation transaction.

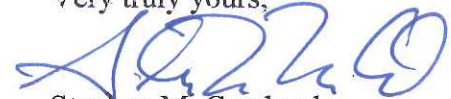
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to §19a-639f(e), the substantial compliance determination triggers the obligation of OHCA to issue its preliminary report on the CMIR within 90 days or by June 8, 2017. OHCA has yet to issue the preliminary report and there is no provision in that section of the statute that permits OHCA to have the ability to seek further information from the transacting parties after the substantial compliance determination is made. Nonetheless, both HHC and TCHH are committed to providing follow-up information on the CMIR that is needed under appropriate circumstances, consistent with §19a-639f, which clearly differentiates the CMIR process from the public hearing on the CON.

Lastly, we note that the CMIR documentation previously supplied by the parties under separate statute is not part of the Table of Record for the public hearing. The exclusion of this evidence from the record provides yet another reason for not raising CMIR issues in the CON contested case hearing since C.G.S. 4-177(d)(3) specifically requires that the record in a contested case include the "evidence received or considered".

For all of the above reasons, we request that OHCA reconsider its decision to elicit evidence and ask questions relative to the CMIR "on the record" at today's public hearing on the CON. Both OHCA and the Applicants have a shared interest in carrying out the new CMIR process in a manner consistent with the statute. The CMIR process can be carried out in the same timely and collaborative way that the parties have approached these activities to date. If, however, OHCA moves forward with taking evidence and asking questions related to the CMIR at the CON public hearing, the Applicants respectfully request that this letter be added to the Table of Record in that docket as their objection on the procedural grounds stated.

Very truly yours,



Stephen M. Cowherd
Applicants' Counsel

cc: Anthony Casagrande, General Counsel, DPH
Kimberly Martone, Director of Operations, OHCA