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4 STATE OF CONNECTICUT  
5 OFFICE OF HEALTH STRATEGY  
6 HEALTH SYSTEMS PLANNING UNIT  
7

8 DOCKET NO.: 20-32394-CON

9 Termination of Inpatient Obstetrical Services at  
10 Windham Community Memorial Hospital  
11

12  
13 Administrative and Public Hearing held via  
14 Teleconference on November 30, 2022, beginning at  
15 11:01 a.m.

16 H e l d B e f o r e:

17 KIMBERLY MARTONE, THE HEARING OFFICER  
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1    **A p p e a r a n c e s :**

2    **For WINDHAM HOSPITAL:**

3                    **UPDIKE, KELLY & SPELLACY**

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11    **OHS Staff:**

12                    **ANTHONY CASAGRANDE, ESQ.**

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1 (Begin: 11:01 a.m.)

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3 THE HEARING OFFICER: Again, good morning. This is  
4 Kimberly Martone, the Executive Director of OHS.  
5 Thank you for all who are in attendance today.

6 Before I start with the formal instructions  
7 for our hearing I just want to introduce our new  
8 General Counsel for OHS, Anthony Casagrande.

9 MR. CASAGRANDE: Good morning, everyone.

10 MS. FUSCO: Hello, Attorney Casagrande.

11 Nice to meet you.

12 MR. CASAGRANDE: Good morning. How are you.

13 THE HEARING OFFICER: So thank you for being here,  
14 Tony, with me.

15 Okay. So I will begin by reading the  
16 instructions for this hearing. The Applicant in  
17 this matter, Windham Community Memorial Hospital,  
18 Inc, seeks to terminate obstetric services under  
19 Connecticut General Statutes 19a-638a5.

20 On July 5, 2022, the Hearing Officer in this  
21 matter issued a proposed final decision denying  
22 the application. By letter dated July 11, 2022,  
23 Windham Community Memorial Hospital, Inc, the  
24 Applicant requested that the July 27, 2022,  
25 deadline for filing briefs and exceptions be

1 extended until August 26, 2022; which request was  
2 granted by the Hearing Officer on July 12, 2022.

3 On August 26, 2022, the Applicant filed a  
4 brief and exceptions, and requested oral argument.  
5 On August 26, 2022, the Applicant further  
6 requested that the hearing record be reopened for  
7 the purpose of admitting limited new evidence.  
8 The request to reopen the hearing record was  
9 denied by the Hearing Officer on September 23,  
10 2022.

11 On November 21, 2022, the Office of Health  
12 Strategy, OHS, issued a notice of oral argument  
13 for today. This hearing before the Office of  
14 Health Strategy is being held on November 30,  
15 2022.

16 My name is Kimberly Martone. I'm the  
17 Executive Director of the Office of Health  
18 Strategy, and I'll be issuing the final decision  
19 in this matter. Also present on behalf of the  
20 agency is OHS General Counsel Anthony Casagrande,  
21 which I just introduced.

22 Public Act 22, Section 145, as amended by  
23 Public Act 22-3, authorizes an agency to hold a  
24 public hearing by means of electronic equipment.  
25 In accordance with this public act any persons who

1 participate orally in an electronic meeting shall  
2 make a good-faith effort to state his or her name  
3 and title at the onset of each occasion that such  
4 person participates orally during an uninterrupted  
5 dialogue, or a series of questions and answers --  
6 also as the Court Reporter just requested.

7 We ask that all members of the public mute  
8 the device that they are using to access the  
9 hearing and silence any additional devices that  
10 are around them. This hearing concerns only the  
11 Applicant's oral argument regarding its exceptions  
12 to the proposed final decision, and it will be  
13 conducted under the provisions of Chapter 54 of  
14 the Connecticut General Statutes.

15 The certificate of need process is a  
16 regulatory process, and as such the highest level  
17 of respect will be accorded to the Applicant and  
18 our staff. Our priority is the integrity and  
19 transparency of this process. Accordingly,  
20 decorum must be maintained by all present during  
21 the proceedings.

22 This hearing is being transcribed and  
23 recorded, and the video will also be made  
24 available on the OHS website and it's YouTube  
25 account. All documents related to this hearing

1 that have been or will be submitted to OHS are  
2 available for review through our electronic  
3 certificate of need portal, which is accessible on  
4 the OHS CON website.

5 Although this hearing is open to the public,  
6 only the Applicant and it's representatives and  
7 OHS and it's representatives will be allowed to  
8 make comments today. Accordingly, the chat  
9 feature in this Zoom call has been disabled.

10 At this hearing, which is being held  
11 virtually, we ask that anyone speaking to the  
12 extent possible enable the use of video cameras  
13 when speaking during the proceedings. In  
14 addition, anyone who is not speaking shall mute  
15 their electronic device including telephone,  
16 television, and any other device not being used to  
17 access this hearing.

18 Lastly, as Zoom hopefully notified you while  
19 entering this meeting, I wish to point out that by  
20 appearing on camera in this virtual hearing you  
21 are consenting to being filmed. If you wish to  
22 revoke your consent, please do at this time.  
23 However, please be advised that in such event the  
24 hearing will be continued at a later date.

25 Please, let's proceed with this hearing.

1           Counsel for the Applicant, can you please  
2           identify yourself or the record?

3 MS. FUSCO: Thank you, Director Martone. This is  
4 Jennifer Fusco. I'm an attorney with Updike,  
5 Kelly & Spellacy and I represent Windham Community  
6 Memorial Hospital in this CON proceeding for the  
7 termination of inpatient obstetric services.

8 THE HEARING OFFICER: Thank you, Attorney Fusco.

9           Are there any other housekeeping matters or  
10          procedural issues that we need to address before  
11          we start?

12 MS. FUSCO: I don't believe. I mean, the Applicant  
13 would in essence renew their request to admit new  
14 evidence which was submitted along with their  
15 brief.

16          And I think you'll hear more arguments today  
17          that there are places where I think it would be  
18          helpful for the agency to understand the current  
19          status of, you know, the transition of women to  
20          other programs, the numbers of women who have  
21          been, you know, gone to those programs and safely  
22          delivered. Those were some of the things we were  
23          looking to admit into the record.

24          So to the extent that after hearing this  
25          argument you think it would be helpful to have any

1 of that information admitted, that request remains  
2 pending.

3 THE HEARING OFFICER: Okay. Thank you very much. I'll  
4 decide that at the end.

5 You may please proceed.

6 MR. CASAGRANDE: Well, if I can jump in for just one  
7 second, please?

8 THE HEARING OFFICER: Yes, Tony. Please do.

9 MR. CASAGRANDE: This is Attorney Casagrande.

10 Attorney Fusco, you indicated before the  
11 hearing began that the slide presentation that  
12 you're presenting this morning is all from  
13 evidence included in the record. Would you please  
14 make that representation on the record?

15 MS. FUSCO: Yes, that's correct. So the PowerPoint  
16 presentation includes all information that is  
17 already in the administrative record, none of that  
18 new information that we have requested to admit.

19 And I'm happy to provide a copy of this to  
20 you via e-mail after the argument, if you would  
21 like one?

22 MR. CASAGRANDE: That would be terrific. Thank you.

23 MS. FUSCO: Okay. You're welcome.

24 THE HEARING OFFICER: Thank you. Again, Attorney  
25 Fusco, you can proceed with your presentation.



1 MS. FUSCO: Okay. Thank you. Well, good morning  
2 again, Executive Director Martone and Attorney  
3 Casagrande, members of the Office of Health  
4 Strategy staff.

5 Again, my name is Jennifer Fusco and I  
6 represent Windham Community Memorial Hospital in  
7 this proceeding. I'd just like to briefly  
8 introduce the others that are here.

9 We have Don Handley to my right who's the  
10 president of Windham Hospital.

11 Karen Goyette is joining us remotely. She's  
12 the executive Vice President Chief Strategy and  
13 Transformation Officer for Hartford Healthcare.

14 Barb Durdy is also over here to my right.  
15 She's HHC's Assistant Director of Strategic  
16 Planning. And to my left is Jacqui Hoell, who's  
17 an assistant general counsel at Hartford  
18 Healthcare. And Melissa Raimondi is providing us  
19 tech support from the other side of the table.

20 I'd like to begin today by expressing our  
21 appreciation to you and to your staff for the time  
22 you've taken in reviewing this proposal. And this  
23 includes, not just the time spent since the CON  
24 application was filed in September of 2020, but  
25 the many discussions held between individuals at

1 the highest levels of OHS, Windham Hospital,  
2 Hartford Healthcare, and the Department of Public  
3 Health leading up to the CON filing.

4 Your guidance helped Windham keep the OB  
5 program open for as long as it was safe to do so.  
6 And when it was no longer safe to do so, set us on  
7 a path to a thoughtful and orderly transition of  
8 Windham maternity patients to hospitals that are  
9 equipped to handle their needs and safely deliver  
10 their babies.

11 And while we disagree with the proposed final  
12 decision the Hearing Officer Csuka issued, we  
13 continue to have the utmost respect for his  
14 agency, for its staff, for the Hearing Officer,  
15 and for this administrative process.

16 We also understand that this proposal to  
17 terminate Windham OB service is emotional for  
18 many, including those women within the Windham  
19 community, those who've given birth at the  
20 hospital over the years -- but emotion does not  
21 and cannot ever outweigh the need to keep our  
22 patients safe, and for this agency to issue  
23 decisions that are consistent with the law and  
24 sound health policy.

25 And so to that end, Windham is extremely

1 disappointed with the outcome proposed by the  
2 Hearing Officer which requires the hospital to  
3 resume providing a service that it cannot safely  
4 provide.

5 You've heard sworn testimony -- and that's in  
6 the record. And you'll see some of it on the next  
7 few slides from hospital administrators,  
8 clinicians and experts with decades of experience  
9 in the operation of OB services and the delivery  
10 of babies, that it can no longer be done safely at  
11 Windham.

12 Yet OHS refuses to recognize the  
13 impossibility of continuing the program. Instead,  
14 the agency is asking the hospital to operate a  
15 program that it knows not to be safe, and in doing  
16 so to jeopardize the health and safety of mothers  
17 and babies in the Windham community.

18 We'll talk more today about the Applicant's  
19 evidence and the proposed final decision that  
20 we're here to challenge, but what we really need  
21 you to take away from this argument is that  
22 patient safety must be considered above all else  
23 in the final decision issued by this agency.

24 Patient safety is at the forefront of  
25 everything Windham Hospital and HHC do every day

1 in the communities that they serve. So we're  
2 asking OHS to put patient safety first as well,  
3 ahead of emotion and rhetoric and to do what's  
4 best for mothers and babies in the Windham  
5 community.

6 This means either issuing a final decision  
7 approving the termination of OB services at  
8 Windham, or coming to the table to discuss a  
9 settlement that addresses any remaining concerns  
10 the agency has over the Applicant's proposal,  
11 because the evidence in the record is clear and  
12 convincing and unequivocally supports approval of  
13 this critically important CON.

14 So just by way of a brief background, Windham  
15 Hospital's current inability to staff and safely  
16 operate its OB Service began with Mansfield  
17 ObGYN's departure in 2014 when they decided to  
18 relocate their deliveries to Manchester Memorial.

19 And you can see from the slide that's up  
20 there that, you know, several years later as of FY  
21 2017 the vast majority of women in the Windham  
22 service area were, in fact, delivering at  
23 Manchester.

24 Women's decisions about where they give birth  
25 are influenced by their obstetricians. If their

1           obstetricians are delivering elsewhere, they're  
2           going to go elsewhere. And this is why we saw  
3           this precipitous decline in volume of 277 births,  
4           or approximately a 74 percent volume decline  
5           between 2014 when Mansfield was still there when  
6           376 babies were delivered, and 2019 when just 99  
7           babies were delivered.

8                     After Mansfield ObGYN stopped delivering  
9           babies at Windham, the only women delivering at  
10          the hospital were patients of the Windham Women's  
11          Health. And as you heard at the hearing -- or as  
12          you saw in hearing testimony, that clinic is  
13          staffed by a single obstetrician, Dr. Eugene  
14          Rosenstein who is unable to cover the OB service  
15          24/7. So call coverage from other private  
16          practices in the area is required.

17                    And as you can see from this timeline, which  
18          comes from the record in this matter, Windham OB  
19          lost its primary call coverage Physicians OBGYN  
20          Services out of Norwich in December of 2019.

21                    I believe they notified us that they were  
22          leaving in September of that year. We notified  
23          OHS in November that this was happening and that  
24          the program, which had already been in a fragile  
25          state, was in an even more fragile state.

1           And so if you look at this timeline, you can  
2 see that despite the hospital's best efforts for  
3 five or six years to piece together coverage and  
4 find a permanent call coverage solution using  
5 community providers, individuals from community  
6 providers, locums, it was never able to do so in a  
7 safe and consistent manner which necessitated  
8 suspension of the service in July of 2020.

9           I think an important thing to understand is  
10 that Mansfield Ob/Gyn, OBGYN Services, these are  
11 private physician practices and they're not coming  
12 back to Windham. Okay? There are affidavits in  
13 the record that were requested by the original  
14 Hearing Officer attesting to the fact that neither  
15 Mansfield OB which is now, I believe Hartford  
16 Women's Health USA or OBGYN Services has any --  
17 any intention of either returning to regular  
18 deliveries at Windham or to providing call  
19 coverage at Windham.

20           And it's just so important to understand that  
21 these are private physician practices and we have  
22 absolutely no control over where they choose to  
23 deliver their babies, or whether they're willing  
24 to provide call coverage.

25           And you know, despite what you can read in

1 the proposed final decision and what members of  
2 the public have said, that the evidence shows  
3 there are no other realistic options for OB call  
4 coverage in Windham. The same is true for nurse  
5 staffing which has become a challenge in the  
6 ability to secure consistent coverage by ancillary  
7 physician providers like neonatologists.

8 Unfortunately, this is a case of low delivery  
9 volume driving a lack of desire on the part of  
10 obstetricians and other clinical staff to practice  
11 in Windham, resulting in an inability to staff the  
12 admins ably.

13 Low delivery volume, as the evidence shows,  
14 also presents a myriad of quality risks based on  
15 an inability to maintain provider competencies.  
16 Ms. Handley testified at the hearing that she had  
17 discussions with the Department of Public Health  
18 in June of 2020, and they expressed concerns about  
19 Windham OB's ability to, you know, deliver babies  
20 given the inability of the physicians and nurses  
21 and another clinical staff to maintain their  
22 competencies.

23 Because when you have only one or two babies  
24 being born at a hospital each week and when  
25 there's no regularity of staffing because you have

1 one staff obstetrician, no call coverage  
2 physicians and you occasionally have to resort to  
3 using locums, the hospital cannot ensure that when  
4 the unexpected occurs during childbirth, which  
5 happens often, that the clinicians are going to be  
6 able to work together as a competent and cohesive  
7 team and deliver that baby, and keep that baby and  
8 mother safe. And the results can be catastrophic.

9 As I said, the proposal at its core is about  
10 patient safety and the need to close the labor and  
11 delivery service that can no longer be operated in  
12 a safe, consistent and sustainable manner.

13 But it's also about ensuring that all women  
14 from the Windham area, including Medicaid  
15 recipients and other at-risk populations have  
16 continued access to high-quality OB care -- but it  
17 needs to be in the right environment that patient  
18 safety can be ensured, even if that means  
19 delivering your baby somewhere other than Windham  
20 Hospital.

21 Now the recent exceptions go into a  
22 tremendous amount of detail regarding the errors  
23 and omissions in the proposed final decision. And  
24 I don't think we need to take the time today to go  
25 through each one, but there are certain key



1 factual findings and legal conclusions based on  
2 those findings that are simply incorrect and that  
3 we believe led the Hearing Officer to propose  
4 denial of the CON. And we feel strongly that  
5 these errors and omissions need to be corrected so  
6 that the Executive Director can have a complete  
7 and accurate understanding of the proposal in  
8 making her decision.

9 So moving onto the actual findings in the  
10 decision -- excuse me, this is by no means an  
11 exhaustive list, but you know, in the interests of  
12 time just a summary of those key issues that we  
13 believe are driving the proposed denial.

14 Let's start with the Hearing Officer's  
15 conclusions about the impact of this proposal on  
16 the quality of obstetric care that we examined.

17 If you look at section E of the proposed  
18 final decision, Hearing Officer Csuka finds that  
19 Windham has not satisfactorily demonstrated that  
20 the proposal will improve the quality of  
21 healthcare. This is incorrect.

22 The proposed termination of labor and  
23 delivery services at Windham, and the planned and  
24 effective transition of women to other hospitals  
25 in the area that are better equipped to handle

1 their needs, including Backus, which was recently  
2 designated as a high-performing maternity hospital  
3 nationally, in fact, improves the quality of the  
4 obstetric care that these women are getting.

5 And the evidence in the record -- and you'll  
6 see from this slide which came straight from an  
7 expert report -- I believe it was in the prefiled  
8 testimony -- Windham is in the lowest decile or  
9 decile per birth volume at 100 or fewer births  
10 each year, and that number had become pretty  
11 consistent after Mansfield ObGYN left.

12 Less than a hundred births per year is low  
13 obstetric volume. I mean, simple math -- that's  
14 about two births a week. And the Hearing Officer  
15 acknowledges in the decision that we have put in  
16 evidence to address how diminished volume  
17 negatively impacts quality, and that very low  
18 volume leads to higher complication rates, which  
19 is one of the arguments we're making.

20 He also acknowledges that other area  
21 hospitals, including Backus, are in higher deciles  
22 for birth volume, who deliver more babies which is  
23 associated with lower -- lowered odds of adverse  
24 outcomes.

25 However, the Hearing Officer discounts this

1 peer-reviewed literature and expert opinions  
2 regarding the adverse impact of low birth volume  
3 on quality, claiming that the Applicant neglected  
4 to fully analyze the impact of Windham's rurality  
5 on access to care, and by extension quality of  
6 care.

7 And in doing the analysis himself, he decided  
8 that the rurality aspects of this proposal  
9 outweighed well documented quality concerns around  
10 low volume, and more importantly, the clear and  
11 convincing evidence in the record that Windham  
12 cannot staff the OB unit in a manner that allows  
13 for a safe and consistent operation.

14 And so just to kind of go through these,  
15 because I think this point about rurality is  
16 really important. And the slides we're going to  
17 show you now come from a brief, and links in a  
18 brief that was cited by a member of the public and  
19 that the Hearing Officer cited in the proposed  
20 final decision.

21 The Hearing Officer's analysis is flawed in  
22 that it assumes rurality is the issue here. Okay?  
23 It assumes that rurality is what's causing the low  
24 volume and the issues that arise from a low volume  
25 OB service, and that rurality precludes a finding

1 that women can still have adequate access to care  
2 if the Windham OB service closes.

3 And these assumptions by the Hearing Officer  
4 drive an incorrect conclusion that the proposal  
5 does not and cannot improve both quality and  
6 access for OB patients.

7 The truth is based on evidence in the record  
8 Windham is not a rural hospital for purposes of  
9 maternal health. Okay? The literature cited by  
10 the Hearing Officer in support of his conclusion  
11 that Windham is rural for maternal health belies  
12 his finding. Right? And there are a few  
13 important things to note.

14 The Applicant never stated or implied that  
15 Windham is a rural hospital for maternal health  
16 purposes, as the Hearing Officer claims we did,  
17 because it isn't. And the CMS brief on maternal  
18 health cited by the Hearing Officer shows -- and  
19 you can see it on this slide, that the only rural  
20 county in Connecticut for purposes of maternal  
21 health is Litchfield County, in the extreme  
22 northwest corner.

23 Windham County is classified as a  
24 Metropolitan Statistical area -- you can see it's  
25 circled there -- by the Office of Management and

1 Budget, which is the entity that does the  
2 designations, records to the CMS brief.

3 And to be considered rural for purposes of  
4 maternal health, an area either needs to be a  
5 micropolitan statistical area -- which is what you  
6 see labeled as in the Torrington/Litchfield, up in  
7 the northwest corner -- or a non metropolitan  
8 area, which would show in white if there any in  
9 the state of Connecticut.

10 And you can see the striking difference again  
11 using the OMB links in that brief between states  
12 like Connecticut and truly rural areas of this  
13 country like Texas and Montana, where women may  
14 need to travel hours to access obstetric services.

15 And if you look at that map of Montana, if  
16 you look to the western side of Texas, every  
17 single one of those white counties or CBSAs is a  
18 rural CBSA -- and even the light green ones would  
19 be considered, so.

20 And if you compare that with Windham, the  
21 next closest hospital is Backus. It's only 16  
22 miles away, and 26 minutes away by car. And just  
23 for reference, that's about how far and how long  
24 it takes to get from Cheshire to Yale New Haven  
25 Hospital. Okay? We're talking 16 miles, less

1 than a half an hour.

2 And there's testimony in the record from the  
3 hospital's expert witness John Rodis that many  
4 women, you know, that he worked at UConn and was  
5 at St. Francis for years. Many women in the state  
6 will voluntarily travel much farther than this,  
7 upwards of an hour to deliver their babies at open  
8 health centers or at other hospitals of their  
9 choosing.

10 The Hearing officer also misquotes -- and I  
11 think this is an important point, although a  
12 technical one, he misquotes literature regarding  
13 how rural hospitals are defined, claiming that,  
14 incorrectly that any hospital with less than 200  
15 births is rural. And this is not what the  
16 literature says. It's a nonsensical conclusion  
17 given that there are probably many small urban  
18 hospitals in this country that do less than 200  
19 births a year.

20 And nor does the community health needs  
21 assessment for Windham, which was cited throughout  
22 the proposed final decision, establish that the  
23 county is rural or that the hospital is rural for  
24 maternal health purposes. And to state otherwise  
25 as the Hearing Officer has is a

1 mischaracterization of the evidence before the  
2 agency.

3 The Hearing Officer correctly acknowledges  
4 that since the Windham OB program was suspended  
5 for safety reads in July 2020 there have been no  
6 quality incidents associated with the redirection  
7 of maternity patients to nearby hospitals better  
8 equipped to handle their needs, and that number is  
9 now closer to 200 babies safely delivered at  
10 Backus.

11 There also have been no issues whatsoever  
12 with the ability to coordinate care for patients  
13 of the Windham Clinic who are either delivering  
14 their babies at Backus, which is part of the HHC  
15 integrated healthcare delivery system, or in other  
16 area hospitals where their care is carefully  
17 planned and transitioned in the months leading up  
18 to delivery.

19 And so it has been demonstrated in practice  
20 for now close to two and a half years quality can  
21 and has been enhanced by this proposal.

22 Now what is at issue when we're speaking  
23 about quality is the Hearing Officer's complete  
24 disregard for the substantial evidence in the  
25 record establishing Windham's inability to safely

1 staff and operate the OB unit. That's the pivotal  
2 issue in the CON proceeding in terms of quality,  
3 and the Hearing Officer's focus on this false  
4 narrative or rurality caused him to miss this  
5 critical point.

6 The Hearing Officer also makes specific  
7 findings regarding access that we believe are  
8 inaccurate and that are leading to erroneous legal  
9 conclusions. As a threshold matter, he seems to  
10 be suggesting that a termination of services needs  
11 to enhance access, that this proposal to terminate  
12 Windham OB has to enhance access to obstetric  
13 services in order to be approved.

14 And while we maintain that it does enhance  
15 access to those services, that's not the standard  
16 for termination of service of CON. This agency  
17 has consistently found that a proposal to  
18 terminate services that maintains adequate access  
19 to those services meets the requirements of the  
20 statute, and that's exactly what this proposal  
21 does.

22 Again, evidence in the record shows and the  
23 Hearing Officer has acknowledged that nearly 100  
24 women from the Windham Clinic safely delivered  
25 their babies at Backus, a top-tier maternity



1 hospital between July of 2020 and September of  
2 2021.

3 Windham has ensured access to OB services in  
4 the manner suggested by an independent expert that  
5 they had retained back in 2017 to evaluate the  
6 program, Dr. Sindhu Srinivas when she recommended  
7 closing the unit citing the ability to have a  
8 sustainable and safe transition of women to  
9 existing hospitals within a reasonable distance to  
10 Windham. So she recommended closure for many  
11 reasons, one of them being she considered access  
12 and determined that there was sufficient access at  
13 hospitals that were nearby to Windham.

14 And so despite some sensational and  
15 inaccurate public comments to the contrary, babies  
16 are not being born to Windham mothers on the side  
17 of the road in ambulances, and they're not being  
18 born in helicopters that can't fly in inclement  
19 weather.

20 These are all red herrings, and there is  
21 actual sworn evidence in the record to explain the  
22 circumstances under which the, I believe, single  
23 ambulance birth occurred to a woman who was not  
24 even a patient at Windham Woman's Heath.

25 But again to refocus, we now have two and a

1 half years worth of data validating the  
2 Applicant's claim that access can and has been  
3 maintained, and their babies are being well cared  
4 for at Backus and other area hospitals. And  
5 again, there have been no incidents.

6 One of the things the Hearing Officer focuses  
7 on when he's doing his accessibility analysis is  
8 the availability of transportation for Windham  
9 mothers. He cites literature regarding  
10 transportation barriers to access generally for  
11 women from areas like Windham where transportation  
12 resources can be limited, but he ignores actual  
13 data showing that nearly 100 women safely  
14 delivered babies at Backus in that timeframe of  
15 July of 2020 to September of 2021.

16 And he talks about the fact that most women  
17 arrange for their own transportation to the  
18 hospital to deliver as if it's a bad thing. It  
19 isn't. You know, what that shows is that women  
20 from the Windham area have adequate transportation  
21 resources to obtain labor and delivery services 16  
22 miles away at Backus, or at other area hospitals  
23 of their choosing.

24 And for those that don't, Windham is  
25 committed to providing transportation services

1 either by ambulance or other means at no cost for  
2 anyone who needs them, and this includes mothers  
3 and their support persons.

4 And as evidence in the record clearly  
5 demonstrates, it's not just for transportation to  
6 the hospital, as the Hearing Officer suggests, but  
7 transportation home as well. And you can see  
8 that, I believe, in the final side. I mean, the  
9 question was specifically asked of -- basically at  
10 the hearing, and she acknowledged that.

11 And you know, my point here being the Hearing  
12 Officer looked at sort of literature and what  
13 could happen theoretically to people who live in  
14 these types of areas. And actual evidence has to  
15 take precedence over theoretical information and  
16 assumptions.

17 I also want to touch briefly on the statutory  
18 criterion around access for Medicaid recipients  
19 and other at-risk populations. The proposal does  
20 not adversely impact access to care for anyone,  
21 and that includes Medicaid recipients who make up  
22 the bulk of the Windham OB patients.

23 It's worth noting Windham continues to  
24 provide critically important prenatal and  
25 postpartum care at the Windham Clinic, and has no

1 plans to discontinue the services which form the  
2 bulk of the woman's care and travel around  
3 (unintelligible). All right? And as we just  
4 discussed, Windham has ensured continuous access  
5 to labor and delivery services without disruption  
6 for the last two and half years.

7 So the Hearing Officer again speculates based  
8 on unsworn public comment about the possibility of  
9 a disruption in OB services for Medicaid  
10 recipients, but speculation is entirely  
11 inappropriate when there's actual evidence in the  
12 record to prove otherwise. Namely, that nearly  
13 100 women -- you can see from here, a majority of  
14 whom are Medicaid recipients, safely delivered  
15 their babies at Backus, a high-performing  
16 maternity hospital between July of 2020 and  
17 September of 2021.

18 So what that's showing you is this the  
19 snippet of women between when the service is  
20 suspended in the last month before we began  
21 preparing for our public hearing. Those women  
22 made it and delivered safely at Backus, and a vast  
23 majority of them are Medicaid recipients.

24 And so although there have been changes to  
25 the manner in which these women access OB

1 services, our position is those changes have been  
2 favorable, and they favorably impact the quality  
3 of obstetric care.

4 The agency again can't speculate that  
5 medicated recipients or indigent persons, or any  
6 patients for that matter might be negatively  
7 affected by a termination of services as a result  
8 of reduced access, when the evidence shows that  
9 access has been maintained.

10 And again, this is a question between of, you  
11 know, do you look at literature and hypotheticals?  
12 Or do we look at the actual evidence in the record  
13 and the actual data of what is going on in the  
14 Windham area.

15 The Hearing Officer also incorrectly analyzes  
16 the statutory criterion regarding reduced access  
17 to services for Medicaid recipients and whether  
18 good cause exists for such a reduction. First and  
19 foremost, no reduction in services for Medicaid  
20 recipients is occurring.

21 Women are still obtaining their prenatal care  
22 at Windham, during which time they arrange for  
23 deliveries at Backus or another hospital of their  
24 choosing, the same as they would arrange to  
25 deliver at Windham. The location has changed, but

1 the service continues to be provided and has been  
2 provided seamlessly for the last two and a half  
3 years.

4 But in analyzing good cause for this supposed  
5 reduction in services, the Hearing Officer chose  
6 to focus on Windham's alleged failure to pursue  
7 all avenues available to it for obstetric  
8 coverage.

9 Specifically, he's taking aim at the  
10 Applicant's alleged failure to contact him on  
11 health and the physicians that covered Day Kimball  
12 Hospital's OB service to see if they could provide  
13 coverage at Windham. And these findings by the  
14 Hearing Officer just generally couldn't be further  
15 from the truth.

16 Expert witnesses have testified that neither  
17 UConn nor Day Kimball physicians have the ability  
18 to provide sustainable OB coverage at Windham.  
19 And that's what we need, sustainable consistent  
20 long-term coverage at Windham.

21 In addition, just the OHS staff is well aware  
22 of the substantial efforts that Windham has made,  
23 you know, in the five-plus years leading up to the  
24 CON filing to staff the OB unit in any way, you  
25 know, with any physicians they could find to

1 ensure sure they could continue to operate safely.  
2 And the hospital updated the Department of Public  
3 Health and OHS on a regular basis about its  
4 efforts. And so to suggest as the Hearing Officer  
5 does, and I quote, that Windham did not bother to  
6 pursue coverage options is absolutely incorrect.

7 The Hearing Officer also ignored clear  
8 evidence in the record regarding what's really the  
9 impossibility of obtaining consistent ongoing OB  
10 call coverage from either UConn or Day Kimball.

11 This entire line of questioning about UConn  
12 and Day Kimball was initiated by unsworn public  
13 comments made by an individual known to this  
14 agency who has his own reasons for trying to keep  
15 the Windham OB service open that have nothing to  
16 do with the health and safety of mothers and  
17 babies.

18 And this individual was given every benefit  
19 of the doubt by the Hearing Officer, despite the  
20 fact that the statements he made about UConn and  
21 Day Kimball were proven to be false in post  
22 hearing submissions. He was asked to validate  
23 those statements and he wouldn't.

24 But at the same time, the Hearing Officer  
25 gives, you know, no credence to anything that was

1 said by Windham's sworn expert and fact witnesses  
2 who have firsthand knowledge of the practicability  
3 and the feasibility of these coverage solutions.

4 The reality is neither UConn nor Day Kimball  
5 offers a realistic OB call coverage option for  
6 Windham. As the agency heard in sworn testimony  
7 from Dr. Adam Borgida who happens to be the former  
8 site director for the UConn Maternal Fetal Health  
9 Medicine Fellowship Program, UConn residents can't  
10 cover Windham due to issues around travel time and  
11 work hours, not to mention the fact that residents  
12 cannot practice without attending physicians.

13 There's only -- the only OB attending  
14 physician at Windham is Dr. Rosenstein. And just  
15 like he can't be available 24/7 to deliver babies,  
16 he can't be available 24/7 to supervise residents.

17 Similarly, the physicians who cover Day  
18 Kimball OB service do not have the capacity to  
19 cover Windham. There's evidence in the record  
20 showing that a number of local obstetricians  
21 primarily from OBGYN Services out of Norwich,  
22 which used to cover Windham, were and still are  
23 covering shifts at Day Kimball, because the Day  
24 Kimball practice can't cover its own OB service,  
25 let alone Windham.



1           And this was one of the things that we were  
2 looking to introduce, which is affidavits from  
3 several of those physicians attesting to the fact  
4 that as of today -- or I guess as of August 26th,  
5 when the brief was submitted, that they were still  
6 providing that coverage at Day Kimball.

7           And so just, I really want to, you know, and  
8 in the interest of time I briefly want to go  
9 through there are a few other statutory decision  
10 criteria that the Applicant maintains have been  
11 met, despite the Hearing Officer's conclusions to  
12 the contrary.

13           These are criteria around cost effectiveness,  
14 diversity of providers and patient choice, clear  
15 public need and consistency with the statewide  
16 healthcare facilities and services plan, and our  
17 arguments with regard to these criteria are set  
18 out in a lot of detail in the recent exceptions.  
19 So we won't belabor them today, but it is worth  
20 pointing out a few things for your consideration.

21           With respect to cost effectiveness, the  
22 Hearing Officer found the proposal wasn't cost  
23 effective because of the slight difference in the  
24 cost of delivery for the minimal number of  
25 commercially insured patients at the Windham OB

1 service. And that slight difference in the cost  
2 of delivery is \$10,000 in total for the entire  
3 program, and that's certainly not enough to make  
4 the proposal cost ineffective.

5 He also claims that Windham's transportation  
6 program and what the hospital would need to do to  
7 fund that made it cost ineffective, but at the  
8 same time he acknowledges that that is offset by  
9 the \$2.5 million in cost savings associated with  
10 discontinuance of the program.

11 And the third, the third basis he used was  
12 that we were not covering transportation home from  
13 the hospital for patients, and patients would need  
14 to pay for that. And you know, based on what you  
15 saw hearing testimony from the stand, that's  
16 absolutely false. We do pay for that, for  
17 patients and support personnel.

18 With respect to diversity of providers and  
19 patient choice, the way I read the decision, the  
20 Hearing Officer saying that any time you terminate  
21 a service and have one less option for that  
22 service in an area you have failed to meet this  
23 decision criteria, that every single termination  
24 of service CON will fail on this criteria.

25 And again, that's not how this agency has

1 historically interpreted this criteria. You just  
2 need to ensure that they're maintained, that there  
3 are adequate providers to offer access and that  
4 there are options. Right?

5 And here what we have are HHC hospital  
6 options for delivery. You've got Backus, and  
7 you've got Hartford Hospital location  
8 (unintelligible). And you've got non-HHC choices  
9 in Manchester and Day Kimball. And this ensures  
10 diversity of providers and patient choice, as that  
11 criteria has historically been interpreted by the  
12 agency.

13 In addition, we were kind of surprised that  
14 the Hearing Officer didn't make a finding on clear  
15 public need and said it was not applicable to a  
16 termination of services CON. We feel we should  
17 have determined that there is a clear public need  
18 based on factors and include -- to terminate based  
19 on factors including declining volume, volume  
20 safety considerations, recruitment challenges and  
21 inability to maintain adequate physician staffing.

22 And such a finding would have been consistent  
23 with other OB service termination CONs, where the  
24 agency acknowledged the clear public need to  
25 terminate a service that could no longer be safely

1 provided.

2 And lastly, based on the totality of actual  
3 evidence in the record around these decision  
4 criteria we've been discussing, it's clear that  
5 the proposal is consistent with the state health  
6 plan.

7 And finally, I'd be remiss if I didn't touch  
8 briefly on the procedural errors and  
9 irregularities in this matter, and their impact on  
10 the proposed final decision. Again, I won't go  
11 into everything, but most notably I think it's the  
12 use of unsworn public comment for a significant  
13 percentage of the findings of fact and in the  
14 conclusions of law deriving from those facts.

15 This agency accepted what was in essence  
16 testimony from unsworn members of the public while  
17 ignoring sworn evidence offered by the Plaintiff.  
18 And the Applicant was given no opportunity to  
19 cross-examine or otherwise challenge these, these  
20 commenters who are not in fact witnesses offering  
21 evidence, and that deprived the Applicant of its  
22 due process rights.

23 And I think it's important for you to  
24 understand and recall some of kind of the more  
25 egregious findings that were based on public

1 comment including, you know, findings that cite  
2 articles that have nothing to do with OB services,  
3 and in some cases have nothing to do with  
4 healthcare services at all; findings that  
5 reference studies from foreign countries that are  
6 not backed up by any peer-reviewed literature or  
7 studies that we can find done in the United  
8 States; findings that question the professional  
9 character of an expert witness Dr. Srinivas, a  
10 well respected physician, accusing her of  
11 potentially colluding on an expert report without  
12 any justification.

13 And then, you know, refusing to accept new  
14 and updated evidence into the record to address  
15 the claimed deficiencies in the CON submission.

16 And you know, as far as procedural errors,  
17 perhaps most egregiously allowing the CON  
18 application to remain pending for more than two  
19 years, despite this agency's belief that women are  
20 being denied access to OB care.

21 And finally, in that regard I think the  
22 change in the Hearing Officer post hearing also  
23 deprived the Applicant of its due process right to  
24 have this matter decided by someone, by an  
25 individual who, like what you're doing today

1 attended the hearing and observed witnesses in  
2 real time, had an ability to ask questions, and to  
3 personally assess the credibility of those  
4 providing testimony.

5 So in making his recommendation that the CON  
6 be denied our belief is that the Hearing Officer  
7 ignored the better evidence in the record showing  
8 that the statutory decision criteria around need,  
9 access, quality, cost, equity and choice have been  
10 met, and that the approval of the application is  
11 in the best interests of patient safety.

12 He ignored the evidence that nearly 100 women  
13 from the Windham Clinic have safely delivered  
14 their babies at Backus, a nationally recognized  
15 top-tier maternity hospital without incident. He  
16 ignored evidence about how access has been and  
17 will continue to be ensured for all women, and  
18 that all women including those at risk are now  
19 receiving higher quality obstetric care at  
20 hospitals better equipped to handle their needs  
21 and the needs of their babies.

22 The reality is Windham cannot safely operate  
23 it's OB service due to a lack of available  
24 obstetricians and other clinical staff. There's  
25 not sufficient physician coverage to sustain a

1 24/7 service in a safe and consistent matter with  
2 competent providers ready and able to deliver  
3 babies when unexpected emergencies arise.

4 If the unit can't be operated safely, it  
5 needs to be closed, and women need to be  
6 redirected to other high quality accessible OB  
7 programs in the area. This is the true narrative  
8 of Windham's CON proposal, not the piecemeal  
9 arguments that the Hearing Officer has advanced  
10 based on unsubstantiated public comment and  
11 conjecture.

12 OHS must look at the reliable and substantial  
13 evidence in the administrative record which  
14 unequivocally favors approving the CON request.

15 So where do we go from here? If a final  
16 decision is issued denying the CON, the Applicant  
17 intends to file an administrative appeal because  
18 there is no way to safely operate the Windham OB  
19 unit going forward. It's in best interests of  
20 women and their babies for OHS to approve this  
21 CON, or to come to the table to discuss a  
22 resolution that protects the community's interests  
23 in preserving high quality, accessible OB care and  
24 enhancing women's health services.

25 And we welcome the opportunity to have these

1 discussions with you and your staff. So thank you  
2 again for your time.

3 Sorry that was a little longer than 15  
4 minutes, but we appreciate your time today.

5 THE HEARING OFFICER: Thank you Attorney Fusco.

6 All right. I do not have any questions at  
7 this time. So at this point -- I mean, Tony, are  
8 you all set?

9 MR. CASAGRANDE: Everything is good. Yeah. Thank you  
10 very much. Thank you all for you participation.

11 THE HEARING OFFICER: All right. Thank you. All  
12 right. Then I thank you all for attending today.  
13 I will issue a final decision in this matter in  
14 accordance with Chapter 54 of the Connecticut  
15 general statutes.

16 I do not need those attestations, Attorney  
17 Fusco. That's fine.

18 MS. FUSCO: Okay.

19 THE HEARING OFFICER: So therefore, I'm closing this  
20 hearing at this time.

21 MS. FUSCO: Thank you.

22 MR. CASAGRANDE: Thank you very much.

23 THE HEARING OFFICER: Thank you all.

24 Have a good day.  
25



(End: 11:43 a.m.)

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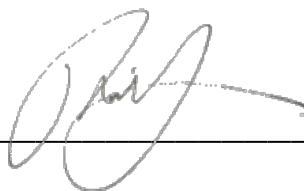
STATE OF CONNECTICUT

I, ROBERT G. DIXON, a Certified Verbatim Reporter within and for the State of Connecticut, do hereby certify that I took the above 41 pages of proceedings in the STATE OF CONNECTICUT, OFFICE OF HEALTH STRATEGY, HEALTH SYSTEMS PLANNING UNIT, in Re: DOCKET NO.: 20-32394-CON; TERMINATION OF INPATIENT OBSTETRICAL SERVICES AT WINDHAM COMMUNITY MEMORIAL HOSPITAL; held before: KIMBERLY MARTONE, THE HEARING OFFICER, on November 30, 2022, (via teleconference).

I further certify that the within testimony was taken by me stenographically and reduced to typewritten form under my direction by means of computer assisted transcription; and I further certify that said deposition is a true record of the testimony given in these proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

WITNESS my hand and seal the 20th day of December, 2022.



Robert G. Dixon, N.P., CVR-M No. 857

My Commission Expires 6/30/2025