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12 **ORAL ARGUMENT**
13 **HELD ON**
14 **FEBRUARY 21st, 2023**
15 **Docket No. 20-32392-CON**
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1 ATTORNEY CASAGRANDE: Everyone -- Attorney
2 Fusco, is everyone present that you need at this
3 point?
4 ATTORNEY FUSCO: Yes, for this portion of
5 the hearing, everyone is present.
6 ATTORNEY casagrande: Great, then I think
7 we'll get started.
8 Good afternoon. My name is Antony
9 Casagrande and I'm the general Counsel for the
10 Office of Health Strategy. This hearing is being
11 convened for the limited purpose of hearing oral
12 argument in Docket No. 20-32392-CON. The
13 applicant in this matter, Encompass Health
14 Rehabilitation Hospital of Danbury, LLC, seeks to
15 establish a 40-bed chronic disease hospital.
16 As has been conveyed to Counsel earlier,
17 today has become a -- had become difficult due to
18 conflicting priorities. Executive Director
19 Gifford, the final decision-maker in this matter,
20 has been busy trying to testify at the state
21 legislature at two different committees.
22 However, State of Connecticut Internet service --
23 services have not been functioning most of the
24 day, which is complicating the process, making it
25 difficult for her to be present at this hearing

1 at this time. While testifying at the state
2 legislature is important, so is proceeding with
3 this oral argument, and OHS would like to
4 accomplish both today, if possible.
5 So, with agreement of Counsel, I would like
6 to presently adjourn this meeting until 4:30 p.m.
7 today so that Dr. Gifford can attend and hear
8 your presentation. If Counsel will indicate
9 their concurrence, we'll adjourn until 4:30 p.m.
10 ATTORNEY FUSCO: This is Jennifer Fusco,
11 Counsel for Encompass Health Rehabilitation
12 Hospital of Danbury, and we are in agreement with
13 that plan, thank you.
14 ATTORNEY CASAGRANDE: Very good. Thank you
15 very much. Then we will presently adjourn until
16 4:30 p.m.. Thanks again.
17 ATTORNEY FUSCO: Thank you.
18
19 (Recess.)
20
21 ATTORNEY CASAGRANDE: I just want to make
22 one -- okay, I just want to make one announcement
23 before you start, Dr. Gifford.
24 I wanted to let everyone know that the
25 hearing is being recorded on Zoom and will be

1 transcribed later. It's not being transcribed at
2 this time.
3 Okay, Dr. Gifford, it's all yours.
4 DR. GIFFORD: Thank you, and to our
5 Applicant, I want to just say thank you for your
6 flexibility this afternoon. As you know, we had
7 several circumstances beyond our control. One
8 was a Statewide IT outage and the second was the
9 scheduling of a couple of hearings that required
10 my presence. So we very much appreciate your
11 flexibility on the scheduling this afternoon.
12 ATTORNEY FUSCO: Absolutely, understood,
13 thank you.
14 DR. GIFFORD: So this hearing is being
15 convened for the limited purpose of hearing oral
16 argument in Docket No. 20-32392-CON. The
17 Applicant in this matter, Encompass Health
18 Rehabilitation Hospital of Danbury, LLC, seeks to
19 establish a 40-bed chronic disease hospital.
20 On September 21st, 2022, the Hearing Officer
21 in this matter issued a proposed final decision
22 denying the application.
23 On October 12th, 2022, the Applicant filed a
24 brief and exceptions and requested an opportunity
25 to present oral argument.

1 On January 31st, 2023, the Office of Health
2 Strategy issued a notice of oral argument for
3 today.
4 This hearing before the Office of Health
5 Strategy is being held on February 21st, 2023.
6 My name is Deidre Gifford. I'm the Executive
7 Director of OHS and I will be issuing the final
8 decision in this matter.
9 Also, present on behalf of the agency is OHS
10 General Counsel Antony Casagrande.
11 Public Act No. 212, Section 149, as amended
12 by Public Act No. 2-3 authorizes an agency to
13 hold a public hearing by means of electronic
14 equipment. In accordance with these acts, any
15 person that participates orally in an electronic
16 meeting shall make a good-faith effort to state
17 his or her name and title at the outset of each
18 occasion that such person participates orally
19 during an uninterrupted dialogue or series of
20 questions and answers.
21 We ask that all those testifying mute the
22 device that they are using to access the hearing
23 and silence any additional device that are around
24 them, all those testifying and listening.
25 This hearing concerns only the Applicant's

1 oral argument regarding its brief and exceptions
2 to the proposed final decision and it will be
3 conducted under the provisions of Chapter 54 of
4 the Connecticut General Statutes.
5 This certificate of need process is a
6 regulatory process, and as such, the highest
7 level of respect will be accorded to the
8 Applicant and our staff. Our priority is the
9 integrity and transparency of this process.
10 Accordingly, decorum must be maintained by all
11 present during these proceedings.
12 As you heard, this hearing will be
13 transcribed and recorded and a video will also be
14 made available on the OHS Website and its YouTube
15 account. All documents related to this hearing
16 have been or will be submitted to OHS are
17 available for review through our electronic CON
18 portal, which is accessible on the OHS CON Web
19 page.
20 Although this hearing is open to the public,
21 only Applicant and its representatives and OHS
22 and its represents will be allowed to make
23 comments. Accordingly, the chat feature of this
24 Zoom call has been disabled.
25 As this meeting is being held virtually, we

1 ask that anyone speaking, to the extent possible
2 and able, to use the video camera when speaking
3 during the proceedings. In addition, anyone who
4 is not speaking small mute their electronic
5 device, including telephones, televisions, and
6 other devices not being used to access the
7 hearing.
8 And lastly, as Zoom has notified you while
9 entering this meeting, I wish to point out that
10 by appearing on-camera in this virtual hearing,
11 you are consenting to being filmed. If you wish
12 to revoke your consent, please, do so at this
13 time. However, please, be advised that in such
14 event, the hearing will be continued to a later
15 date.
16 We will now proceed.
17 DR. GIFFORD: Counsel for the Applicant, can
18 you, please, identify yourself for the record?
19 ATTORNEY FUSCO: Yes, my name is Jennifer
20 Fusco. I'm with the law firm of Updike, Kelly &
21 Spellacy and I am Counsel for Encompass Health
22 Rehabilitation Hospital of Danbury.
23 DR. GIFFORD: Thank you.
24 Are there any other housekeeping matters or
25 procedural issues that we need to address before

1 we start?

2 ATTORNEY FUSCO: I would just like, at

3 Attorney Casagrande's request, to note for the

4 record that the PowerPoint you're viewing right

5 now is one that was put together for purposes of

6 guiding this oral argument. All of the

7 substantive information in it came directly from

8 the record in this matter and there's no new

9 evidence contained in the presentation.

10 DR. GIFFORD: Thank you.

11 You may begin whenever you're ready,

12 Attorney Fusco.

13 ATTORNEY FUSCO: Wonderful, and thank you

14 again, Dr. Gifford, for making the time to be

15 here with us today. I know it's been a

16 challenging day for you technology-wise, but here

17 we all are, and before I started, I did want to

18 take the time to introduce you to a few

19 representatives of my clients, who are here with

20 me virtually. One is Carey McRae, he's the

21 vice-president and associate general counsel in

22 charge of state regulatory matters for Encompass

23 Health. Another is Patrick Tuer, regional

24 president for the northeast region of Encompass.

25 Mr. Tuer testified at the public hearing on the

1 matter -- on this matter, and the third is Marty
2 Chafin of Chafin Consulting Group, who served as
3 the Applicant's expert witness in this matter,
4 and she is here today - obviously, I know this is
5 an oral argument - but to answer any questions
6 which you might have as we go along.
7 We thank you for the opportunity to provide
8 this argument in support of Encompass Danbury's
9 CON, and I'd like to begin by expressing our
10 appreciation for the time you and your staff have
11 taken to review this proposal. While we disagree
12 with the proposed final decision issued by
13 Hearing Officer Novie(ph), we have the utmost
14 respect for her, for this agency, for the
15 administrative process, which is why we are here
16 here today to try to give you, the final
17 decision-maker, a clear understanding of the
18 substantial benefits of Encompass Danbury's
19 proposal and how the statutory criteria for
20 approval of the CON have unequivocally been met.
21 I think in the -- I think it's important to
22 start that OHS understand exactly what Encompass
23 is proposing to do here and why they're proposing
24 to do it.
25 Encompass Health is the nation's largest

1 provider of inpatient rehabilitation services
2 with more than 150 hospitals located across the
3 United States and Puerto Rico, and that includes
4 10 facilities right here in New England, as you
5 can see from that map. The company is looking to
6 bring a much-needed, state-of-the-art inpatient
7 rehabilitation hospital to Danbury, where beds of
8 this type are extremely limited and an
9 independent rehab facility of this scope and
10 nature does not exist.
11 The $39 million hospital, which will
12 permanently employ more than 100 clinical and
13 support staff, will be constructed with Encompass
14 Health dollars and without any requests for
15 economic incentives or assistance from the State
16 of Connecticut. In other words, Encompass is
17 offering to bring its resources and its unmatched
18 clinical expertise to our state with no strings
19 attached. This is why the proposal has received
20 enthusiastic support from physicians, referral
21 agency represents, and elected officials,
22 including the mayor of Danbury and the entire
23 Danbury legislative delegation.
24 As you'll hear a bit later, Connecticut is
25 ranked 48th in the nation, almost last, in our

1 utilization of inpatient rehabilitation facility,
2 or IRF services, as they're known, and there's
3 nothing unique about our population that explains
4 why we don't use this critically-important
5 service at rates similar to the rest of the
6 country. In fact, we have a large and growing
7 Medicare population, which is the primary users
8 of IRF services.
9 The answer to why Connecticut's utilization
10 is ranked this low is simple: We don't have
11 enough IRF beds. Now, the people who need the
12 services that Encompass proposes to provide have
13 significant medical challenges. They need
14 speech, occupational, and physical rehabilitation
15 to treat the effects of strokes, spinal cord
16 injuries, traumatic brain injuries, Parkinson's
17 disease, and other debilitating conditions. They
18 need the highest and most intensive level of
19 inpatient rehab services provided at a
20 state-of-the-art facility with specialized
21 equipment, 24/7 nursing care, and access to a
22 variety of medical specialists on-site. They
23 need hours of therapy each day, not minutes of
24 therapy each day, in order to have the best
25 chance to have a complete recovery, and they need

1 care close to their homes so that their families
2 can be actively involved in the rehabilitation
3 process, but instead, because there aren't enough
4 IRF beds in Connecticut, and specifically, in the
5 Danbury service area, many of these patients are
6 receiving rehab care in suboptimal settings, such
7 as skilled nursing facilities. They're using
8 home healthcare. They're traveling out-of-state
9 for services or they're foregoing needed
10 treatment altogether, and these inequities will
11 continue if the proposed Encompass hospital is
12 not approved.
13 How is this acceptable in the year 2023 and
14 the state with the resources that Connecticut has
15 and the collective healthcare knowledge and
16 foresight of regulators such as yourselves?
17 In the proposed final decision, OHS
18 acknowledged that the proposal is in the best
19 interest of patient care, that it will improve
20 the quality and accessibility to IRF services for
21 all patients, including Medicaid recipients and
22 indigent persons, that it's both
23 financially-feasible and cost-effective, and that
24 it improves the diversity of providers in the
25 Danbury area, giving patients meaningful choice

1 of providers as the CON as the laws require, but
2 at the same time, and notwithstanding the
3 tremendous benefits of the proposal that the
4 hearing officer acknowledges, she inexplicably
5 concludes that there's no need for the new
6 hospital and that it will unnecessarily duplicate
7 services provided by Danbury Hospital in a 14-bed
8 rehab unit that's operating at capacity, and for
9 these reasons alone, she's recommending denial of
10 the CON.
11 The hearing officer's conclusions were
12 driven largely by her refusal to consider the
13 sound, well-reasoned, well-documented bed need
14 methodology utilized by the Applicant, claiming
15 this it wasn't an approved methodology. She was
16 incorrect in concluding that the methodology
17 needed to be approved to be considered by this
18 agency, and she's also incorrect in concluding
19 that the Applicant has failed to show a need for
20 the proposed facility. To the contrary, the
21 evidence in the record demonstrates the need for
22 nearly four times the number of IRF beds in the
23 Danbury area than currently exists.
24 As you undoubtedly know, the CON application
25 for a 40-bed inpatient rehab hospital is one of

1 two presently pending before this agency filed by
2 national rehab providers who separately recognize
3 the cer -- a significant need for this level of
4 service in Connecticut, and I can assure you that
5 neither provider would be before this agency
6 requesting permission to build a multi-million
7 dollar hospital if they weren't confident in the
8 need for this service.
9 We're going to talk more today about the
10 Applicant's evidence and why the proposed final
11 decision we're here to challenge meets the
12 statutory criteria for issuance of the CON, but
13 as important, we'll talk about how flawed this
14 process has been and how the unlawful procedures
15 upon which the CON application was reviewed and
16 decided provide the grounds for an administrative
17 appeal. Hopefully, once you hear what we have to
18 say, you'll agree that both the Applicant and
19 this proposal deserved a more fundamentally-fair
20 process than what was afforded to them, and
21 again, once you've heard what we have to say, our
22 hope and expectation is that you will right this
23 wrong and either issue a final decision approving
24 the proposed Encompass rehab hospital or come to
25 the table to discuss a settlement that addresses

1 any remaining concerns the agency has with the
2 Applicant's request because the evidence in the
3 record is clear and convincing and unequivocally
4 supports approval of this vitally-important CON.
5 So, moving on to the actual findings in the
6 proposed final decision and the basis for the
7 hearing officer's denial, as you can see from the
8 slide in front of you, the statutory criteria
9 that have been met far outweigh those that OHS
10 claims have not been met, and you need to look at
11 the totality of those criteria that have been met
12 in deciding how to rule on this CON, and this has
13 been said in arguments and in CON hearings
14 before.
15 OHS is required to take into consideration
16 and make written findings regarding each of the
17 statutory decision criteria, but based on the
18 plain and unambiguous language of that statute,
19 this agency is not required to find that each of
20 these criteria has been satisfied as a
21 precondition to CON approval, okay?
22 Now, here, you can see, OHS determined that
23 the Applicant met the applicable decision
24 criteria around financial feasibility, quality,
25 access, cost-effectiveness, diversity of

1 providers, and patient choice, and the hearing
2 officer also conceded in her findings that the
3 proposal ensures access for Medicaid recipients
4 and indigent persons, and if you could consider
5 the nature of the criteria that were met, the
6 importance of these criteria unbalanced. OHS is
7 compelled to find that the Applicant carried its
8 burden by the preponderance of the evidence and
9 to approve the CON, and as we'll discuss in a
10 moment, our position is that the Applicant, in
11 fact, has met all of the statutory criteria for
12 issuance of this CON, including those around
13 need, duplication of services, and state health
14 planning goals and objectives, which means
15 there's no reasonable basis on which to deny this
16 CON request.
17 There's no question that the CON should be
18 approved and that Encompass Danbury should be
19 allowed to establish an IRF in Danbury that will
20 significantly enhance the state's healthcare
21 delivery system.
22 Now, I would also just like to take you
23 briefly through several of the key criteria that
24 the hearing officer claims were not met and
25 explain why we strongly disagree with her

1 conclusions, and the first criteria are around
2 utilization of existing facilities and
3 unnecessary duplication of services. She claims
4 that those two criteria have not been met and do
5 not support approval of the Encompass hospital.
6 This was based on her incorrect assumption that
7 Danbury Hospital, which is the only other
8 inpatient rehab provider in the service area, has
9 available capacity, but that's not what the data
10 shows. Danbury Hospital's only(sic) filing,
11 which you see summarized on your screen right
12 now, shows that the rehab unit's average
13 occupancy in 2021 was 88.1 percent. That's
14 well-above the state's health plan's 80 percent
15 target occupancy, and it far exceeds the outdated
16 74.1 percent occupancy cited by the hearing
17 officer in her final decision, or proposed final
18 decision.
19 You can also see that Danbury's annual
20 patient days, average daily census, and things
21 above the unit's 14-bed capacity have increased
22 materially over the past few years, and as
23 hospital administrators testified, utilization
24 will likely continue to increase as Danbury works
25 to add referrals from its sister facility,

1 Norwalk Hospital. The proposed Encompass
2 hospital cannot unnecessarily duplicate the
3 services of an existing provider if those
4 services are at capacity, and that's what this
5 data shows.
6 Danbury Hospital's president and medical
7 director of inpatient rehabilitation also
8 testified that hospital plans to expands its
9 rehab unit in the immediate future. This is
10 obviously at odds with their testimony that
11 there's no need for additional in beds in western
12 Connecticut. I would say Danbury Hospital's
13 motivation here has to be carefully scrutinized,
14 given their conflicting positions, on the one
15 hand, that there's no need for additional rehab
16 beds, and on the other, that they, themselves,
17 have plans to add those beds, plans that have
18 progressed to the point of architectural
19 drawings, millions in budgeted funds for
20 renovations, and sworn public testimony that the
21 beds will be added in the near future. I would
22 say these actions taken by the hospital confirm
23 that there's, in fact, a great need for
24 additional IRF capacity in the Danbury area and
25 Encompass is here, ready, willing, and able to

1 meet that need.
2 Of equal importance, when we're talking
3 about utilization of existing providers,
4 Encompass is a cost-effective provider than
5 patient rehab services. As the evidence in the
6 record shows and as acknowledged by the hearing
7 officer, the positive impact of a freestanding
8 IRF complement Danbury Hospital's rehab unit must
9 be considered by OHS in discharging its
10 obligation to ensure lower-cost care for relevant
11 patient populations and the cost-effectiveness of
12 healthcare delivery in the region.
13 The hearing officer's conclusions around
14 clear public need are also clearly erroneous.
15 She concluded that the Applicant has not shown a
16 need for the inpatient rehab hospital because the
17 national population-based need methodology
18 advanced by our expert witness is not - quote,
19 unquote - approved for use in Connecticut and
20 does not accurately reflect Connecticut residents
21 and their need for IRF services. We respectfully
22 disagree with both of these conclusions.
23 Without, you know, recreating hundreds of
24 pages of evidence and hours of expert testimony
25 by Ms. Chafin, I'd like to take you briefly

1 through the process undertaken and the summary
2 conclusions from her analysis. As I mentioned at
3 the outset, Ms. Chafin is here today and
4 available to answer any questions that you have,
5 and given her extensive experience, as described
6 in her curriculum vitae, including their analysis
7 and preparation of successful CON applications in
8 many states, and internationally, when she worked
9 to establish a CON framework for a Middle Eastern
10 country, I think her opinion should be given
11 substantial weight.
12 So, just to briefly summarize, first, the
13 Applicant conducted a market assessment by having
14 discussions with community physicians and
15 referral agency representatives who identified
16 the need for additional IRF services in Danbury.
17 Much was made at the hearing about the fact that
18 Encompass is based out-of-state, but I could
19 assure you that work was done on the ground here
20 in Connecticut in their northeast region to
21 ensure that there was a need for these services,
22 and you can find many letters of support and
23 public comments to this effect in the record.
24 Ms. Chafin then quantified the need for IRF
25 beds or the gap in care, as it was called in her

1 expert report, and at the hearing, using national
2 benchmarks applied to service area populations,
3 and I do urge you to read Ms. Chafin's written
4 testimony and listen to her presentation and
5 responses to questions at the hearing, which
6 provide substantially more detail than we have
7 time to go into today, but I will go through a
8 few more key findings in a moment.
9 And as we look at Ms. Chafin's analysis, I
10 would also ask you to keep in mind the following
11 statistics, which come directly from her hearing
12 testimony and provide an important foundation for
13 her opinion.
14 First, as I mentioned at the outset,
15 Connecticut is ranked 48th nationally in 2019 in
16 terms of IRF conversion rates with only 1.64
17 percent of Medicare fee-for-service patients
18 discharged to IRF compared to the U.S. average of
19 4.22 percent. That gap then increased in 2020 as
20 the national average grew to 4.55 percent and
21 Connecticut's rate remained virtually flat.
22 Looking at another metric, Connecticut
23 ranked 43rd nationally in 2019 in terms of IRF
24 discharges per 1,000 Medicare fee-for-service
25 patients with just five discharges. That's 45

1 percent of the national average, but then we
2 ranked first in the nation in terms of discharges
3 from stamps(sic) at 92 or 148.4 percent of the
4 national average, and home health discharges were
5 also above the national average at 128.2 percent,
6 and notably, while there's a significant
7 disparity between Connecticut residents and the
8 nation's use of post-acute care services, that
9 same disparity, as you can see from this chart,
10 does not exist for general acute-care services.
11 It follows, then, that many patients in
12 Connecticut are not getting the highest and most
13 intensive level of rehab care needed to give them
14 the best chance of a complete recovery. This is
15 why it's also completely illogical to use
16 historical utilization as a measure of current
17 need when utilization of a service is amongst the
18 lowest with in the nation. This will inevitably
19 lead to an underestimate of need and the false
20 presumption that there are enough IRF beds when,
21 in fact, many people who would benefit from this
22 level of service are not receiving the care they
23 need.
24 The need for IRF services cannot ever be
25 accurately assessed unless you're open to the

1 possibility of looking at things differently, of
2 challenging the status quo, so to speak, and
3 again, without getting into a level of detail
4 that can be found in the written record and Ms.
5 Chafin's testimony, she arrived at the number of
6 beds needed in western Connecticut by analyzing
7 publicly-available data. This is all
8 pubicly-available and was verified by the
9 analysts after the hearing process, and it
10 yielded a total of 62 IRF beds at 80 percent
11 occupancy. So, even considering the 14 beds that
12 already operate at Danbury Hospital, there's
13 still a need for an additional 48 IRF beds in the
14 service area.
15 This methodology that Ms. Chafin used was
16 not a national methodology that failed to
17 consider relevant information about Connecticut
18 residents and their need for IRF services, which
19 is what the hearing officer says it was. To the
20 contrary, it considered the size and aging of the
21 Connecticut service area population, as well as
22 their use of general acute and post-acute care
23 services. It's also important to note, as I just
24 said, that all of these findings are based on
25 publicly-available data and they're entirely

1 consistent with the experience of area physicians
2 and community agencies, which we understand from
3 the research done at the outset.
4 The needs assessment is clear, it's concise,
5 and it's supported by evidence, but still, the
6 hearing officer incorrectly concluded that the
7 methodology I just described to you had to be
8 approved in order to be considered by OHS. There
9 is no such requirement in law or OHS practice,
10 and even if there was, the methodology being
11 advanced is one that has been approved by virtue
12 of this agency's approval of many other CON
13 applications using similar methods of analysis.
14 Examples are laid out, you know, in detail in our
15 brief, but they include national and regional
16 behavioral health providers who established
17 clear, public need for services and facilities in
18 Connecticut in the exact same way that we did.
19 Now, we understand that the Applicant bears
20 the burden of proving that there's a clear public
21 need for its proposal, but there are a number of
22 acceptable ways to do this. Applicants will
23 often use the state-wide healthcare facilities
24 and services plans guidelines to assist in
25 evaluating the need for proposal, but these

1 guidelines are not approved methodologies,
2 either.
3 The plan, by its design, is an advisory
4 document and the guidelines do not have the force
5 of law unless and until they're formally adopted
6 as regulations, and even if the planned
7 guidelines were legally binding, none of those
8 guidelines addressed bed-need methodologies for
9 freestanding inpatient rehab facilities, which
10 opens up the Applicant to determine need in any
11 way that they deem appropriate, which is what
12 we've done using publicly-available evidence.
13 OHS has the flexibility to apply a
14 population-based need methodology based on
15 national benchmarks to determine clear public
16 need for a service in Connecticut, and you've
17 shown a willingness to analyze CONs in this
18 matter before. So why is OHS now saying that
19 this type of methodology isn't approved in the
20 context of the Applicant's CON request?
21 Now, rules need to be applied in a fair and
22 consistent manner, and its an arbitrary and
23 capricious and an unwarranted exercise of the
24 agency's discretion to consider Encompass'
25 request under different standards in

1 similarly-situated providers.
2 And finally, I would like to touch on the
3 procedural errors and irregularities in this
4 matter, which I alluded to in my introduction.
5 First, the agency's decision to redesignate a
6 hearing officer on two separate occasions. Once
7 was between the public hearing and the closure of
8 the record, and then again just 20 days before
9 the proposed final decision was issued. The
10 third redesignated hearing officer, who was just
11 weeks into her tenure with the agency when she
12 issued the proposed decision, did not observe the
13 hearing in-person in realtime, did not have an
14 opportunity to assess witness credibility, to ask
15 clarifying questions, to request additional
16 evidence, and to -- and to use that information
17 to issue a proposed decision that accurately and
18 completely reflects the law and information in
19 the administrative record. So the result is a
20 decision that's just replete with errors and
21 omissions, both legal and factual, it's based on
22 selective evidence, and it takes positions on
23 matters of policy that are contrary to the manner
24 in which this agency has decided many other
25 applications.

1 Also, as you can see from the timeline up
2 there, this has been a two-and-a-half year
3 process. This certificate of need was filed on
4 August 4th, 2020 and it has been plagued by
5 repeated delays in scheduling and holding a
6 public hearing and closing the public hearing and
7 issuing a decision and even in trying to get this
8 brief oral argument scheduled.
9 As you know, our hope, you know, from a
10 letter that was submitted several weeks ago
11 asking to move this argument forward, this has
12 resulted in substantial prejudice to the
13 Applicant, including $200,000 spent on options to
14 secure real property, which it now risks losing,
15 and this is the kind of unnecessary spending
16 that's contrary to the goals and objectives of
17 this agency around healthcare cost containment
18 and it's exactly what the CON laws are intended
19 prevent.
20 So, together, these procedural errors have
21 denied the Applicant the right to a prompt and
22 fair hearing, to a timely decision based on the
23 administrative record, and there are due process
24 violations that form grounds for an
25 administrative appeal.

1 Now, in making her recommendation that the
2 CON be denied, the hearing officer ignored the
3 better evidence in the showing that all relevant
4 decision criteria have been met and that approval
5 of the application is in the best interest to
6 patients.
7 As set forth in our briefs and exceptions,
8 the reliable, probative, and substantial evidence
9 in the administrative record unequivocally
10 supports approval of the proposal and does not
11 support the hearing officer's recommended denial.
12 Therefore, approval is the only reasonable path
13 for this agency to take.
14 In closing, please, ask yourself how you
15 would feel if a family member or a loved one
16 suffered a stroke or was paralyzed in an accident
17 and was unable to get the transformative care
18 that Encompass proposes to offer to the residents
19 of this state. Everyone deserves access to the
20 level of care needed to ensure that they have the
21 best possible chance of making a complete
22 recovery. That's why Encompass wants to build
23 this hospital and that's why you, Dr. Gifford,
24 should approve it.
25 I thank you for your time today and we're

1 here to answer my questions that you have.
2 DR. GIFFORD: Thank you, thank you very much
3 for that presentation.
4 If you wouldn't mind, I -- we would ideally
5 be in the same room, Attorney Casagrande and
6 myself, but I do have a question for him. So I'm
7 just going to ask that we both go on mute and
8 turn off our cameras so we can confer briefly
9 before we conclude.
10 ATTORNEY FUSCO: Absolutely, that's fine,
11 thank you.
12
13 (Recess.)
14
15 DR. GIFFORD: Thank you for indulging us.
16 So I do have one just clarifying question,
17 if I could, and that is on your Slide 10, which
18 is your discussion of the bed -- I believe the
19 bed need calculation.
20 ATTORNEY FUSCO: Yes, correct.
21 DR. GIFFORD: And that's Line 4, which is
22 the target or discharge rate for 1,000
23 beneficiaries.
24 ATTORNEY FUSCO: Mm-hm.
25 DR. GIFFORD: You -- you stated that this --

1 the information here was based on
2 pubically-available information, and I believe
3 that you were asked during the hearing about the
4 origin of this No. 13 as to target discharge
5 rate. Could you just reanswer the question,
6 please, as to where this No. 13 is derived from?
7 ATTORNEY FUSCO: And are you okay with
8 having Marty Chafin answer that? She's the one
9 that put together the needs assessment. So I
10 would ask if she can do that?
11 Marty, are you there?
12 MS. CHAFIN: Yes, I'm here. The -- the 13
13 is from the same database in terms of the CMS
14 information that provides every state's discharge
15 rate per 1,000 Medicare fee-for-service
16 beneficiaries, and so that 13 is the 75th
17 percentile of a ranking of the 50 states versus
18 Puerto Rico.
19 DR. GIFFORD: Okay, that answers my
20 question. I had not picked up on the 75th
21 percentile piece, so thank you very much.
22 And with that, I want to thank you very much
23 for your presentation and for attending today,
24 and as you know, I will issue a final decision on
25 this matter in accordance with Chapter 54 of the

1 General Statutes.

2 Thank you very much, again, for your

3 patience in the scheduling this afternoon and for

4 your -- for the information that you conveyed.

5 ATTORNEY FUSCO: Thank you for your time.

6 We appreciate it.

7 DR. GIFFORD: You're welcome.

8 ATTORNEY FUSCO: Have a good day. Take

9 care.

10 DR. GIFFORD: Bye.

11

12 (Adjourned.)

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CERTIFICATE

I hereby certify that the foregoing 32 pages are a complete and accurate transcription to the best of my ability of the Oral Arguments in the matter of Encompass Health Rehabilitation Hospital of Danbury, LLC.

Melissa Zamfir, Transcriber

Date: March 6th, 2023