

STATE OF CONNECTICUT

OFFICE OF HEALTH STRATEGY

DOCKET NUMBER 22-32612-CON

IN RE: A HEARING REGARDING THE TERMINATION OF
INPATIENT LABOR & DELIVERY SERVICES BY JOHNSON
MEMORIAL HOSPITAL

****VIA ZOOM****

Oral Argument on Proposed Final Decision held
via Zoom, before the office of Health Strategy,
on Friday, March 8, 2024, beginning at 2 p.m.

H e l d B e f o r e:

DEIDRE SPELLISCY GIFFORD, MD, MPH,
Executive Director, Office of Health Strategy,
Senior Advisor to the Governor for Health and
Human Services

ANTONY A. CASAGRANDE, ESQ., OHS General Counsel

Representing Johnson Memorial Hospital:

HINCKLEY, ALLEN & SNYDER LLP
20 Church Street
Hartford, Connecticut 06013
Phone: 860.331.2768 Fax: 860.278.3802

BY: DAVID A. DeBASSIO, ESQ.
ddebassio@hinckleyallen.com
ANNA R. GUREVICH, ESQ.

Also present: Dr. Robert Roose, Johnson Memorial
Hospital; Claudio Capone, Trinity Health of New
England; and Alicia J. Novi, Esq., DPH

Reporter: Lisa L. Warner, CSR #061

1 (Whereupon, the proceedings commenced at 2 p.m.)

2 EXECUTIVE DIRECTOR GIFFORD: So we'll
3 get started. I have a preliminary script that I
4 will walk through, Mr. DeBassio, and then I will
5 invite you to formally introduce yourself and your
6 team.

7 So good afternoon. This hearing is
8 being convened for the limited purpose of hearing
9 oral argument in Docket Number 22-32612. The
10 applicant in this matter, Johnson Memorial
11 Hospital, seeks to terminate labor and delivery
12 services.

13 On January 16, 2024, the hearing
14 officer in this matter issued a proposed final
15 decision denying the application.

16 On February 2, 2024, the applicant
17 filed a brief in opposition and written exceptions
18 to the proposed final decision and requested an
19 opportunity to present oral argument.

20 On February 7, 2024, the Office of
21 Health Strategy issued a notice of oral argument
22 for today.

23 This hearing before the Office of
24 Health Strategy is being held on March 8, 2024.
25 My name is Deidre Gifford, and I'm the executive

1 director of the Office of Health Strategy, and I
2 will be issuing the final decision in this matter.
3 Also present on behalf of the agency is OHS
4 General Counsel Antony Casagrande.

5 OHS is holding this public hearing
6 remotely by means of electronic equipment. Any
7 person who participates orally in an electronic
8 meeting shall make a good faith effort to state
9 his or her name and title at the outset of each
10 occasion as such person participates orally during
11 an interrupted dialogue or a series of questions
12 and answers. We ask that all members of the
13 public mute the device that they are using to
14 access the hearing and silence any additional
15 devices that are around them.

16 This hearing concerns only the
17 applicant's oral argument regarding its brief and
18 exceptions to the proposed final decision, and it
19 will be conducted under the provisions of Chapter
20 54 of the Connecticut General Statutes.

21 The Certificate of Need process is a
22 regulatory process, and, as such, the highest
23 level of respect will be accorded to the applicant
24 and to our staff. Our priority is the integrity
25 and transparency of this process. Accordingly,

1 decorum must be maintained by all present during
2 these proceedings.

3 This hearing is being transcribed and
4 recorded, and the video will also be made
5 available on the OHS website and its YouTube
6 account. All documents related to this hearing
7 that have been or will be submitted to OHS are
8 available for review through our electronic
9 certificate of need portal which is accessible on
10 the OHS CON webpage.

11 Although this hearing is open to the
12 public, only the applicant and its representatives
13 and OHS and its representatives will be allowed to
14 make comments. Accordingly, the chat feature in
15 this Zoom call has been disabled.

16 As this hearing is being held
17 virtually, we ask that anyone speaking, to the
18 extent possible, enable the use of video cameras
19 when speaking during the proceedings. In
20 addition, anyone who is not speaking shall mute
21 their electronic devices, including telephones,
22 televisions and other devices not being used to
23 access the hearing.

24 Lastly, as Zoom has notified you, I
25 wish to point out that by appearing on camera in

1 this virtual hearing, you are consenting to being
2 filmed. If you wish to revoke your consent,
3 please do so at this time. However, please be
4 advised that in such event the hearing will be
5 continued to a later date.

6 We will now proceed. Counsel for the
7 applicant, can you please identify yourself for
8 the record.

9 ATTORNEY DeBASSIO: Thank you, Madam
10 Director. My name is David DeBassio. I'm an
11 attorney at Hinckley, Allen, and I'm counsel for
12 Johnson Memorial Hospital. With me here today are
13 Dr. Robert Roose, the chief administrative officer
14 of Johnson Memorial Hospital; Claudio Capone, the
15 regional vice president of strategic planning and
16 business development of Trinity Health of New
17 England; and my colleague, Anna Gurevich, of
18 Hinckley Allen as well.

19 EXECUTIVE DIRECTOR GIFFORD: Thank you.
20 Are there any other housekeeping matters or
21 procedural issues that we need to address before
22 you start, Mr. DeBassio?

23 ATTORNEY DeBASSIO: I don't believe so,
24 Madam Director. We have not moved to supplement
25 the record, and we have tried to make sure that

1 our brief and our argument rely only on the
2 submissions that have already been made to the
3 hearing officer for the proposed final decision.
4 And if I mention something outside the record,
5 it's inadvertent, and I probably misspoke. It is
6 not an attempt to introduce new evidence in this
7 hearing.

8 EXECUTIVE DIRECTOR GIFFORD:

9 Understood. Thank you very much.

10 Mr. Casagrande, anything from you
11 before we start?

12 ATTORNEY CASAGRANDE: No. I think
13 Attorney DeBassio's representations suffice.
14 Thank you.

15 EXECUTIVE DIRECTOR GIFFORD: Thank you.
16 All right. You may begin whenever you're ready.
17 Thank you.

18 ATTORNEY DeBASSIO: Thank you,
19 Director. At the outset, I would like to first
20 just start by thanking Hearing Officer Novi and
21 her entire staff that conducted the underlying
22 hearings that led to the proposed final decision.
23 It was a pleasure to work with them. They were
24 professional, they were courteous. And while we
25 disagree with some of the findings that were in

1 the proposed final decision, we have nothing but
2 the utmost respect for her and her team and do
3 appreciate the way we were treated by all of them.

4 So to begin, over the last few years
5 Johnson Memorial Hospital has experienced a
6 declining number of births, as increasingly a
7 significant number of expectant mothers in the
8 Johnson Memorial Hospital service area have chosen
9 to deliver at other hospitals. In addition, the
10 number of overall births in the community has been
11 in consistent decline year over year as a result
12 of a graying demographic. Low patient volume
13 creates an environment which is difficult for
14 providers to maintain clinical skill sets, making
15 it harder to recruit and retain qualified and
16 trained nurses and other staff, making the safe
17 operation of labor and delivery services an
18 ongoing challenge.

19 Labor and delivery volume at Johnson
20 Memorial has declined from 302 deliveries in 2008
21 to an average of 172 deliveries annually between
22 2017 and 2019. Even with the lower volume, any
23 hospital is required to maintain certain levels of
24 clinical staffing and resources to safely operate
25 an inpatient labor and delivery unit. This

1 includes having 24/7 physician and 24/7 nursing
2 coverage. The services provided at the higher
3 cost facilities such as Trinity Health reflects
4 specialized resources for higher acuity and more
5 complex patients. Those services were never
6 available at Johnson Memorial Hospital.

7 Dr. Roose testified in the underlying
8 hearing that the service provided at Saint
9 Francis -- excuse me, I quote, "The service
10 provided at Saint Francis that could not be
11 provided at Johnson because a mother needed a
12 higher level of care or a baby needed a neonatal
13 intensive care unit would considerably drive up
14 the overall costs for labor and delivery services
15 at Saint Francis which wouldn't be a comparison to
16 Johnson because those mothers would always be
17 delivering at Saint Francis and not at Johnson."

18 As Johnson Memorial stated previously,
19 given the complexity of cases Saint Francis is
20 equipped to deal with, Saint Francis regularly
21 deals with a larger cohort of patients that need
22 specialized care, for example, the neonatal care
23 Dr. Roose referenced or multi-birth deliveries
24 driving their average cost numbers up
25 significantly higher than those at Johnson

1 Memorial or Mercy Medical. These numbers include
2 the costs of treating both the mother and the
3 infant in acute cases for services which are not
4 and have never been offered by Johnson Memorial
5 Hospital. Patients with higher acuity cases
6 choose to deliver, and, if needed, are transferred
7 by Johnson Memorial Hospital to deliver at
8 facilities with higher acuity resources. A higher
9 average cost for these facilities reflect higher
10 acuity and increased -- and the increased
11 complexity of these cases. OHS in the proposed
12 decision agreed that when Johnson Memorial had a
13 labor and delivery unit, it did not deliver high
14 risk pregnancies and did not have a neonatal
15 intensive care unit.

16 This is important to the determination
17 today that OHS is tasked with because the
18 proportion of higher risk pregnancies is also
19 accelerating nationwide and is a top national
20 trend in addition to accelerating in the proposed
21 service area. Johnson Memorial Hospital has
22 demonstrated that this fact is reflected locally
23 in our primary service area with more than 80
24 percent of the deliveries occurring from Johnson
25 Memorial's primary service area taking place at

1 other hospitals with better resources to serve
2 higher acuity cases, a fact which OHS has
3 acknowledged in its proposed final decision.

4 There is additionally a recognized
5 public need for post-delivery care -- excuse me,
6 for pre and post-delivery care. This coincides
7 with what Johnson Memorial has been transitioning
8 to do, and with the stated mission of OHS, which
9 is to implement comprehensive data driven
10 strategies to promote equal access to high quality
11 health care, control costs, and ensure better
12 health for the people of Connecticut. OHS's
13 planning and regulatory responsibilities are
14 intended to increase accessibility, continuity and
15 quality of health services, prevent unnecessary
16 duplication of health resources, and provide
17 financial stability and cost containment of health
18 care services.

19 And OHS has correctly determined in
20 their proposed final decision that Johnson
21 Memorial's proposal to close labor and delivery
22 here aligns with the overall state's plan and goal
23 of quality services. Johnson Memorial's
24 established closure aligns with that plan and as
25 set forth in Section E of the proposed decision.

1 Johnson Memorial respectfully disagrees
2 with OHS's finding on page 15 of the proposed
3 decision that its expressed greater need in the
4 primary service area for more wraparound services
5 like pre and post-natal delivery should not be
6 considered in the application's determination.

7 One of OHS's burdens in evaluating
8 whether any CON application should be granted or
9 denied is considering whether the applicant has
10 satisfactorily demonstrated how the proposal will
11 improve quality, accessibility and cost
12 effectiveness of the delivery of health care in
13 the region. As the Hearing Officer concedes in
14 the proposed final decision, these wraparound
15 services that we're referencing are useful to the
16 community and should be a factor in OHS's
17 decision-making progress. These wraparound
18 services meet all of the touchstones we just
19 discussed. They improve quality, access and the
20 cost effectiveness of health care delivery in the
21 primary service area in a way that maintaining
22 labor and delivery services in Johnson Memorial
23 Hospital would not.

24 Dr. Roose testified that closing labor
25 and delivery, a service which has experienced

1 chronic issues with staffing, would improve access
2 to care both pre and postnatal and would be cost
3 neutral to the vast majority of patients in the
4 primary service area. To quote Dr. Roose, The
5 enhancements of the prenatal and postnatal
6 delivery services will be what really increases
7 health outcomes and health equity in the region.
8 Studies show that the value of having access to a
9 well organized high quality array of resources and
10 programs is how we decrease health disparities.
11 That is exactly what Johnson Memorial's proposal
12 would do in terms of closing labor and delivery
13 which is an underutilized service at the hospital
14 and shifting and transferring those resources to
15 these pre and postnatal services that are detailed
16 in much greater depth in our original and our
17 supplementary brief.

18 And I want to stress, and I think the
19 record supports this, that this is not a cost
20 cutting measure that Johnson Memorial has taken.
21 It is not a measure to lay off staff. All of the
22 people that have been trained, and the record
23 reflects this in our appearances before OHS, have
24 either accepted positions at Trinity Health or at
25 other hospitals and were offered positions at

1 Johnson Memorial but chose not to come there.

2 What we're talking about in switching
3 to these wraparound services is giving nurses and
4 doctors an opportunity to be fully utilized, to
5 touch patient lives both pre and post-delivery in
6 a way that has a positive impact on these high
7 acuity and, quite frankly, on normal births.

8 Dr. Roose has testified that the
9 overall cost of the state health care system is
10 anticipated to improve with the closure of labor
11 and delivery at Johnson Memorial since there are
12 concurrent initiatives, as I just discussed, in
13 place to transform Johnson Memorial Hospital to
14 address the growing needs in that service area.
15 By addressing the services with higher demand
16 sooner, one of the overall goals and one of the
17 overall results is to care for and work with
18 patients to maintain and lower the acuity of their
19 health care needs and lead to better results.
20 This community care is anticipated to ultimately
21 lower overall costs, the overall cost of health
22 care for patients and the health care system in
23 the years to come.

24 It is uncontested that there is an
25 aging population in the primary service area, a

1 trend of higher risk births and a year-to-year
2 over decline in birth rates. The population in
3 the primary service area are better suited to the
4 wraparound services that we've discussed than an
5 underutilized labor and delivery unit that cannot
6 provide the specialized resources such as a
7 neonatal intensive care unit that patients would
8 have available at higher volume hospitals.

9 Dr. Roose has consistently testified
10 and given supporting evidence that this proposal
11 will save patients' costs and improve the quality
12 and access to care. And he's further testified
13 that looking simply at the charts that we've seen
14 relied on in the proposed final decision and
15 comparing the costs of Johnson Memorial Hospital
16 to these higher acuity hospitals in a vacuum is
17 inappropriate. Those other hospital costs cited
18 all provide treatment for high risk births, higher
19 acuity outcomes, neonatal intensive care units.
20 And there is no dispute that Johnson Memorial has
21 not and has never dealt with those types of
22 patients, therefore costs at those facilities must
23 be higher which is what's reflected in the
24 documents.

25 For the last several years, due to the

1 low patient volume in labor and delivery at
2 Johnson Memorial, Johnson Memorial has been unable
3 to recruit and retain a nursing staff in
4 sufficient numbers to reach the target full-time
5 employees for adequate staffing and coverage. The
6 inability to achieve the target full-time
7 employees to safely provide 24/7 coverage caused
8 Johnson Memorial to suspend its labor and delivery
9 services while they were actively trying to
10 recruit additional nursing staff.

11 While Johnson Memorial was unable to
12 reach these targeted levels of staffing despite
13 its substantial recruiting efforts and the
14 cooperation of Saint Francis and Trinity Health in
15 terms of onboarding and training these nurses, as
16 a result, the public would not be well served.
17 And should OHS find Johnson Memorial must continue
18 to offer these labor and delivery services as the
19 need in the community for the service is
20 declining, coupled with the challenges of
21 achieving staffing levels, we would reach a
22 situation where the costs are unsustainable given
23 the utilization. OHS acknowledged Johnson
24 Memorial's efforts to recruit and train providers
25 in its proposed decision, and we agree with that.

1 Johnson Memorial is simultaneously in
2 the process of expanding its locations in Enfield
3 to include community access to services such as
4 OBGYN and women's health specialties, primary
5 care, imaging and laboratory services. The
6 infusion of these additional services into the
7 primary service area supports the improvement of
8 health equity and will continue to be the focus of
9 the Trinity Health of New England system. Instead
10 of dedicating extra resources to maintain an
11 inpatient L&D unit that historically has been
12 underutilized with one delivery, on average, every
13 two days, despite the need for 24/7 staffing in
14 order to reopen the service leading to an
15 underutilized nursing staff, the community
16 resources we're talking about with these
17 wraparound services will create full-time
18 utilization of staff in the community providing
19 critical health care services accessible to these
20 patients on a daily basis in the community.

21 Finding Johnson Memorial can
22 discontinue a service due to the low utilization
23 of the service and Johnson Memorial's inability to
24 retain staff would better serve the public need
25 for safe and high quality labor and delivery

1 services as the proposed final decision has found.

2 I'm happy to answer any questions or
3 provide any further information if the Hearing
4 Officer requires.

5 EXECUTIVE DIRECTOR GIFFORD: Thank you
6 very much, Mr. DeBassio. I don't have any further
7 questions. I've reviewed your brief and the
8 record, and I have the information that I need to
9 issue a final decision.

10 Tony, do you have any additional
11 questions for the applicant? You're muted.

12 ATTORNEY DeBASSIO: We've all done it.
13 You're still muted, Attorney Casagrande.

14 EXECUTIVE DIRECTOR GIFFORD: I think he
15 said no he has no additional questions.

16 ATTORNEY DeBASSIO: Thank you, Madam
17 Director.

18 ATTORNEY CASAGRANDE: Can you hear me
19 now?

20 EXECUTIVE DIRECTOR GIFFORD: Yes.

21 ATTORNEY CASAGRANDE: I apologize, I
22 couldn't find the button. I'm usually using
23 Teams. But I don't have any questions. Thank
24 you.

25 EXECUTIVE DIRECTOR GIFFORD: Thank you.

1 ATTORNEY DeBASSIO: Thank you, Madam
2 Director. And I should add just in closing, which
3 is not part of our formal argument, but Johnson
4 Memorial is always available to discuss, you know,
5 alternatives with OHS, should they desire to. It
6 was never our intention to get into a litigious
7 position with OHS because we see us as cooperating
8 in terms of providing the best health care that
9 the citizens of the State of Connecticut deserve.
10 So to that end, if there are any other further
11 discussions that need to be had in the future, we
12 would certainly be available for that.

13 EXECUTIVE DIRECTOR GIFFORD: Okay, duly
14 noted. Thank you very much, Mr. DeBassio. Thank
15 you, Ms. Gurevich, Dr. Roose, Mr. Capone and
16 everyone else. Thanks to the OHS team. With
17 that, thank you very much for attending today. I
18 will be issuing the final decision in accordance
19 with Chapter 54 of the General Statutes. Have a
20 good afternoon, everyone. Thank you.

21 ATTORNEY DeBASSIO: Thank you, Madam
22 Director.

23 (Whereupon, the above proceedings
24 concluded at 2:20 p.m.)
25

1 CERTIFICATE

2
3 I hereby certify that the foregoing 18 pages
4 are a complete and accurate computer-aided
5 transcription of my original stenotype notes taken
6 of the Oral Argument on the Proposed Final
7 Decision held before the Office of Health Strategy
8 in Re: DOCKET NUMBER 22-32612-CON, A HEARING
9 REGARDING THE TERMINATION OF INPATIENT LABOR &
10 DELIVERY SERVICES BY JOHNSON MEMORIAL HOSPITAL,
11 which was held remotely via Zoom before DEIDRE S.
12 GIFFORD, MD, MPH, Executive Director, on March 8,
13 2024.

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19 -----
20 Lisa L. Warner, CSR 061
21 Notary Public
22 My commission expires:
23 May 31, 2028
24
25