



Office of Health Care Access Certificate of Need Application

Agreed Settlement

Applicant: Norwalk Hospital

Docket Number: 04-30334-CON

Project Title: Closure of the Westport Clinic in Westport

Statutory Reference: Section 19a-638 of the Connecticut General Statutes

Filing Date: April 7, 2005

Decision Date: June 29, 2005

Default Date: July 5, 2005

Staff Assigned: Paolo Fiducia

Project Description: Norwalk Hospital (“Hospital”) terminated health care services offered at the Westport Clinic in Westport, Connecticut with no associated capital expenditure.

Nature of Proceedings: On November 29, 2004, the Office of Health Care Access (“OHCA”) received a Certificate of Need (“CON”) application from Norwalk Hospital that terminated health care services offered at the Westport Clinic in Westport with no associated capital expenditure. The Hospital is a health care facility or institution as defined by Section 19a-630 of the Connecticut General Statutes (“C.G.S.”).

A notice to the public concerning OHCA’s receipt of the Hospital’s Letter of Intent (LOI) was published on November 18, 2004 in *The Hour* (Norwalk). OHCA received no responses from the public concerning the Hospital’s proposal.

OHCA’s authority to review and approve, modify or deny the CON application is established by Section 19a-638, C.G.S. The provisions of this section as well as the principles and guidelines set forth in Section 19a-637, C.G.S., were fully considered by OHCA in its review.

Findings of Fact

Clear Public Need

Impact of the Proposal on the Hospital's Current Utilization Statistics Proposal's Contribution to the Quality of Health Care Delivery in the Region Proposal's Contribution to the Accessibility of Health Care Delivery in the Region

1. Norwalk Hospital ("Hospital" or "NH") is an acute care general hospital located at 34 Maple Street in Norwalk, Connecticut. *(April 7, 2005 CON Application, page 1)*
2. Nursing and Home Care, Inc., through its subsidiary, The Family Center Services, Inc. ("The Family Center"), had executed a services agreement with the Hospital to serve as the behavioral health program provider at 1690 Post Road in Westport. Under the direction of the Hospital's Department of Psychiatry, individual, family and group counseling and medication management services were provided at The Family Center. *(April 7, 2005 CON Application, page 3)*
3. In 1999, The Family Center relocated to 319 Post Road East in Westport. Nursing and Home Care, Inc. subsequently encountered fiscal difficulties and could no longer provide community support and educational programs at this location. *(April 7, 2005 CON Application, page 3)*
4. In 2001, the Hospital assumed the lease for the 319 Post Road East location and re-named the site "The Westport Clinic" to be operated under the Norwalk Hospital license. This site is listed as a satellite location of the Hospital on the Hospital's General Hospital license. *(April 7, 2005 CON Application, page 3)*
5. The Westport Clinic provided outpatient mental health and substance abuse counseling services utilizing individual, family and group therapy. *(April 7, 2005 CON Application, page 4)*
6. The services at The Westport Clinic were billed for as Norwalk Hospital services and the utilization and associated revenues and expenses were expensed to the Norwalk Hospital books and records. *(April 7, 2005 CON Application, page 3)*
7. In 2004, the services provided at The Westport Clinic site were relocated to the Norwalk Hospital campus due to under performing clinical workload volumes. *(April 7, 2005 CON Application, page 4)*
8. On June 24, 2003, The Office of Health Care Access ("OHCA") issued an Advisory regarding terminations, closures and decreases in bed capacity at and by various psychiatric and/or mental health programs operated by community based providers and hospitals subsequent to such actions being undertaken. It stated that the statute specifically requires notification to OHCA prior to such undertakings. The Advisory reminded and strongly advised the above providers that notification of planned terminations, closures and decreases in beds, is required from the provider, prior to any planned actions or undertakings. *(June 24, 2003 Advisory regarding changes to psychiatric and substance abuse services in Connecticut.)*

9. Section 19a-638(a)(3) within Chapter 368z of the Connecticut General Statutes states the following:

“Each health care facility or institution or state health care facility or institution which intends to terminate a health services offered by such facility or institution or decrease substantially its total bed capacity, shall submit to the office, prior to the proposed date of such termination or decrease, a request to undertake such termination or decrease.”

. *(June 24, 2003 Advisory regarding changes to psychiatric and substance abuse services in Connecticut.)*

10. The Hospital violated and delayed the CON process as follows:

- July 9, 2004, OHCA sent a letter to Norwalk Hospital initiating a Certificate of Need (“CON”) Determination process under Docket Number 04-30334-DTR to determine whether Norwalk Hospital terminated a health care service offered in Westport. OHCA requested information regarding the closure of the Westport Clinic in Westport.
- July 30, 2004, OHCA received the Hospital’s response to OHCA’s CON Determination inquiry. The Hospital stated that as of July 6, 2004, it had terminated services at the Westport Clinic in Westport. OHCA was not notified prior to the closure of the Westport Clinic.
- August 3, 2004, OHCA sent a letter to the Hospital, after reviewing responses received on July 30, 2004, determining that Certificate of Need approval is required pursuant to Section 19a-638 of the Connecticut General Statutes, in order for Norwalk Hospital to terminate the operation of the Westport Clinic.
- November 29, 2004, OHCA received the CON application of Norwalk Hospital for the closure of the Westport Clinic. The application was deficient in many areas and additional information was required.
- December 10, 2004, OHCA sent first completeness letter requiring additional information.
- March 8, 2005, 3 months later, OHCA received the Hospital’s responses to the first completeness letter. Responses did not address all concerns, therefore a second completeness letter was required.
- March 22, 2005, OHCA sent second completeness letter.
- April 7, 2005 OHCA received the Hospital’s responses to the second completeness letter and the application was deemed complete.

11. The Hospital states that in July of 2004, prior to the closure of the Westport Clinic there were 119 patients served at the Westport location. Of those patients that required continued treatment:

- 102 patients elected to go to Norwalk Hospital,
- 16 were discharged from care, and
- 1 opted to be referred to the The New Learning Center.

(April 7, 2005 Responses to Completeness Questions, page 7)

12. The Hospital based the need for the termination of services at the Westport Clinic on the following:

- Low volume
- Maintain accessibility
- Continuity of care
- Existing providers offer similar services

(April 7, 2005 Responses to Completeness Questions)

13. The Hospital states that the majority of patients served at the Westport Clinic resided in the City of Norwalk as the associated patient base represents 54 percent of all patient activity. The patient base associated with residents of Westport represents 6 percent of total patient activity. The other 40 percent represents patients from the following towns: Weston, New Canaan, Redding, Georgetown, Fairfield, Stamford, and Bridgeport. *(April 7, 2005 CON Application, page 4)*

Financial Feasibility and Cost Effectiveness of the Proposal and its Impact on the Applicant's Rates and Financial Condition
Impact of the Proposal on the Interests of Consumers of Health Care Services and Payers for Such Services
Consideration of Other Section 19a-637, C.G.S.
Principles and Guidelines

14. The project has no associated capital expenditure. *(April 7, 2005 CON Application, page 50)*

15. The Hospital will provide these services on the campus and realize cost gains from operations of \$172,000 in FY 2005, \$237,000 in FY 2006 and \$237,000 in FY 2007. *(April 7, 2005 CON Application, page 4)*

16. The project will have a reduction of 3.0 FTEs. *(April 7, 2005 Responses to Completeness Questions, page 50)*

17. There is no State Health Plan in existence at this time. *(April 7, 2005, CON Application, page 2)*

18. The Hospital has adduced evidence that the proposal is consistent with the Hospital's long-range plan. *(April 7, 2005, CON Application, page 3)*

19. The Hospital has improved productivity and contained costs by undertaking energy conservation measures regarding its facilities, group purchasing, reengineering, and the application of technology. *(April 7, 2005, CON Application, page 9)*

20. The proposal will not result in any change to the Hospital's teaching and research responsibilities. *(April 7, 2005, CON Application, page 10)*

21. The Hospital's current patient/physician mix is similar to that of other acute care, tertiary hospitals in the region. The proposal will not result in any change to this mix. *(April 7, 2005, CON Application, page 10)*

22. The Hospital has sufficient technical, financial and managerial competence and expertise to provide efficient and adequate service to the public. (*April 7, 2005, CON Application, pages 6 through 8*)
23. The Hospital's rates are sufficient to cover the proposed capital expenditure and operating costs associated with the proposal. (*April 7, 2005, CON Application, page 38*)

Rationale

The Office of Health Care Access ("OHCA") approaches community and regional need for Certificate of Need ("CON") proposals on a case by case basis. CON applications do not lend themselves to general applicability due to a variety of factors, which may affect any given proposal; e.g. the characteristics of the population to be served, the nature of the existing services, the specific types of services proposed to be offered, the current utilization of services and the financial feasibility of the proposal.

Norwalk Hospital is an acute care general hospital located at 34 Maple Street in Norwalk, Connecticut. Since 2001, Norwalk Hospital operated The Westport Clinic in Westport as a satellite location. The Westport Clinic provided outpatient mental health and substance abuse counseling services utilizing individual, family and group therapy. As of July 6, 2004, the Hospital terminated services at the Westport Clinic in Westport and relocated the services at the Norwalk Hospital campus. The Hospital asserted that the fully staffed program in Westport had under-performing clinical workload volumes that could not support a satellite location in Westport. OHCA was not notified prior to the closure of the Westport Clinic; the termination of authorized health care services occurred without OHCA approval, which is a violation of OHCA's Statutes and Regulations.

The Hospital based the need for the termination of services at the Westport Clinic on the following: low volume, ability to maintain accessibility, continuity of care, and presence of existing providers offering similar services. The Hospital states that in July of 2004, prior to the closure of The Westport Clinic, there were 119 patients being served. Of those patients that required continued treatment, 102 patients elected to go to Norwalk Hospital, 16 were discharged from care, and 1 opted to be referred to the The New Learning Center. The Hospital asserted that the majority of patients served at the Westport Clinic resided in the City of Norwalk as the associated patient base represents 54 percent of all patient activity. The patient base associated with residents of Westport represents 6 percent of total patient activity and the remainder of the patients were from the following towns: Weston, New Canaan, Redding, Georgetown, Fairfield, Stamford, and Bridgeport. OHCA is unable to verify this data and is unable to conclude that accessibility to care was maintained.

The project has no associated capital expenditure. The Hospital will provide these services on the campus and realize cost gains from operations of \$172,000 in FY 2005, \$237,000 in FY 2006 and \$237,000 in FY 2007. The project will have a reduction of 3.0 FTEs due to the closure of the Westport Clinic.

Of greater concern to OHCA is the fact that the Hospital violated state law by terminating services without OHCA authorization. Further the Hospital was not forth coming with

providing required information to OHCA thereby delaying the process of this application. In light of not reviewing the information prior to the closure, it is difficult for OHCA to determine that patient access was not impacted. The Hospital has an obligation to its former and current patients to continue to maintain access to the types of services that have been terminated. The Hospital must guarantee that it will continue to provide access to necessary services such as providing transportation to patients who will need it, delivering care to the uninsured, provide charitable care, and advertise its existing program to the Westport community. With the institution of these and other measures to ensure continued provision of care to this fragile population, OHCA reluctantly agrees to allow Norwalk Hospital to terminate health care services at the Westport Clinic. However, in the future, the Hospital must comply with CON laws or civil penalties may be applied.

Order

NOW, THEREFORE, the Office of Health Care Access (“OHCA”) and Norwalk Hospital (“Hospital”) hereby stipulate and agree to the terms of settlement with respect to the termination of health care services at the Westport Clinic in Westport, with no associated capital expenditure, as follows:

1. The CON to terminate health care services at the Westport Clinic in Westport, with no associated capital expenditure, is hereby approved.
2. The Hospital shall provide transportation to residents of Westport that require outpatient behavioral health care services at the Norwalk Hospital campus for patients without their own means of transportation for a 2 year period commencing on the date of this signed agreed settlement.
3. The Hospital shall provide the residents of Westport with information regarding the availability of outpatient mental health and substance abuse counseling at Norwalk Hospital’s main campus for 2 years, and provide to OHCA such communication plan no later than September 1, 2005. OHCA will approve the communication plan by October 1, 2005.
4. The Hospital shall provide to OHCA a listing of the number of patients utilizing the outpatient behavioral health care services by patient zip code and payor source on a semi-annual basis for two (2) years. The first reporting period is from July 1, 2005 through December 31, 2005 to be reported on January 31, 2006. The second reporting period is from January 1, 2006 through June 30, 2006 to be reported on July 31, 2006.
5. In the future, prior to the termination of any health care services, the Hospital shall comply with all applicable state laws.
6. OHCA and Norwalk Hospital agree that this Agreed Settlement represents a final agreement between OHCA and Norwalk Hospital with respect to this request. The signing of this Agreed Settlement resolves all objections, claims and disputes, which may have been raised by the Applicants with regard to Docket Number 04-30334-CON.
7. This Agreed Settlement is an order of the Office of Health Care Access with all the rights and obligations attendant thereto, and the Office of Health Care Access may enforce this Agreed Settlement pursuant to the provisions of Sections 19a-642 and 19a-653 of the Connecticut General Statutes at Norwalk Hospital’s expense, if the Applicants fail to comply with its terms.

June 28, 2005

Geoffrey F. Cole

Date

Duly Authorized Agent for
Norwalk Hospital

The above Agreed Settlement is hereby accepted and so ordered by the Office of Health Care Access on June 29, 2005.

Date Signed:
June 29, 2005

Signed by:
Cristine A. Vogel
Commissioner
Office of Health Care Access

CAV:pf