

October 26, 2016

The Honorable Raul Pino  
Commissioner of Public Health  
State of Connecticut  
410 Capitol Ave.  
PO Box 340308  
Hartford CT 06134

Dear Commissioner Pino:

The undersigned organizations and individuals write to express both our appreciation and concerns regarding the Agreed Settlement and Orders for Dockets 15-32033 and 15-32032. We are local and statewide community leaders and organizations including physicians, faith leaders, patient advocates, consumer advocacy organizations, nurses and other caregivers, and workers from all sectors of the economy. We are committed to ensuring continued access to quality, affordable locally delivered health care services, fully accessible to all residents within the L+M Hospital catchment area.

We appreciate the seriousness with which OHCA has approached the concerns expressed by the public during the Certificate of Need process. The conditions imposed and agreed to by the Applicants provide a rare level of accountability for the promises made by the Applicants.

In particular, OHCA's establishment of a system to review, oversee and cap the growth of L+M's prices over the next five years is a landmark in the history of Connecticut health care, and builds on the price freeze provisions negotiated in the collective bargaining agreements between L+M and its organized workforce. This unprecedented condition for the sale of a Connecticut hospital reflects the attention OHCA has paid to the concerns expressed by community and legislative leaders, and an understanding of the legislative intent of both PA 14-168 and PA 15-146.

By adopting the Cost and Market Impact Review as the basis for establishing baseline prices and developing a cap, OHCA has placed the L+M acquisition at the center of statewide health policy debate. Two advisory bodies are preparing recommendations for legislation to improve Connecticut's regulatory framework for health care. Capping price growth offers a potential model for controlling costs in an environment in which competition has been diminished by consolidation.

The conditions include many other important community protections, and are reflective of the inclusion of many coalition issues in the order.

- Delaying the full consummation of the NEMG-LMMG merger until promised new primary care physicians are actually in place and treating patients in the L+M service area dramatically increases the likelihood that our region will experience expanded service.
- Requiring preservation of existing collective bargaining agreements and maintenance of benefits and seniority for workers who transfer to the YNHHS payroll provides important protection for workers' rights.

- In the wake of recent service cuts at Windham Memorial Hospital, we are pleased to see an enforceable condition requiring the maintenance of core hospital services.
- The conditions establish robust transparency. We count more than a dozen required public reports or meetings, and the boards of YNHHS and L+M are required to meet with the public every six months for five years. In our view, this should become a standard requirement for the boards of all non-profit health care providers in Connecticut in perpetuity.
- Requiring the Applicants to achieve actual savings from “efficiencies,” document those savings and report on how they are passed on to patients serves not only to create accountability for the L+M acquisition, but creates a policy opportunity for our state to move from industry rhetoric on consolidation to actual accountability for improving health care for patients.
- Above all, having an Independent Monitor with full authority to impose statutory civil penalties and even require additional community benefits to mitigate substantial non-compliance creates the condition for true oversight and enforcement.

Unfortunately, the Order also contains several conditions and passages that lack sufficient clarity or are inadequate to protect the public. In particular, the conditions designed to preserve community access to services require both further clarity and strengthening:

- **Process:** OHCA chose to release the final Agreed Settlements and Orders without opportunity for public comment. Although OHCA staff are experts and the Applicants understand their businesses, the public brings its own expertise. Publishing a Proposed Agreement and Order would have given the public time to weigh in, and saved OHCA time and trouble dealing with some of the concerns below.
- **Community Access to Services:** The list of services that must be preserved is both too narrow and vague. Core services such as inpatient pediatrics, neonatal intensive care and even inpatient general surgery are not explicitly protected. “General medical services” may encompass pediatrics and surgery, and “critical care services” may refer to the NICU, but it is far from clear that they do. The list should be clarified and expanded to encompass other crucial services such as diagnostic imaging as soon as possible.
- **Duration:** Many important conditions lapse after 3 years, including protection of core services. Hartford HealthCare waited five years before stripping Windham of critical care services.
- **Community Health Needs Assessment:** Condition 3 is confusing and contains important undefined terms. It appears OHCA was uncertain of the status of the current CHNA, and the condition refers to “the CHNA” in several places in which it is unclear whether the condition applies to the 2016 or future CHNAs. Equally important, Condition 3 requires YNHHS to

“participate with L+MH and the key community stakeholders and health organizations, in conducting future CHNAs... .” Who are these key stakeholders and health organizations? Finally, it is crucial that this process includes clear enforcement mechanisms and requirements for community input.

- **Funding for Implementation Plan:** Implementation of the 2012 L+M CHNA foundered because the hospital claimed it lacked the resources to mitigate community health needs. The conditions require no increase in funding for the Implementation Plan save that other investment should meet needs. With at least \$76 million unplanned for in the capital commitment, and other resources potentially available from the \$300 million commitment, the Applicants should apply significant resources to innovative community outreach efforts that go beyond the important, but limited value of hiring additional physicians.
- **Decision making:** The Findings of Fact and Law say that the local L+M Board will be the primary decision-making body. As the bylaws state, YNHHS will approve all L+M Board members, may remove any Board member without cause, and the President/CEO serves at the pleasure of Yale, not the L+M Board. This is important because it is not clear who will make the ultimate decisions about the \$300 million commitment, and how that investment will be made accountable to the CHNA. It appears that YNHHS and L+M executives will make that decision in their strategic plan by themselves, which we strongly believe is unacceptable and contradicts the spirit and intent of a **community** needs assessment tool. It is within this spirit that we strongly urge OHCA to require that the community representative designated to serve on the board of directors is chosen by an entity other than YNHHS.
- **Technical Structure of Total Price per Unit of Service:** The total price per unit of service as defined is somewhat vague and if not clarified may not yield an appropriate benchmark. The Order appears to envision a total blended price with all payers pooled together. This offers the potential for inaccuracy, which could lead certain payers and/or individual patients to suffer excessive price increases even as the Applicants are able to meet a blended cap. We are particularly concerned about the potential impact on uninsured and underinsured patients.
- **Transparency:** The Order contains numerous important elements of transparency. However, the Order does not state clearly that the Baseline Cost and Market Impact Review, the Annual Cost and Market Impact Review Updates and the Applicants’ Strategic Plan for continuation and expansion of health care services must be made public. While some underlying documentation for the CMIRs may appropriately be kept confidential, the document itself should be public, with appropriate redactions for genuinely confidential information. Condition 32b requires that the Six Months/Annual Reports include narrative Affirmation of the achievement of the strategic plan components. However, unlike with so many other reports, the Order has neither a clear timeline for production of the Strategic Plan, nor an explicit requirement for publication.
- **Independent Monitor and Consultant:** The Order appears to reference two Independent Monitors. Whether one or two, the Independent Monitor and Independent Consultant for the

CMIRs are crucial to the process. The Independent Monitor will be “selected by YNHHS and L +M and approved by OHCA”. There is no provision for a transparent process and no standards for “independence.” The public must have faith in both positions, and OHCA should ensure public input into the process, perhaps through a transparent Request for Proposals, or a process by which the public can comment on a proposed selection before approval by OHCA. Selection of a less-than-vigorous monitor could lead to deterioration of access to health care, and will certainly erode the public’s confidence in the Certificate of Need process.

We congratulate you and OHCA for taking important steps toward protecting consumers in the midst of dramatic change in our health care system. We would like to meet with you as soon as possible to discuss the concerns listed above, and to urge you to facilitate conversations between hospital officials and a broad range of community leaders, organizations and residents.

Sincerely,



Tom Swan, Executive Director  
Connecticut Citizen Action Group



David Pickus, President  
SEIU Healthcare 1199NE



Ellen Andrews, Executive Director  
Connecticut Health Policy Project



Connie Holt, Secretary-Treasurer  
UNITE HERE Local 217



Ocean Pellet  
United Action Connecticut



Jan Hochadel, President  
AFT Connecticut



Stephen Smith, MD  
National Physicians Alliance Connecticut

cc: Ms. Marna Borgstrom, President and Chief Executive Officer, Yale New Haven Health Services Corporation