



## Office of Health Care Access Certificate of Need Application

### Final Decision

**Applicants:** OptiCare Eye Health Centers, Inc.  
HEALTHSOUTH Surgery Center of Norwalk, L.P.

**Docket Number:** 01-505

**Project Title:** Change of Ownership of Ambulatory Surgery Center

**Statutory Reference:** Sections 19a-638 and 19a-639 of the Connecticut General Statutes

**Filing Date:** July 24, 2001

**Hearing Date:** September 25, 2001

**Presiding Officer:** Raymond J. Gorman, Commissioner

**Decision Date:** October 18, 2001

**Default Date:** October 22, 2001

**Staff Assigned:** Harold M. Oberg and Steven Lazarus

**Project Description:** OptiCare Eye Health Centers, Inc. (“OptiCare”) proposes to transfer ownership and control and all other rights and interests related to its ambulatory surgical center (“the Facility”) located at 40 Cross Street in Norwalk, Connecticut to HEALTHSOUTH Surgery Center of Norwalk, L.P. (“HSCN”). The total capital expenditure associated with the proposed change of ownership and control is \$2,953,022. The Office of Health Care Access (“OHCA”) previously approved the development of the Facility as a licensed general purpose ambulatory surgery center on December 16, 1998 under Docket Number 98-540.

**Nature of Proceedings:** On July 24, 2001, OHCA received the Certificate of Need (“CON”) application of OptiCare Eye Health Centers, Inc. and HEALTHSOUTH

Surgery Center of Norwalk, L.P. (collectively known as “Applicants”) seeking authorization for OptiCare to transfer ownership and control of its uncompleted and unlicensed multi-specialty ambulatory surgical center located at 40 Cross Street in Norwalk to HSCN, at a total capital expenditure of \$2,953,022. The Applicants are health care facilities or institutions as defined by Section 19a-630 of the Connecticut General Statutes (“C.G.S.”).

A public hearing was held on September 25, 2001. The Applicants were notified of the date, time and place of the hearing, and a notice to the public was published prior to the hearing in *The Hour* of Norwalk. Commissioner Raymond J. Gorman served as presiding officer for this case. The public hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Connecticut General Statutes) and Sections 19a-638 and 19a-639, C.G.S.

The Presiding Officer heard testimony from a witness for HSCN and in rendering this decision, considered the entire record of the proceeding. OHCA’s authority to review and approve, modify or deny this proposal is established by Sections 19a-638 and 19a-639, C.G.S. The provisions of these sections 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**

### **Proposal’s Contribution to Accessibility of Health Care Delivery in the Region Impact of the Proposal on the Interests of Consumers of Health Care Services and Payers for Such Services Financial Feasibility of the Proposal and its Impact on the Applicants’ Rates and Financial Condition**

1. The Applicants are proposing the transfer by OptiCare of the ownership and control and all other rights and interests related to its ambulatory surgical center located at 40 Cross Street in Norwalk to HSCN. (*January 18, 2001 Letter of Intent, Project Description*)
2. On December 16, 1998, OptiCare was granted a CON from OHCA under Docket Number 98-540 to convert its Medicare-certified eye surgery center to a general purpose ambulatory surgery center. (*May 17, 2001 CON Application, page 4*)
3. OptiCare is undertaking the proposed transfer of ownership of the Facility because of a decision by OptiCare Health Centers, Inc., the parent corporation of OptiCare Eye Health Centers, Inc., to withdraw from the direct delivery of ambulatory care services and to focus on major lines of business involving managed eye care services for third party payers, as well as eye care systems and services to providers on a national basis. (*January 18, 2001 Letter of Intent, Project Description*)

4. In order to allow for the development and completion of the Facility, the Applicants are proposing that the ownership and operation of the Facility be transferred to HSCN. HSCN is a Tennessee limited partnership of which 100% of the general partnership and limited partnership interests will be owned by HEALTHSOUTH S.C. of Norwalk, Inc. HEALTHSOUTH S.C. of Norwalk, Inc. is a Delaware corporation and a wholly owned subsidiary of HEALTHSOUTH Corporation, which presently owns and operates four multi-specialty ambulatory surgical centers in Connecticut located in Bridgeport, Danbury and Hartford. *(January 18, 2001 Letter of Intent, Project Description and July 24, 2001 Completeness Responses, page 2)*
5. Norwalk Hospital is currently the only health care facility located in Norwalk, which provides multi-specialty ambulatory surgical services to Norwalk residents. *(May 17, 2001 CON Application, page 8)*
6. The change of ownership will result in the completion of the Facility authorized in the CON authorization granted by OHCA to OptiCare under Docket Number 98-540. The proposed change of ownership of the Facility will alleviate the need to refer ambulatory surgery cases outside of Norwalk to Bridgeport, permit patients whose surgical procedures can be reimbursed only if performed in an ambulatory setting to remain in Norwalk, provide for a cost effective alternative facility for the delivery of ambulatory surgical services, and avoid transportation and travel issues inherent in referring surgical cases outside of the local Norwalk delivery system. *(May 17, 2001 CON Application, page 8)*
7. HSCN is requesting authority to subsequently sell up to 49% of its partnership interests in the form of limited partnerships to physicians, their families and trusts established for the benefit of such persons and/or their professional practices. The remaining 51% of HSCN's partnership interests would be retained at all times thereafter, in the form of general partnership interests, by HEALTHSOUTH S.C. of Norwalk, Inc. This ownership structure is identical to the ownership structure approved by OHCA for other HEALTHSOUTH Corporation facilities located in Connecticut. *(January 18, 2001 Letter of Intent, Project Description)*
8. The CON authorization granted by OHCA under Docket Number 98-540 provided that OptiCare would provide ophthalmology, orthopedics, ear nose and throat, plastic surgery and gastroenterology ambulatory surgical services at the Facility. *(May 17, 2001 CON Application, page 4)*
9. In connection with the change in ownership of the Facility, HSCN is requesting that podiatry, pain management, urology and general surgery also be included within the authorized categories of services that can be provided at the Facility. These additional services will insure uniformity in management, administration and contracting so that the scope of services that can be provided at the Facility will be

- consistent with the ambulatory surgery service offerings at other HEALTHSOUTH Corporation facilities located in Connecticut. *(May 17, 2001 CON Application, page 4)*
10. Since the renovations for the Facility have not yet been completed and the Facility is neither licensed nor operational, HSCN has not yet determined which professional and administrative personnel will be assigned to or hired for the Facility. All necessary personnel will be assigned or hired prior to the completion of renovations by HEALTHSOUTH Corporation, which is in the process of identifying qualified personnel from internal and external sources. *(May 17, 2001 CON Application, page 9)*
11. On January 2, 2001 under Docket Number 00-578R, OHCA modified Stipulation #11 of the CON granted to OptiCare under Docket Number 98-540 in order to extend by approximately one year, from December 16, 2000 to December 31, 2001, the date by which the renovations associated with the authorized ambulatory surgery center must be completed and the date by which the Facility must be licensed. *(May 17, 2001 CON Application, page 37)*
12. HSCN's projected surgical case volume for the Facility's authorized services and the additional requested services for the initial three years of operation of the Facility are as follows: *(September 13, 2001 Responses to OHCA's Interrogatories, page 7)*

<b>Type of Surgical Case</b>	<b>FY 2003 Surgical Cases</b>	<b>FY 2004 Surgical Cases</b>	<b>FY 2005 Surgical Cases</b>
<b>Existing Services:</b>			
Plastic Surgery	57	59	62
Ear, Nose and Throat	132	136	141
Gastrointestinal	373	384	396
Ophthalmology	240	247	256
Orthopedics	1,338	1,378	1,412
<b>Additional Services:</b>			
Podiatry	177	183	190
General Surgery	333	342	353
Urology	50	52	54
Pain Management	0	0	0
<b>Total Surgical Cases</b>	<b>2,700</b>	<b>2,781</b>	<b>2,864</b>

13. HSCN indicated that HEALTHSOUTH Corporation does not typically include pain management cases within its financial projections for its ambulatory surgery centers because such cases are relatively simple, are performed in procedure rooms and are subject to low reimbursement rates. *(September 13, 2000 Responses to OHCA's Interrogatories, page 6)*
14. HSCN conducted an informal survey of surgeons and physicians in the Norwalk area relative to the types of surgical procedures that would likely be performed at the Facility. The informal survey confirmed the continuing demand for the ambulatory surgical services to be provided by the Facility located in Norwalk. *(May 17, 2001 CON Application, page 8)*

15. The results of HSCN’s informal survey of surgeons and physicians in the Norwalk area indicated an estimated annual number of ambulatory surgical cases of 4,220 including 400 pain management cases. *(July 24, 2001 Completeness Responses, page 14)*
16. HSCN estimates the following capital expenditures associated with the proposed change of ownership of the Facility: *(July 24, 2001 Completeness Responses, page 9)*

<b>Type of Capital Expenditure</b>	<b>Approved DN: 98-540</b>	<b>Proposed DN: 01-505</b>
Building Renovations	\$1,081,000	\$1,274,100
Movable Equipment	884,764	1,241,415
Architect. & Engineer. Costs	109,000	125,350
Contingency Fund	54,050	62,157
Purchase of Assets	0	250,000
<b>Total Capital Expenditures</b>	<b>\$2,088,814</b>	<b>\$2,953,022</b>

17. The CON proposal’s total capital expenditures of \$2,953,022 will be funded through an equity contribution of \$975,000 from general partner capital contributions and the proceeds from the sale of limited partnership interests. The remaining balance of \$1,978,022 will be funded through a loan from HEALTHSOUTH Corporation to the General Partner, HEALTHSOUTH S.C. of Norwalk, Inc. *(May 17, 2001 CON Application, page 18)*
18. Although the footprint of the Facility will be approximately the same, the total gross square feet (“GSF”) of renovations proposed for the Facility has increased by 2,264 GSF, from 7,996 GSF to 10,260 GSF, due to a difference in the methods used to measure the space to be renovated (e.g., counting only interior space vs. measuring from the outside of external walls). *(July 24, 2001 Completeness Responses, page 10)*
19. The projected payer mix associated with the CON proposal is as follows: *(September 13, 2001 Responses to OHCA’s Interrogatories, page 9)*

<b>Type of Payer</b>	<b>Payer Mix Percentage</b>
Commercial Insurers	66.1%
Other Private Payers	5.5%
Government Payers	28.4%
<b>Total Payer Mix</b>	<b>100.0%</b>

20. HSCN is projecting net income after taxes associated with the CON proposal for the Facility of \$326,177, \$360,336 and \$394,242 for FY 2003, FY 2004 and FY 2005 respectively. *(September 13, 2001 Responses to OHCA’s Interrogatories, page 17)*

21. The rates are sufficient to cover the proposed capital expenditure and operating costs. *(September 13, 2001 Responses to OHCA's Interrogatories, page 17)*

## **Consideration of Other Section 19a-637, C.G.S. Principles and Guidelines**

The following findings are made pursuant to other principles and guidelines set forth in Section 19a-637, C.G.S.:

22. There is no State Health Plan in existence at this time. *(May 17, 2001 CON Application, page 5)*
23. The Applicants have adduced evidence that this proposal is consistent with their long-range plans. *(May 17, 2001 CON Application, page 6)*
24. The Applicants have no current teaching and research responsibilities. *(May 17, 2001 CON Application, page 11)*
25. There are no distinguishing characteristics of the patient/physician mix of each of the Applicants. *(May 17, 2001 CON Application, page 11)*
26. The Applicants' proposal will result in no change in the technical, financial and managerial competence of each of the Applicants to provide efficient and adequate service to the public. *(July 24, 2001 Completeness Responses, page 2)*
27. The Applicants' proposal will have no impact on the ability of HSCN to provide quality health care services in the Norwalk area. *(January 18, 2001 Letter of Intent, Project Description)*

## **Rationale**

OptiCare Eye Health Centers, Inc. proposes to transfer ownership and control and all other rights and interests related to its ambulatory surgical center located at 40 Cross Street in Norwalk to HEALTHSOUTH Surgery Center of Norwalk, L.P. OptiCare Eye Health Centers, Inc. and its parent company, OptiCare Health Systems, Inc., have decided to withdraw from the direct delivery of ambulatory care services and to focus on major lines of business involving managed eye care services for third party payers, as well as eye care systems and services to providers on a national basis. The total capital expenditure associated with the proposed transfer of ownership and control is \$2,953,022.

The Office of Health Care Access previously approved the development of the Facility as a licensed general purpose ambulatory surgery center on December 16, 1998 under Docket Number 98-540. In addition, on January 2, 2001 under Docket Number 00-578R, OHCA modified the CON authorization granted to OptiCare under Docket Number 98-

540 in order to extend by approximately one year, from December 16, 2000 to December 31, 2001, the date by which the renovations associated with the authorized ambulatory surgery center must be completed and the date by which it must be licensed. Since OptiCare has currently not completed the Facility's renovations and the Facility is neither licensed nor operational, the change of ownership of the Facility from OptiCare to HSCN will facilitate the Facility's final completion and commencement of operations.

The proposed change of ownership is necessary for the establishment of the Facility. When the Facility becomes operational, it will alleviate the need to refer ambulatory surgery cases outside of Norwalk and will permit patients, whose outpatient surgical procedures can be reimbursed only if performed in an ambulatory setting, to remain in Norwalk. The Facility will also provide a cost effective alternative for the delivery of ambulatory surgical services and will help patients avoid transportation and travel issues inherent in the referral of cases outside of the local Norwalk delivery system.

HSCN is a Tennessee limited partnership of which 100% of the general partnership and limited partnership interests are owned by HEALTHSOUTH S.C. of Norwalk, Inc., which is a Delaware Corporation and a wholly owned subsidiary of HEALTHSOUTH Corporation. HEALTHSOUTH Corporation currently owns and operates other multi-specialty ambulatory surgical centers in Connecticut located in Bridgeport, Danbury and Hartford. HSCN is requesting authority to subsequently sell up to 49% of its partnership interests in the form of limited partnerships to physicians, their families and trusts established for the benefit of such persons and/or their professional practices. The remaining 51% of HSCN's partnership interests will be retained at all times thereafter, in the form of general partnership interests, by HEALTHSOUTH S.C. of Norwalk, Inc. OHCA finds that since the ownership structure proposed for HSCN will be identical to the ownership structure previously approved by OHCA for other HEALTHSOUTH Corporation facilities located in Connecticut, the requested ownership structure for HSCN is therefore acceptable to OHCA.

HSCN has also requested that four new categories of services, including podiatry, urology, general surgery and pain management, be added to the authorized categories of services to be provided at the Facility, which currently include ophthalmology, orthopedics, ear nose and throat, plastic surgery and gastroenterology ambulatory surgical services. The inclusion of these new services in the scope of services to be provided at the Facility will ensure consistency with the service offerings of other ambulatory surgery centers owned by HEALTHSOUTH Corporation that are located in Connecticut. OHCA finds that the addition of these four new surgical services to the authorized surgical services to be provided at the Facility, will facilitate the eventual development of the Facility as well as its commencement of operations and will increase the chances of the Facility's future success.

Based upon the foregoing Findings and Rationale, the Certificate of Need application of OptiCare Eye Health Centers, Inc. and HEALTHSOUTH Surgery Center of Norwalk, L.P. for the transfer of ownership and control and all other rights and interests related to

OptiCare Eye Health Center, Inc.'s ambulatory surgical center located at 40 Cross Street in Norwalk to HEALTHSOUTH Surgery Center of Norwalk, L.P., is hereby GRANTED.

## **Order**

The transfer of ownership and control and all rights and interests related to OptiCare Eye Health Centers, Inc.'s ambulatory surgical center located at 40 Cross Street in Norwalk to HEALTHSOUTH Surgery Center of Norwalk, L.P., at a total capital expenditure of \$2,953,022, is hereby authorized subject to the following conditions:

1. The authorization shall expire on December 31, 2002. Should the renovations for the Facility not be completed by that date and the Facility not be licensed by that date, HEALTHSOUTH Surgery Center of Norwalk, L.P. must seek further approval from OHCA to complete the project beyond that date.
2. HEALTHSOUTH Surgery Center of Norwalk, L.P. shall be the license holder and operator of the ambulatory surgical center located at 40 Cross Street in Norwalk.
3. HEALTHSOUTH Surgery Center of Norwalk, L.P. shall not exceed the approved capital expenditure of \$2,953,022. In the event that HEALTHSOUTH Surgery Center of Norwalk, L.P. learns of potential cost increases or expects that the final project costs will exceed those approved, HEALTHSOUTH Surgery Center of Norwalk, L.P. shall file with OHCA a request for approval of the revised project budget. Financing for the project is from an equity contribution from general partner capital contributions and proceeds from the sale of limited partnership interests as well as from a loan from HEALTHSOUTH Corporation to HEALTHSOUTH S.C. of Norwalk, Inc.
4. After the transfer of ownership and control of the Facility has been completed, HEALTHSOUTH Surgery Center of Norwalk, L.P. may sell up to 49% of its partnership interests in the form of limited partnerships to physicians, their families and trusts established for the benefit of such persons and/or their professional practices. The remaining 51% of HEALTHSOUTH Surgery Center of Norwalk, L.P.'s partnership interests shall be retained at all times thereafter, in the form of general partnership interests, by HEALTHSOUTH S.C. of Norwalk, Inc.
5. The ambulatory surgical services that shall be provided by HEALTHSOUTH Surgery Center of Norwalk, L.P. at the Facility are ophthalmology, orthopedics, ear nose and throat, plastic surgery, gastroenterology, podiatry, urology, general surgery and pain management.
6. HEALTHSOUTH Surgery Center of Norwalk, L.P. is required to file utilization statistics for the ambulatory surgery center on a semi-annual calendar basis (e.g., January and July) for a period of three years beginning with FY 2003. Each semi-annual filing shall be submitted to OHCA by no later than one month following the



end of each reporting period. The initial report shall list the date on which the authorized ambulatory surgery center became licensed. The semi-annual reports shall include the following:

- a. Total Number of Procedures;
- b. Number of Procedures by Patient Town of Origin and Zip Code; and
- c. Average Patient Waiting Time from Time of Scheduling of the Procedure to the Performance of the Procedure.

All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

By Order of the  
Office of Health Care Access

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Date

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Raymond J. Gorman  
Commissioner

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