



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

January 10, 2011

IN THE MATTER OF:

An Application for a Certificate of Need
filed pursuant to Public Act 09-3 § 10 by:

Day Kimball Hospital

Notice of Final Decision
Office of Health Care Access
Docket Number: 10-31602-CON

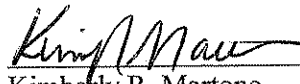
**Acquisition and Operation of a Second MRI
Scanner in Putnam, Connecticut**

To: Robert E. Smanik
President and Chief Executive Officer
Day Kimball Hospital
320 Pomfret Street
Putnam, CT 06260

Dear Mr. Smanik:

In accordance with the Connecticut General Statutes Section 4-179, the Proposed Final Decision dated December 22, 2010 by Hearing Officer Melanie A. Dillon is hereby adopted as the final decision of the Deputy Commissioner of the Office of Health Care Access, Department of Public Health in this matter. A copy of the Proposed Final Decision is attached hereto and incorporated herein.

Sincerely,



Kimberly R. Martone,
Director of Operations

KRM: jah

cc: Melanie A. Dillon, Hearing Officer, OHCA/DPH
Ajay I. Dalal, M.D., V.P./Director, Norwich Radiology Group, P.C., 39 Kennedy Drive, Putnam, CT, 06260
John D. Blair, Esq., Brown Rudnick, LLP, CityPlace 1, 185 Asylum Street, Hartford, CT, 06103



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

In Re: Day Kimball Hospital
Docket Number: 10-31602-CON

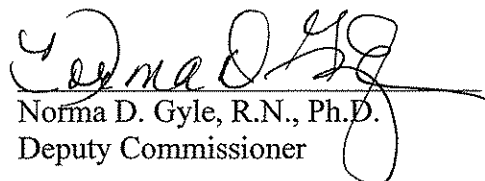
FINAL DECISION

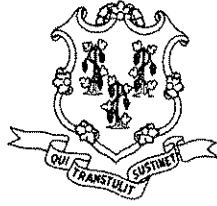
On December 22, 2010, a Proposed Final Decision was issued in the above matter pursuant to Section 4-179 of the Connecticut General Statutes.

In accordance with Connecticut General Statutes Section 4-179, the attached Proposed Final Decision dated December 22, 2010 by Hearing Officer Melanie A. Dillon is hereby adopted as the final decision of the Deputy Commissioner of the Department of Public Health in this matter. A copy of the Proposed Final Decision is attached hereto and incorporated herein.

WHEREFORE, it is the final decision of the Deputy Commissioner that the application of Day Kimball Hospital for the acquisition and operation of a second magnetic resonance imaging scanner is hereby approved.

1-10-11
Date


Norma D. Gyle, R.N., Ph.D.
Deputy Commissioner



**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Proposed Final Decision

Applicant: Day Kimball Hospital

Docket Number: 10-31602-CON

Project Title: The Acquisition and Operation of a
Second MRI Scanner in Putnam, CT

Project Description: Day Kimball Hospital (“Hospital”) proposes to acquire and operate a second magnetic resonance imaging (“MRI”) scanner, that is currently leased and operated by Norwich Radiology Group, P.C., (“Norwich Radiology”).

Procedural History: On October 28, 2010, the Office of Health Care Access (“OHCA”) received a Certificate of Need (“CON”) application from the Hospital for the above-referenced project. A notice to the public concerning OHCA’s receipt of the Hospital’s Letter of Intent was published on May 14, 2010, in the *Norwich Bulletin*.

A public hearing regarding the CON application was held on December 6, 2010. On November 16, 2010, the Hospital was notified of the date, time, and place of the hearing. On November 16, 2010, a notice to the public announcing the hearing was published in the *Norwich Bulletin*. Commissioner J. Robert Galvin designated Melanie Dillon, Staff Attorney as the hearing officer in this matter on November 19, 2010. The hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq. and Public Act 09-3 § 10. The Hearing Officer considered the entire record in rendering this proposed final decision.

Findings of Fact

1. The Hospital is a general acute care hospital located at 320 Pomfret Street in Putnam, Connecticut. Ex. D, p. 2; Att. 12, p. 38.

2. Norwich Radiology is a private radiology practice that has operated a MRI scanner since 2004 within a medical building complex located at 39 Kennedy Drive in Putnam. Ex. D, pp. 2-3; Att. 15, p. 2; Ex. G, p. 99.
3. Norwich Radiology is proposing to sell the assets of its Putnam practice to the Hospital due to the retirement of one of the practice's business partners. Ex. G, p. 99.
4. The Hospital proposes to purchase the assets of Norwich Radiology's Putnam practice. Through the proposed asset purchase agreement the Hospital will:
 - a. Purchase \$245,000 in leasehold improvements and related pieces of office equipment and furniture; and
 - b. Renegotiate the lease agreement of the existing General Electric 1.0 tesla-strength, closed short-bore, CX Conquest MRI ("Kennedy Drive MRI") scanner. The current fair market value of the Kennedy Drive MRI scanner is \$20,000. Ex. D, p. 2; Att. 12, pp. 72-88; Hospital Late File 1.
5. The Kennedy Drive MRI scanner was manufactured in 1998 and refurbished prior its acquisition by Norwich Radiology. The technical parameters of the scanning unit are within the guidelines of the American College of Radiology. Ex. G, p. 100.
6. Following the closing date of the asset purchase agreement, the Kennedy Drive MRI scanner will remain at its current location and be operated by the Hospital as an extension of the institution's outpatient imaging services. Exhibit D, page 2.
7. The service area of the Hospital includes the following thirteen (13) towns: Ashford, Brooklyn, Canterbury, Chaplin, Eastford, Hampton, Killingly, Plainfield, Pomfret, Putnam, Sterling, Thompson, and Woodstock. Ex. G, p. 100.
8. The Hospital operates an open 1.5 Tesla-Strength mobile MRI ("Hospital MRI") scanner on its main campus Sunday – Friday from 6:30 a.m. until 8:45 p.m. Ex. D, p. 4; Ex. J, pp. 104-106.
9. The nearest MRI scanners other than the Hospital MRI scanner and Kennedy Drive MRI scanner are located outside of the Hospital's service area at Windham Community Memorial Hospital in Willimantic and William W. Backus Hospital in Norwich. Ex. N, p. 113; Hearing Ex. 1, p. 2.

10. The Hospital and Norwich Radiology reported the following actual and projected MRI scan volumes by provider and scanner for fiscal years ("FYs") 2007 through 2013:

Table 1: Actual and Projected MRI Scan Volumes by Provider and Scanner

Provider/Scanner	Actual Volume*				Projected Volume** (First 3 Full Operational FYs)		
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Hospital:							
Siemens Mobile	4,474	4,073	4,278	4,647	4,787	4,930	5,078
GE Fixed	-	-	-	-	681	702	723
Norwich Radiology:							
GE Fixed		669***	836	661	-	-	-
Total # Scans	4,474	4,742	5,114	5,308	5,468	5,632	5,801

Note: The Hospital's fiscal year runs from October 1st through September 30th.

*Actual MRI volumes are for 2 MRI scanners with the GE unit becoming operational in FY 2008;

** Projected MRI volumes include the additional MRI scanner that the Hospital is planning to acquire.

***Volume based on 9 months actual data (January through September).

Ex. D, p. 5; Ex. N, p. 101.

11. The Hospital has experienced a steady increase in the number of MRI scans as follows: five percent (5%) increase between FYs 2008 to 2009 and an eight point six percent (8.6%) increase between FYs 2009 to FY 2010. Ex. N, p. 118.
12. The Hospital's actual MRI scan volumes have been increasing by an annual average rate of seven percent (7%) over the last three (3) fiscal years.
13. The Hospital projects an annual three percent (3%) increase in the number of MRI scans between FY 2011 and 2013 based upon increases in volume between FY2008 and 2010; increase in the use of the Kennedy Drive MRI scanner due to additional outpatient referrals from the Hospital and the orthopedic practice located next door to the MRI scanner; and referrals from two new physicians on the Hospital staff, one family and sports medicine practitioner and one neurologist. Ex. G, p. 3; Testimony of Robert Smanik, Hospital President and CEO, Public Hearing, December 6, 2010.
14. Based upon historical utilization, the Hospital's anticipated annual increase in the number of MRI scans between FY 2011 and FY 2013 is reasonable and achievable.
15. The Hospital is unable to absorb the current Kennedy Drive MRI volume because current utilization averages approximately 85.7% at the Hospital. Absorbing additional patients requiring MRI imaging from the Kennedy Drive office would create inefficiencies such as longer wait times for appointments and lack of continued availability for inpatient/urgent MRI needs. Ex. J, p. 106.

16. The Hospital is unable to expand the current operating hours for the Hospital MRI scanner as Saturdays are reserved for mobile positron emission tomography/computed tomography ("PET/CT") services, which utilizes the same equipment pad as the mobile MRI service. Ex. J, p. 106; Testimony of Robert Smanik, Public Hearing, December 6, 2010.
17. The Hospital has sufficient MRI volume to support the acquisition of one additional MRI scanner, which will positively impact the accessibility of MRI imaging services for patients in the Hospital's service area.
18. The Hospital projects the following incremental gains from operations due to the proposal:

Table 2: Hospital's Financial Projections Incremental to the Project

Description	Fiscal Year		
	2011	2012	2013
Incremental Revenue from Operations	\$864,590	\$907,820	\$953,210
Incremental Total Operating Expense	\$390,882	\$410,426	\$430,947
Incremental Gain from Operations	\$473,708	\$497,393	\$522,263

Note: The Hospital's fiscal year runs from Oct 1st through Sept 30th.
Ex. D, p. 9; Att. 18, p. 91.

19. The Hospital's proposal to acquire a second MRI scanner is financially feasible.
20. The Hospital and Norwich Radiology reported the following patient population mix percentages for each entity:

Table 3: Hospital's Current & Projected Patient Population Mix

Patient Population Mix	Day Kimball Hospital			
	FY 2010	FY 2011	FY 2012	FY 2013
Medicare*	19.84%	19.84%	19.84%	19.84%
Medicaid*	17.49%	17.49%	17.49%	17.49%
CHAMPUS & TriCare	0.92%	0.92%	0.92%	0.92%
Total Government	38.25%	38.25%	38.25%	38.25%
Commercial Insurers*	59.66%	59.66%	59.66%	59.66%
Uninsured	0.59%	0.59%	0.59%	0.59%
Workers Comp.	1.50%	1.50%	1.50%	1.50%
Total Non-Government	61.75%	61.75%	61.75%	61.75%
Total Payer Mix	100.00%	100.00%	100.00%	100.00%

*Includes managed care activity
Ex. G, pp. 101-102.

21. The overall payer mix has been and is projected to be stable for the Hospital. The payer mix at the Kennedy Drive location, as a result of this proposal, should be consistent with the Hospital's patient population mix.

Discussion

CON applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considers the factors set forth in Public Act 08-14 §1 and the Applicant bears the burden of proof in this matter by a preponderance of the evidence. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995); *Bridgeport Ambulance Serv. v. Connecticut Dept. of Health Serv.*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989); *Steadman v. SEC*, 450 U.S. 91, 101 S.Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980).

The Hospital proposes to acquire through an asset purchase agreement a leased MRI scanner from Norwich Radiology and continue to operate it at its current location. FF4 & 6. The Hospital will renegotiate a lease agreement of the Kennedy Drive MRI scanner with the current equipment vendor. FF4. The Hospital currently offers on-campus MRI services six (6) days per week from 6:45 am to 8:45 pm each operating day. FF8. Saturdays are reserved for the Hospital's mobile PET/CT services, which utilize the same equipment pad as the mobile MRI scanner. FF16.

The Hospital MRI scanner and the Kennedy Drive MRI scanner are the only MRI scanners operating in the Hospital's service area. FF9. The nearest MRI scanners are located at Windham Community Memorial Hospital in Willimantic and William W. Backus Hospital in Norwich. FF9. The Hospital has experienced an average annual increase of seven percent (7%) in the number of MRI scans from FY 2008 (4,073 scans) to FY 2010 (4,647 scans). FF12. Currently the Hospital's MRI utilization averages approximately 86%. FF15. The Hospital projects that the demand for MRI scans will increase three percent (3%) annually due to historic utilization of Hospital MRI services and increasing referrals to the Kennedy Drive MRI scanner from the orthopedic practice located next door and from two new physicians at the Hospital. FF13. Based upon the foregoing, OHCA finds that there is sufficient MRI volume in the service area to support the Hospital's acquisition of a second MRI scanner, which will positively impact the accessibility of MRI imaging for patients in the Hospital's service area.

With respect to the financial feasibility of the proposal, the Hospital has projected incremental gains from operations with the addition of a second MRI scanner [Finding 29]. Accordingly, OHCA finds that the Hospital's acquisition and operation of a second MRI scanner is financially feasible.

Order

Based upon the foregoing Findings and Discussion, the Certificate of Need application of Day Kimball Hospital for the acquisition and operation of a second magnetic resonance imaging scanner from Norwich Radiology Group, P.C. at a total project cost of \$265,000 is hereby **approved**, subject to the following condition:

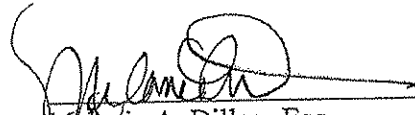
1. Should the Hospital plan to operate the MRI scanner identified in this proposal at a location other than 39 Kennedy Drive, Putnam, Connecticut, the Hospital shall notify OHCA of the new location, no later than one month after the equipment's relocation.

Should The Hospital fail to comply with the aforementioned condition, OHCA reserves the right to take additional action as authorized by law. All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

Based upon the foregoing, I respectfully recommend that the Deputy Commissioner approve the application of Day Kimball Hospital's request to acquire and operate a second MRI scanner.

12-22-10

Date



Melanie A. Dillon, Esq.
Hearing Officer

MAD:jah