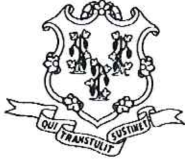


STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH
Office of Health Care Access

September 8, 2014

IN THE MATTER OF:

An Application for a Certificate of Need filed Pursuant to Section 19a-638, C.G.S. by:

Notice of Agreed Settlement
Office of Health Care Access
Docket Number: 13-31884-CON

Gaylord Hospital

Termination of Gaylord Sleep Medicine Services in North Haven

To:

Art Tedesco
Interim Chief Executive Officer
Gaylord Hospital
P.O. Box 400
Gaylord Farms Rd.
Wallingford, CT 06492

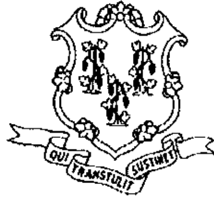
RE: Certificate of Need Application, Docket Number 13-31884-CON
Gaylord Hospital
Termination of Gaylord Sleep Medicine Services in North Haven

Dear Mr. Tedesco:

This letter will serve as notice of the approved Certificate of Need Application in the above-referenced matter. On September 8, 2014, the Agreed Settlement, attached hereto, was adopted and issued as an Order by the Department of Public Health, Office of Health Care Access.

Kimberly R. Martone
Director of Operations

Enclosure
KRM:lkg



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

Agreed Settlement

Applicant:	**Gaylord Hospital, Inc.** **Gaylord Farms Road, Wallingford, CT 06492**
Docket Number:	**13-31884-CON**
Project Title:	**Termination of Gaylord Sleep Medicine Services in North Haven, Connecticut**

Project Description: Gaylord Hospital, Inc. ("Hospital" or "Applicant") seeks authorization to terminate Gaylord Sleep Medicine Services in North Haven, Connecticut, with no associated capital expenditure.

Procedural History: The Applicant published notice of its intent to file the Certificate of Need ("CON") application in the *New Haven Register* on November 20, 21 and 22, 2013. On December 31, 2013, the Office of Health Care Access ("OHCA") received the CON application from the Applicant for the above-referenced project and deemed the application complete on March 10, 2014.

On May 21, 2014, the Applicant was notified of the date, time and place of the public hearing. On May 29, 2014, a notice to the public announcing the hearing was published in the New Haven Register. On April 8, 2014, OHCA received a petition from UNITE HERE International Union, Local 34 (UNITE HERE") requesting intervenor status. OHCA granted UNITE HERE intervenor status with limited rights in the matter on May 29, 2014. Thereafter, pursuant to Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a, a public hearing regarding the CON application was held on June 18, 2014.

Commissioner Jewel Mullen designated Attorney Kevin Hansted as the hearing officer in this matter. The hearing was conducted in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the General Statutes) and Conn. Gen. Stat. § 19a-639a. The public hearing record was closed on July 25, 2014. Deputy Commissioner Davis considered the entire record in this matter.

Findings of Fact and Conclusions of Law

To the extent the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc., v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985).

1. The Applicant is a long-term acute care hospital located at Gaylord Farms Road, Wallingford, Connecticut. Ex. A, p. 5.

2. The Hospital provides health care services for patients requiring care for spinal cord injury, traumatic brain injury, stroke, pulmonary disease and other medically complex illnesses and sleep medicine. It includes both inpatient and outpatient care. Ex. A, p. 5.

3. The Hospital operates Gaylord Sleep Medicine-North Haven ("Sleep Center"), which is located at 8 Devine Street, #3, North Haven, Connecticut and utilizes twelve beds, operating 7 days a week. Ex. A, p. 5.

4. The Hospital is proposing to terminate all services at the Sleep Center. Ex. A, p. 5.

5. The Sleep Center provides physician consultation and patient evaluation, and is equipped for day and overnight sleep testing as well as continuous positive airway pressure (CPAP) therapy. It also provides diagnostic, split-night and therapeutic polysomnography services. Ex. A. p. 5.

6. Over 75% of patient visits to the Sleep Center originated from nine towns in FY 2013:

TABLE 1
GAYLORD SLEEP MEDICINE NORTH HAVEN
PATIENT VISITS (FY 2013*)

TOWN	VISITS	% OF TOTAL	TOWN	VISITS	% OF TOTAL
New Haven	2100	23%	West Haven	522	6%
Hamden	1058	12%	Cheshire	485	5%
Wallingford	873	10%	East Haven	320	4%
Meriden	658	7%	Milford	280	3%
North Haven	601	7%	All Other	2,150	24%
				TOTAL NUMBER OF VISITS	**9,047**

*Gaylord Hospital fiscal year (October 1-September 30)
Ex. A, pp. 7-10.

7. The following table shows the existing providers of sleep medicine services in the Applicant's service area:

TABLE 2
EXISTING SLEEP LAB FACILITIES IN THE APPLICANT'S SERVICE AREA

Service	Provider Name and Location
Sleep Laboratory	Yale-New Haven Hospital New Haven, CT
Sleep Laboratory	Middlesex Hospital Middletown, CT
Sleep Laboratory	MidState Medical Center Meriden, CT

Ex. A, p. 6.

8. The primary reasons for the Applicant's request to terminate services at the Sleep Center are diminished in-lab patient volume, changing models of sleep medicine service delivery and duplicative sleep services in the service area. Ex. C, p. 43.

9. Since the opening of the Sleep Center, sleep medicine visits have declined and it was determined that maintaining the program at the North Haven location was not an efficient use of resources. Ex. C, p. 43.

10. The overall decline in sleep medicine visits at the Sleep Center is illustrated in the table below:

TABLE 3
GAYLORD SLEEP MEDICINE NORTH HAVEN
HISTORICAL AND CURRENT VISITS

Visits Description	Fiscal Year			
	2011	**2012**	**2013**	**2014*** (annualized)
Sleep Medicine Study (full service study with physician interpretation)	2,627	2,343	1,951	1,848
Initial Consultation with Medical Staff	1,639	1,394	1,625	1,646
Follow-up visit to review study results and plan of care	2,015	2,177	2,077	1,707
PAP NAP **	---	62	69	58
Clinic***	2,076	2,546	2,538	2,174
Other****	221	680	787	773
Total	**8,578**	**9,202**	**9,047**	**8,206**

* October 1, 2013 – April 2014
**Day time visit of 3-4 hours to help patients learn to use masks and improve patient compliance.
***CPAP set up; working with patients on compliance or mask issues.
****Includes in-home sleep studies; HST rental; psychology visits for insomnia management.
Ex. J, p. 4.

11. Overnight sleep medicine visits dropped from 2,627 in FY2011 to 1,951 in FY13, representing a 26% decrease. Ex. C, p. 6; Ex. J, p. 4.

12. The decision to terminate services at the Sleep Center was based on an evaluation of how the Hospital could best serve the needs of its patients within its core business: comprehensive health services for individuals with brain or spinal cord injuries, complex pulmonary conditions or complex medical illnesses. Ex. C, p. 43.

13. There is an increasing trend of delivering sleep medicine away from lab testing to home-based sleep testing (HST), thus reducing the need for freestanding sleep labs. Ex. C, p. 55.

14. Since 2011, there has been a dramatic increase in the number of home sleep studies, often mandated by insurance companies, as they will not reimburse for in-lab studies. *Testimony of George Kyriacou, President and CEO, Gaylord Specialty Health Care.* Ex. T, pp. 31-32.

15. According to the Journal of Clinical Sleep Medicine, HST is likely to play an increasingly larger role in the practice of sleep medicine in the next several years, in large part due to changes in insurance practices around HST devices use in the diagnosis of obstructive sleep apnea (OSA). As prior authorization programs run by utilization management companies have begun to proliferate, many patients have been shifted from sleep laboratories into home testing. Portable, home-based testing appears to be a cost-efficient diagnostic measure at a time when medical costs are being closely scrutinized. Additionally, HST may reach a larger number of patients when not limited to a physical location of a sleep laboratory. Ex. C, pp. 53-55.

16. The Applicant will implement external communications and outreach activities to help transition patients to alternative clinical services following the termination of services at the Sleep Center. Ex. C, p. 45.

17. The Applicant will notify patients seen within the last two years, in writing, about the availability of sleep medicine services at Yale-New Haven Hospital ("YNHH")(adult and pediatric patients) and Connecticut Children's Medical Center ("CCMC")(pediatric patients). The Applicant will also provide copies of medical records upon request and help patients transition to alternative providers of their choice. Ex. A, p. 6.

18. YNHH[1] will assure continued accessibility to sleep medicine services by providing transportation at the same level of service as currently provided by the Applicant. *Richard D'Aquila, President & COO, Yale-New Haven Hospital,* Ex. W.

19. No capital expenditures/costs will be incurred from the termination of sleep medicine services at the Sleep Center. Ex. A, p. 12.

20. The decision to terminate the Sleep Center services was not dependent on reimbursement levels, but on declining volume and cost to continue the program. Ex. A, p. 13.

21. The Hospital's assessment of its core programs revealed that, over the past seven years, the Sleep Center had contributed significantly to overall organizational losses. *Transcript of*

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[1] YNHH has not been designated as a Party or Intervenor in this matter.

June 18, 2014 Public Hearing Testimony of George Kyriacou, President and CEO, Gaylord Specialty Health Care, Ex. T, p. 31.

22. The continued operation of sleep medicine services at the Sleep Center would result in ongoing and increasing losses in each of the next three fiscal years.

TABLE 4
APPLICANT'S GAIN / (LOSS) FROM OPERATIONS

	FY 2013* (Actual)	FY 2014	FY 2015	FY 2016
Revenue from Operations	$3,241,678	($3,243,340)	($3,243,340)	($3,243,340)
Total Operating Expenses	($3,379,370)	($ 3,440,034)	($ 3,495,045)	($3,551,208)
Gain/(Loss) from Operations	($ 137,692)	($ 196,694)	($ 251,705)	($ 307,868)

*Gaylord Hospital fiscal year (October 1-September 30)
Assumptions: Gaylord Sleep Medicine Services in North Haven recorded an operational loss in FY 2013 and projects continued losses in FY 2014-FY 2016 due to operating expenses in excess of revenues. If the proposal is approved, the number of FTEs will be reduced by 26.5, producing cost savings of $2,491,614, $2,541,446 and $2,592,275, respectively. Other significant reductions will come from depreciation/amortization, lease expense, professional/contracted services and other operating expenses.
Ex. C, p. 57.

23. The Applicant's historical and current payer mix is as follows:

TABLE 5
APPLICANT'S HISTORICAL AND CURRENT PAYER MIX FOR SLEEP CENTER

Payer	FY 2011		FY 2012		FY 2013		FY 2014*	
	Volume	%	Volume	%	Volume	%	Volume	%
Medicare*	1,943	23%	2,055	23%	2,070	23%	1,078	23%
Medicaid*	2,069	24%	2,335	25%	2,080	23%	1,135	24%
CHAMPUS & TriCare	20	0%	13	0%	9	0%	12	0%
Total Government	**4,032**	**47%**	**4,403**	**48%**	**4,159**	**46%**	**2,225**	**47%**
Commercial Insurers	4,529	53%	4,791	52%	4,859	54%	2,549	53%
Uninsured	17	0%	8	0%	29	0%	13	0%
Workers Compensation	---	0%	---	0	---	0%	---	0%
Total Non-Government	**4,546**	**53%**	**4,799**	**52%**	**4,888**	**54%**	**2,562**	**53%**
Total Payer Mix	**8,578**	**100%**	**9,202**	**100%**	**9,047**	**100%**	**4,787**	**100%**

*(October 1, 2013 – to April 2014)
Ex. J, p. 4.

24. There will be no adverse impact on the quality and access of sleep medicine services for Medicaid recipients. Medicaid patients can continue to be referred by their physicians,

and the Hospital has made arrangements with YNHH for the transition of its adult and pediatric patients and CCMC for the transition of its pediatric patients. Ex. C. p. 49.

25. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any regulations not yet adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1))

26. This CON application is consistent with the overall goals of the Statewide Health Care Facilities and Service Plan. (Conn. Gen. Stat. § 19a-639(a)(2))

27. The Applicant has established that there is a clear public need for its proposal. (Conn. Gen. Stat. § 19a-639(a)(3))

28. The Applicant has demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4))

29. The Applicant has satisfactorily demonstrated that quality and access to services in the region will be maintained for all relevant patient populations and that the proposal will reduce overall system costs by eliminating duplicative services and allowing for the greater use of a more cost-efficient diagnostic method with the potential to reach a broader population. The Department of Social Services is unable to determine the proposal's impact upon the cost effectiveness of providing access to services provided under the Medicaid program. (Conn. Gen. Stat.§ 19a-639(a)(5))

30. The Applicant has shown that there would be no adverse change in the provision of health care services to the relevant populations and payer mix, including Medicaid patients and indigent persons. (Conn. Gen. Stat. § 19a-639(a)(6))

31. The Applicant has satisfactorily identified the population to be affected by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7))

32. The declining historical utilization of sleep medicine visits in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))

33. The Applicant has satisfactorily demonstrated that this proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9))

34. The Applicant has demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. (Conn. Gen. Stat. § 19a-639(a)(10))

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 § 19a-639(a) of the Statutes. The Applicant bears the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board, 309 Conn. 727 (2013).*

The Applicant is a long-term acute care hospital located at Gaylord Farms Road, Wallingford, Connecticut. *FF1* The Hospital, which offers sleep medicine services in North Haven, Connecticut ("Sleep Center"), is proposing to terminate all sleep medicine services at the Sleep Center. *FF3,4* The Sleep Center currently provides physician consultation and patient evaluation of sleep disorders. The Sleep Center is equipped for day and overnight sleep testing and performs diagnostic, split-night and therapeutic polysomnography, as well as continuous positive airway pressure therapy. *FF5*

The primary reasons for the Applicant's request to terminate services at the Sleep Center are diminished in-lab patient volume, changing models of sleep medicine service delivery and duplicative sleep services in the service area. *FF8* Overnight sleep studies dropped by 26% from FY2011 to FY2013. *FF11* The decline in volume is the result of the recent trend toward delivering sleep medicine testing in the home as opposed to lab-based testing. *FF13* According to the Journal of Clinical Sleep Medicine, home-based sleep testing (HST) is likely to play an increasingly larger role in the practice of sleep medicine in the next several years, in large part due to changes in insurance practices around HST devices use in the diagnosis of obstructive sleep apnea. As prior authorization programs run by utilization management companies have begun to proliferate, many patients have been shifted from sleep laboratories into home testing. Portable, home-based testing appears to be a cost-efficient diagnostic measure at a time when medical costs are being closely scrutinized. Additionally, HST may reach a larger number of patients when not limited to a physical location of a sleep laboratory. *FF14,15* The trend toward moving sleep medicine testing to the home evidences forward thinking in an effort to reduce the cost of providing this service thereby strengthening the financial stability of Connecticut's health care system while maintaining access to this service for the patient population. In fact, this trend makes it easier for the patient to receive sleep medicine services by eliminating the need to travel to, and stay overnight at, the hospital.

To help patients transition following the closure of its program, the Hospital will implement external communications and outreach activities to ensure that patients have continued access to sleep medicine services. *FF16* All patients seen within the past two years will be notified in writing about the availability of alternative sleep medicine services including those at YNHH (adult and pediatric patients) and CCMC (pediatric patients). The Applicant will provide copies of medical records and help patients transition to alternative providers of their choice. *FF16,17* YNHH will assure continued accessibility to sleep medicine services by providing transportation at the same level of service as currently provided by the Hospital. *FF18* It is important to note that UNITE HERE raised the issue of YNHH purchasing the assets of the Sleep Center in the future. While this purchase is not currently under OHCA's jurisdiction, it does confirm that YNHH will continue to offer sleep services at the North Haven location subsequent to its

purchase.[2] *Testimony of George Kyriacou, President and CEO, Gaylord Specialty Health Care. Ex. T, p. 39.* Therefore, there will be no effective changes to the provision of sleep services at the North Haven location other than the name of the provider. Additionally, there are three other sleep medicine service providers available to patients within the Applicant's service area. *FF7* Based upon the foregoing, the Applicant has satisfactorily demonstrated that access to sleep medicine services will be maintained and there will be no adverse impact on the quality of sleep medicine services for the relevant patient populations, including Medicaid patients.

The proposal to terminate services at the Sleep Center was based on an evaluation of how the Hospital could best serve the needs of its patients within its core business: comprehensive health services for individuals with brain or spinal cord injuries, complex pulmonary conditions or complex medical illnesses. *FF12* The decision to terminate services was not dependent on reimbursement levels, but rather was predicated on declining volume and program costs. *FF20,21* The Applicant experienced an operational loss in FY 2013 and projects that the continued operation of the Sleep Center would result in ongoing and increasing losses over the next three fiscal years. *FF22* No capital expenditures/costs will be incurred from the program's termination. *FF20.* The decision to focus on its core services and avoid future losses from the Sleep Center will ultimately benefit the population served by the Hospital by allowing the Hospital to focus funding to its core services. Therefore, the Applicant has demonstrated that its proposal is financially feasible by ultimately resulting in cost avoidance for the Hospital while providing a more focused health care delivery model for the patient.

One of the overarching goals of the Statewide Health Care Facilities and Services Plan is the use of health care facility resources in an efficient, cost-effective manner while maintaining or improving patients' access to quality health care services. This proposal is reflective of the changing model of sleep medicine service delivery that has the potential to reach a larger number of patients that may not ordinarily be able to access such services. Thus, the Applicant has sufficiently demonstrated a clear public need for this proposal.

In order to ensure proper notification to its current patients and continued access to sleep medicine services to the relevant patient population, OHCA requires that the conditions contained in the attached Order be met by the Applicant.

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[2] The Intervenor, UNITE HERE, raised employment issues and the sale of a physician practice as concerns. These two areas are not currently under OHCA's jurisdiction. UNITE HERE also raised concerns about the transfer of ownership of a health care facility insofar as YNHH plans to purchase the assets of the Sleep Center. While the transfer of ownership of a health care facility is under OHCA's jurisdiction, the Sleep Center is not a "health care facility" as defined by Conn. Gen. Stat. 19a-630(10).

Order

NOW, THEREFORE, the Department of Public Health, Office of Health Care Access ("OHCA") and Gaylord Hospital hereby stipulate and agree to the terms of settlement with respect to the termination of services of Gaylord Sleep Medicine Services, 8 Devine Street, #3, North Haven, Connecticut, as follows:

1. Gaylord Hospital's request to terminate services at Gaylord Sleep Medicine Services, at 8 Devine Street, #3, North Haven, Connecticut, is **approved.**

2. Gaylord Hospital shall release a one-time written notification to all current patients, and those seen within the past two years, of the Gaylord Sleep Medicine Services that clearly identifies all existing providers of sleep medicine services in the service area where patients can receive the same services. A copy of such notification shall be filed with OHCA within (10) days of the signing of this Agreed Settlement.

3. Gaylord Hospital shall assist former Gaylord Sleep Medicine Services patients in transitioning to alternative providers of their choice and provide copies of medical records upon request.

4. This Agreed Settlement is an order of OHCA with all rights and obligations attendant thereto, and OHCA may enforce this Agreed Settlement under the provisions of Conn. Gen. Stat. §§ 19a-642 and 19a-653 with all fees and costs of such enforcement being the responsibility of Gaylord Hospital.

5. OHCA and Gaylord Hospital agree that this Agreed Settlement represents a final agreement between OHCA and all parties with respect to this Application. The signing of this Agreed Settlement resolves all objections, claims and disputes that may have been raised by the Applicant with regard to Docket Number: 13-31884-CON.

6. This Agreed Settlement shall be binding upon Gaylord Hospital and its successors and assigns.

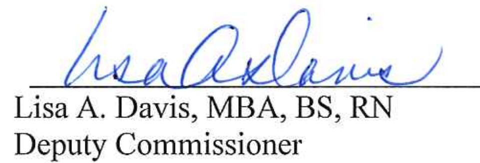
Signed by George M. Kyriacou, CEO
(Print name) (Title)

9/3/2014
Date

Duly Authorized Agent for
Gaylord Hospital, Inc.

The above Agreed Settlement is hereby accepted and so ordered by the Department of Public Health Office of Health Care Access on September 8, 2014.

9/8/2014
Date:



Lisa A. Davis, MBA, BS, RN
Deputy Commissioner