

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

May 1, 2015

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: 14-31937-CON

**PriMed Gastroenterology, LLC d/b/a
Fairfield County Endoscopy Center**

**Transfer of ownership of PriMed
Gastroenterology, LLC d/b/a Fairfield
County Endoscopy Center to Northeast
Medical Group, Inc.**

Northeast Medical Group, Inc.

To: Nancy Rosenthal
Sr. Vice President-Health Systems Development
Yale-New Haven Hospital
5 Perryridge Road
Greenwich, CT 06830

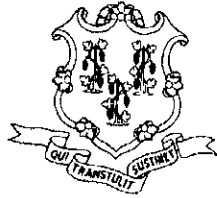
Dear Ms. Rosenthal:

This letter will serve as notice of the approved Certificate of Need Application in the above-referenced matter. On May 1, 2015, 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:bac

An Equal Opportunity Provider
(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)
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**Department of Public Health
Office of Health Care Access
Certificate of Need Application**

Agreed Settlement

Applicants: PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center
888 White Plains Road, Suite 210, Trumbull, CT 06611

Northeast Medical Group, Inc.
5 Perryridge Road, Greenwich, CT 06830

Docket Number: 14-31937-CON

Project Title: Transfer of ownership of PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center to Northeast Medical Group, Inc.

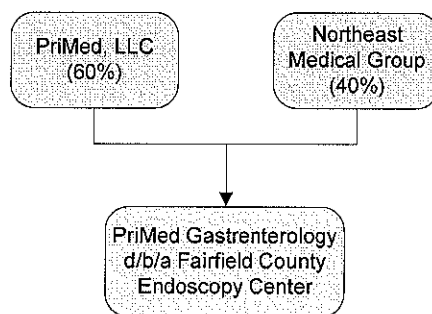
Project Description: PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center ("FCEC") and Northeast Medical Group, Inc. ("NEMG"), or collectively ("Applicants") seek authorization to transfer ownership of FCEC to NEMG, with an associated capital expenditure of \$5,500,000.

Procedural History: The Applicants published notice of their intent to file a Certificate of Need ("CON") application in *The Connecticut Post* (Bridgeport) on June 4, 5 and 6, 2014. On August 25, 2014, the Office of Health Care Access ("OHCA") received the CON application from the Applicants for the above-referenced project and deemed the application complete on January 9, 2015. OHCA received no responses from the public concerning the proposal and no hearing requests were received from the public per Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a(e). Deputy Commissioner Brancifort 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).

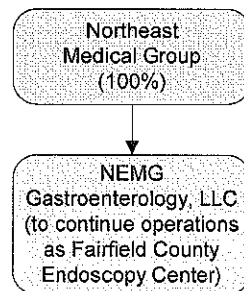
1. PriMed, LLC (“PriMed”) is an integrated medical practice owned exclusively by licensed physicians that practice in the Bridgeport area. Ex. A, p. 17.
2. PriMed, LLC formed PriMed Gastroenterology, LLC for the purpose of establishing Fairfield County Endoscopy Center (“FCEC”), a licensed outpatient surgical facility located at 888 White Plains Road, Suite 210, Trumbull, Connecticut and a health care facility or institution as defined by Conn. Gen. Stat. § 19a-630. Ex. A, p. 17.
3. FCEC has been in operation since 2003, following OHCA approval on January 24, 2002 (DN: 01-551). FCEC utilizes two procedure rooms to perform gastrointestinal (GI) services that include colonoscopies, polypectomies, upper endoscopies and esophageal dilations. Ex. A, p. 17.
4. Northeast Medical Group, Inc. (“NEMG”) is a medical foundation affiliated with the Yale New Haven Health System (“YNHHS”). Ex. A, p. 17.
5. On June 1, 2014, NEMG acquired the assets of PriMed, LLC and a 40% interest in FCEC. No CON was required for the sale (OHCA 14-31907-DTR). Ex. A, p. 17.
6. FCEC is currently owned by PriMed (60%) and NEMG (40%) as indicated in the chart below. Ex. A, p.17.



7. PriMed physicians now perform services exclusively on behalf of NEMG pursuant to a professional services agreement. Ex. A, p. 17.
8. Pursuant to the Federal Sherman Antitrust Act and Conn. Gen. Stat. § 35-24 et seq., there exist limitations on the actions NEMG can take on behalf of FCEC, unless NEMG holds the controlling ownership interest of the endoscopy center. Under both Federal and Connecticut

statutes, entities not under common control cannot coordinate their negotiation of prices or payment terms with purchasers of their services, but entities under common control can coordinate such activities. Ex. C, p. 142; Conn. Gen. Stat. § 35-24 et seq.

9. NEMG generally requires physicians to divest themselves of any ownership interests in facilities, such as FCEC, that bill and receive payment from third party payers. Ex. C, p. 141.
10. The former PriMed physicians are seeking approval to sell their remaining 60% member interest to NEMG, making NEMG the sole owner of FCEC. Ex. A, p. 17.
11. Following the acquisition, NEMG will establish a separate entity called NEMG Gastroenterology, LLC to operate the endoscopy center. Ex. E, p. 153 and Ex. F, p.154.
12. NEMG Gastroenterology, LLC will obtain a new tax ID number to bill for procedures that are performed at FCEC. Ex. E, p. 153 and Ex. F, p.154.
13. A chart of organization following NEMG's full acquisition of FCEC is indicated below. Ex. E, p. 153 and Ex. F, p.154.



14. NEMG will notify patients of the ownership change in the following ways:
 - letters will be mailed to patients scheduled for appointments/procedures;
 - fliers will be placed in the waiting room;
 - patients will be informed when scheduling new appointments; and
 - websites of NEMG and FCEC will be updated to reflect the new ownership.Ex. A, p. 19.
15. The majority of patients served by FCEC reside in Bridgeport, Trumbull, Stratford, Shelton, Fairfield, Monroe and Milford. Ex. A, p. 18.
16. NEMG will continue to offer the same clinical services currently provided at FCEC, by the same practicing physicians. Ex. A, p. 18.

17. NEMG will establish an operations-oriented board that will have responsibility for determining, implementing and monitoring FCEC policies, oversight for the quality assessment and quality improvement program at FCEC, development of the disaster preparedness plan and ensuring policies are administered that ensure quality health care is provided in a safe environment. Ex. E, p. 153.
18. The method of billing, which includes professional and technical components, will remain the same under NEMG ownership and the endoscopy center will continue to charge a facility fee similar to that which is currently being charged. Ex C, p. 142; Ex. E, p.151.
19. In order to maintain a revenue neutral position for payers, NEMG will not seek to move FCEC to the NEMG fee schedule. However, NEMG will implement a new self-pay fee schedule based on annual income to help patients without health insurance afford care. Ex A, p. 19; Ex C, p. 141.
20. NEMG will assume all existing payer contracts in place with FCEC. After the existing payer contracts expire, NEMG plans to negotiate terms and conditions for new rates that will allow the facility to remain competitive in the marketplace. Ex E, p. 152.
21. GI procedures at FCEC increased yearly by 3% on average (FY 2012 - FY 2014).

TABLE 1
 HISTORICAL VISITS

	Historical Volume			
	FY 2011	FY 2012	FY 2013	FY 2014
GI Procedures ¹	5,504	5,657	5,863	6,004

¹Approximately 70% are upper gastrointestinal tract procedures.
 Fiscal Year is October 1st through September 30th.
 Ex. C, p. 144.

22. The Applicants project stable demand for GI procedures over the next four years.

TABLE 2
 PROJECTED VOLUME

	Projected Volume			
	FY 2015	FY 2016	FY 2017	FY 2018
GI Procedures	6,004	6,004	6,004	6,004

Ex. C, pp. 144; Ex. I pp. 158-161.

23. Historical procedure volume for the Medicaid population has been 2% of the total volume. Future payer mix at FCEC is projected to remain similar to historical results.

TABLE 3
FCEC'S CURRENT & PROJECTED PAYER MIX

Payer	Most Recently Completed FY2013		Projected					
			FY2014		FY2015		FY2016	
	Volume	%	Volume	%	Volume	%	Volume	%
Medicare*	1,811	31%	1,854	31%	1,854	31%	1,854	31%
Medicaid*	121	2%	166	3%	166	3%	166	3%
CHAMPUS & TriCare	1	0%	0	0%	0	0%	0	0%
Total Government	1,933	33%	2,020	34%	2,020	34%	2,020	34%
Commercial Insurers	3,910	67%	3,955	66%	3,955	66%	3,955	66%
Uninsured	20	0%	29	0%	29	0%	29	0%
Workers Compensation	0	0%	0	0%	0	0%	0	0%
Total Non-Government	3,930	67%	3,984	66%	3,984	66%	3,984	66%
Total Payer Mix	5,863	100%	6,004	100%	6,004	100%	6,004	100%

Ex. A, p 28; Ex. E, p.152-153

*Includes managed care activity

24. NEMG will bring a number of efficiencies and cost savings to FCEC including:

- EPIC electronic medical records and practice management system;
- infrastructure for billing, compliance and other essential data
- lower purchase prices for medical supplies using YNHHS vendor contracts.
Ex. C, p. 145.

25. By dissolving the separate LLC and transferring assets to NEMG, FCEC can be run more efficiently, without the need for separate financial statements, tax and corporate filings and board meetings. In addition, the operations of the FCEC will benefit from NEMG's tax-exempt status with respect to purchasing. Ex. C, p. 144.

26. The anticipated cost savings as a result of the proposal total \$135,000:

- \$20,000 savings related to electronic medical record system transfer to EPIC;
- \$80,000 savings related to ending management fees;
- \$35,000 savings related to future supply purchase from YNHHS vendor contracts.
Ex. C, p145.

27. NEMG projects incremental gains from operations in FY 2015 (partial year due to transfer date) and in each of the first three complete fiscal years following the ownership change (FY 2016-2018).

TABLE 5
APPLICANTS PROJECTED INCREMENTAL GAIN FROM OPERATIONS

	FY 2015¹	FY 2016	FY 2017	FY 2018
Revenue from Operations	\$ 1,623,956	\$ 2,165,274	\$ 2,165,274	\$ 2,165,274
Total Operating Expenses*	\$ 995,325	\$ 1,366,508	\$ 1,407,039	\$ 1,449,026
Gain from Operations	\$ 628,630	\$ 798,766	\$ 758,235	\$ 716,248

¹ FY 2015 represents a represents a pro-rated value based on an estimate of when the CON would be approved and NEMG assumes 100% ownership.

*Operating expenses are projected to increase as a result of a projected 4% inflation factor that was applied to wages, benefits and other non- salary expenses.

Ex. I, p. 157-161.

28. 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))
29. 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))
30. The Applicants have established that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3))
31. The Applicants have demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4))
32. The Applicants have satisfactorily demonstrated that the proposal will maintain quality, and improve the accessibility and cost effectiveness of health care delivery in the region. (Conn. Gen. Stat. § 19a-639(a)(5))
33. The Applicants have shown that there would be no adverse change in the provision of health care services to the relevant populations and payer mix, including access to services by Medicaid recipients and indigent persons. (Conn. Gen. Stat. § 19a-639(a)(6))
34. The Applicants have satisfactorily identified the population to be affected by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7))
35. The Applicants' historical provision of treatment in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))
36. The Applicants have 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))

37. The Applicants have demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. (Conn. Gen. Stat. § 19a-639(a)(10))
38. The Applicants have demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the region. (Conn. Gen. Stat. § 19a-639(a)(11))
39. The Applicants have satisfactorily demonstrated that the proposal will not result in any consolidation. (Conn. Gen. Stat. § 19a-639(a)(12))

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 Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

PriMed, LLC (“PriMed”) is an integrated medical practice owned exclusively by licensed physicians that practice in the “greater Bridgeport area.” *FF1*. PriMed, LLC formed PriMed Gastroenterology, LLC for the purpose of establishing the Fairfield County Endoscopy Center (“FCEC”), a licensed outpatient surgical facility in Trumbull, Connecticut. *FF2*. FCEC has been in operation since 2003 and utilizes two procedure rooms to perform gastrointestinal services that include: colonoscopies, polypectomies, upper endoscopies and esophageal dilations. *FF3*.

On June 1, 2014, Northeast Medical Group (“NEMG”), a medical foundation affiliated with Yale New Haven Health System (YNHHS), acquired the assets of PriMed, LLC, along with a 40% interest in FCEC. *FF4-5*. PriMed physicians now perform services exclusively on behalf of NEMG through a professional services agreement. *FF7*.

Pursuant to the Sherman Antitrust Act and Conn. Gen. Stat. § 35-24 et seq. limitations exist on the actions NEMG can take on behalf of FCEC, unless NEMG holds the controlling ownership interest of the endoscopy center. Entities not under common control are unable to coordinate the negotiation of prices or payment terms with purchasers of their services. *FF8*. In addition, NEMG generally requires physicians to divest themselves of any ownership interest in facilities, such as FCEC, that bill and receive payment from third party payers. *FF9*. As a result, the former PriMed physicians are seeking approval to sell their remaining 60% member interest to NEMG, making NEMG the sole owner of FCEC. *FF10*. Following the acquisition, NEMG will establish a separate entity called NEMG Gastroenterology, LLC to operate the endoscopy center and obtain a new tax ID number to bill for procedures. *FF11-12*.

Following the acquisition of FCEC, NEMG will continue to provide the same clinical services to the same patient population by the same physicians. *FF16*. An operations-oriented board will be established and will focus on administrative policies that ensure quality health care is provided in a safe environment. *FF17*. NEMG will assume all existing payer contracts and implement a new self-pay fee schedule (based on annual income) to help patients without health insurance afford care. *FF18-20*.

NEMG will bring a number of efficiencies and enhancements to the endoscopy center, such as the EPIC electronic medical records system, expertise and infrastructure for billing and other essential data management requirements, such as compliance. *FF24*. In addition, by dissolving the separate LLC and transferring assets to NEMG, FCEC can be run more efficiently, without the need for separate financial statements, tax and corporate filings and board meetings. In addition, the operations of FCEC will benefit from NEMG’s tax-exempt status with respect to purchasing. *FF25*. As a result of these combined factors, the Applicants have satisfactorily demonstrated that

quality and access to cost effective services in the region will be maintained for all relevant patient populations.

The proposal is expected to reduce costs at FCEC by a total of \$135,000 annually as a result of anticipated savings due to the transfer to the EPIC electronic medical records system, ending management fees and the ability to purchase supplies utilizing YNHHS vendor contracts. *FF26*. NEMG projects incremental gains from operations of \$628,630 in FY 2015, \$798,766 in FY 2016, \$758,235 in FY 2017 and \$716,248 in FY 2018 as a result of the proposal. *FF27*. Based on these two factors, the Applicants have satisfactorily demonstrated that the proposal is financially feasible.

Overall, the cost savings achieved by this proposal will enhance the financial strength of the health care system in Connecticut while ensuring that access to quality care is maintained for the population currently being served by FCEC, including that of the Medicare and Medicaid population. Consequently, the Applicants have demonstrated that their proposal is consistent with the overall goals included in the Statewide Health Care Facilities and Services Plan.

In order to ensure that the practicing physicians remain free from any corporate influence upon their medical judgment, OHCA requires that the Applicants agree to take certain actions as stated in the Order attached hereto.

Order

NOW, THEREFORE, the Department of Public Health, Office of Health Care Access, PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. hereby stipulate and agree to the terms of settlement with respect to the change in ownership structure of Fairfield County Endoscopy Center as follows:

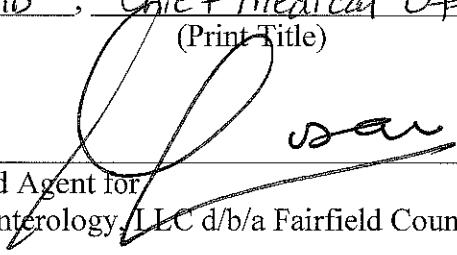
1. PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. shall ensure that the Fairfield County Endoscopy Center Medical Director and any and all physicians utilizing the Fairfield County Endoscopy Center are free from any and all influence from PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. with respect to their independent medical judgment in providing direct care to patients of the Fairfield County Endoscopy Center. Nothing herein shall prohibit Northeast Medical Group, Inc. from adopting care protocols or policies for the Fairfield County Endoscopy Center, provided that such protocols and policies are approved by Northeast Medical Group, Inc. and its physician directors consistent with the physician governance requirements of Connecticut General Statutes §§ 33-182aa et seq. (the Medical Foundation Act).
2. PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. shall ensure that the Fairfield County Endoscopy Center Medical Director and any and all physicians utilizing the Fairfield County Endoscopy Center are free from any and all influence with respect to their supervision of any and all licensed health care workers providing direct care to patients of the Fairfield County Endoscopy Center. Nothing herein shall prohibit Northeast Medical Group, Inc. from adopting human resource or other policies for the Fairfield County Endoscopy Center, provided that such policies are approved by Northeast Medical Group, Inc. and its physician directors consistent with the physician governance requirements of the Medical Foundation Act.
3. PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. shall provide the Office of Health Care Access with a fully executed copy of the Operating Agreement, relating to the Fairfield County Endoscopy Center, within 30 days of execution.
4. The Office of Health Care Access, PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. agree that this Agreed Settlement represents a final agreement between the Office of Health Care Access, PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. with respect to this request. The signing of this Agreed Settlement resolves all objections, claims and disputes that may have been raised by the PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. with regard to Docket Number: 14-31937-CON.

5. 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 Conn. Gen. Stat. §§ 19a-642 and 19a-653 with all fees and costs of such enforcement being the responsibility of PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center and Northeast Medical Group, Inc. should PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center or Northeast Medical Group, Inc. fail to comply with its terms.

6. This Agreed Settlement shall inure to the benefit of and be binding upon the Office of Health Care Access, PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center, Northeast Medical Group, Inc. and their successors and assigns.


Signed by Arnold Dorosario, MD, Chairman of The Board
(Print name) ~~Chief Medical Officer~~
(Print Title)

4-27-15
Date

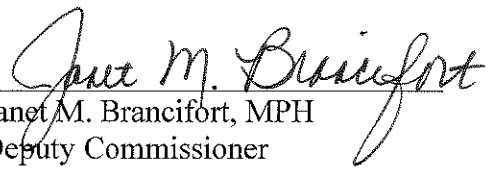

Duly Authorized Agent for
PriMed Gastroenterology, LLC d/b/a Fairfield County Endoscopy Center

Signed by Amit Rastogi, MD, Interim Chief Executive Officer
(Print name) (Print Title)

4-27-15
Date


Duly Authorized Agent for
Northeast Medical Group, Inc.

The above Agreed Settlement is hereby accepted and so ordered by the Department of Public Health, Office of Health Care Access on 5/1/15.


Janet M. Brancifort, MPH
Deputy Commissioner