



Office of Health Care Access

Revised Final Decision

Applicants: Sharon Corporation, Sharon Hospital, Inc., West Sharon Corporation and Essent Healthcare, Inc. d/b/a Essent Healthcare of Connecticut, Inc.

Docket Number: 01-486-01R

Project Title: Purchase of Sharon Hospital by Essent Healthcare, Inc.

Statutory Reference: Section 4-181a of the Connecticut General Statutes

Filing Date: November 26, 2001

Hearing Date: Not Applicable

Presiding Officer: Raymond J. Gorman, Commissioner

Intervenors: Community Association to Save Sharon Hospital
The Ombudsmen for Sharon Hospital
The Permanent Commission on the Status of Women
The Physicians for Sharon's Future

Informal Participant: The Connecticut Coalition for Choice

Decision Date: December 14, 2001

Staff: Patricia A. Gerner, Susan Cole, Karen H. Nolen,
Harold M. Oberg and Steven Lazarus

Decision on Reconsideration

On October 17, 2001, the Office of Health Care Access (“OHCA”) issued its Final Decision in Docket Number 01-486-01. On November 26, 2001, the Office of the Attorney General issued its Final Decision in this matter. By document dated November 26, 2001, Sharon Hospital and Essent Healthcare, Inc. d/b/a Essent Healthcare of Connecticut, Inc. filed a “Joint Petition for Reconsideration, Modification or Clarification of the Office of Health Care Access’ October 17, 2001 Final Decision” under Docket Number 01-486-01R. On December 5, 2001, the Office of Health Care Access issued a Ruling indicating that it would reconsider its Final Decision.

The Office of Health Care Access has reconsidered its Final Decision in light of the Attorney General’s Decision as well as the Petition for Reconsideration filed by the Applicants. Some of the issues of interest to both OHCA and the Attorney General were addressed so completely by the Attorney General that OHCA has eliminated its stipulations to avoid confusion. Specifically, the issues of the Amenia Landfill and the Sharon Hospital Advisory Board have been eliminated from the OHCA Stipulations. Other Stipulations have been eliminated, modified and/or combined in the Final Decision.

In light of the modified Stipulations, there are parts of the October 17, 2001 Final Decision, especially the “Rationale”, which would now appear to be superfluous. However, it is OHCA’s position that those portions of the Rationale are still vital to the thought process of the agency as it reached its Final Decision and therefore no changes have been made to the Final Decision in those sections entitled “Project Description”, “Nature of Proceedings”, “Findings of Fact” or “Rationale”. OHCA has reconsidered its Final Decision in accordance with the provisions of Section 4-181a of the Connecticut General Statutes and hereby issues its Decision on Reconsideration.

Order: Pages 33-37

The existing Order is vacated and replaced with the following:

Order

For purposes of this Order, “Essent” is defined as Essent Healthcare, Inc. d/b/a Essent Healthcare of Connecticut, Inc. “Hospital” is defined as the entity now known as Sharon Hospital after it is purchased by Essent. The application filed pursuant to Section 19a-486 of the Connecticut General Statutes seeking approval of the asset purchase agreement entered into by Sharon Corporation, Sharon Hospital, Inc., West Sharon Corporation and Essent for the purchase of Sharon Hospital by Essent Healthcare, Inc., at a total capital expenditure of \$16,390,000 (subject to adjustments, including any valuation determined by the Office of the Attorney General) is hereby approved with modifications as set forth in the following stipulations, which have been revised after reconsideration by OHCA:

- 1) The purchase price paid by Essent for the assets and liabilities of Sharon Hospital, Inc. and the assets of the West Sharon Corporation and the Sharon Corporation will be in the form of a cash capital contribution to Sharon Hospital, Inc. and will not result in the issuance of any additional debt or issuance of any preferred stock with debt-like features by Sharon Hospital, Inc. to the purchaser, Essent, or any third party as part of the transaction. This cash capital contribution shall be used to retire the entire debt of \$11.4 million with Fleet Bank and fund the Escrow Account as set forth in the Asset Purchase Agreement. A transaction audit to verify this information will be submitted to OHCA within thirty days of the transfer of assets to Essent. This audit may be conducted and completed by the same independent forensic accountant selected by the Attorney General in coordination with the audit required by the Final Decision of the Attorney General.

- 2) Essent will invest \$8 million in the Hospital for renovations, clinical equipment acquisitions and programs as promised by Essent. A detailed business plan, and a facilities improvement plan for the entire \$8 million, will be submitted by Essent to OHCA for its review and prior approval within ninety days of the official date of this document. The business plan will contain both immediate (24 month) and longer term (60 month) components. If Essent cannot document that it has invested \$8 million in the Hospital at the end of five years, the difference between what has been spent and the \$8 million will be turned over to the SACHF, or a successor foundation, to be spent on programs and services that will benefit the citizens of the area. If Essent sells the Hospital or in any way changes its relationship with the Hospital prior to the end of the five-year period, the same condition will be imposed on the new owner as ordered above.

- 3) Essent will establish an escrow account (“the Escrow Account”) which will be funded at the time of closing with \$2.1 million in a federally insured bank or financial institution located and licensed to do business in Connecticut. OHCA will have the right to approve the issuing bank or financial institution and review and pre-approve the language in the escrow agreement. There will be two components to the Escrow Account, to be structured as two separate line items, or as two separate funds within the Escrow Account.

The first fund within the Escrow Account will consist of the \$500,000 recommended by Essent to defray costs associated with any extraordinary monitoring and compliance not otherwise addressed by OHCA funding, including but not limited to compliance audits, case record review and on-site compliance inspections. This fund may also be used to pay any civil penalties allowed by law or any court-imposed penalties for any failure to comply with the Stipulations in this Order. This fund will remain at the level of \$500,000 less monies drawn down after billing by OHCA for the first five years of Essent ownership. If any portion or all of the \$500,000 fund is used for penalties imposed by OHCA or a court, Essent must replenish that amount to the Escrow Account within 90 days.

Any part of the \$500,000 fund used for OHCA monitoring will not need to be replenished.

As part of the monitoring and compliance activities, OHCA agents and designees will be guaranteed complete access to any and all activities of Essent and the Hospital concerning the operation of the Hospital including, but not limited to, all financial and utilization data, and all financial transactions. This access shall include access to all documents, confidential or otherwise, and all persons having any business with the Hospital. At the end of five years from the official date of this document, any monies remaining in this \$500,000 funded portion of the Escrow Account will be returned to Essent with any interest that has accumulated.

The second fund within the Escrow Account will be for capital improvements as identified and approved by OHCA under the facilities improvement plan referenced in Stipulation #2 of this Order. This fund will be established at the time of closing with \$1.6 million, which is one fifth of the \$8 million promised by Essent to fund capital improvements at Sharon Hospital. This account will be maintained by Essent with no less than \$1.6 million over the first five years from the official date of this document or until Essent has spent \$8 million on approved capital expenditures, whichever is earlier. After spending down any portion of the \$1.6 million, Essent will bring the balance back up to \$1.6 million at all times during the first five years of operation or until the \$8 million is spent, whichever is earlier.

- 4) Within one hundred and eighty days of the official date of this document, Essent will establish a tertiary care agreement with a hospital, health system or facility that provides the full range of health care services that are legally permissible and clinically available in Connecticut, and takes into consideration traditional referral patterns. The Essent-St. Francis affiliation and any other affiliations that have been contemplated are held in abeyance until the described agreement is in place.
- 5) There will be no reduction in the size and/or qualifications of the clinical care work force at Sharon Hospital, nor a reduction in any services or service availability without the thorough review and prior approval of OHCA during the first five years of operation. This Stipulation does not relate to reductions in the business office, billing, physical plant and other non-clinical areas of hospital operations, so long as the reductions have no impact on the delivery of patient care.
- 6) Under Essent's ownership, the Hospital will agree to provide appropriate care to any person or patient presenting for such care regardless of the individual's ability to pay, to the extent that those services are offered at the Hospital. Within ninety days of the official date of this document, Essent will submit to OHCA Essent's free care/charity care policy and the bad debts policy for the Hospital, which will be subject to OHCA's approval.

- 7) Essent and the Hospital will continue to be subject to all state and federal laws, including the statutes and regulations that all other Connecticut acute care hospitals are subject to including, but not limited to, all financial and statistical reportings as set forth in Chapter 368z of the Connecticut General Statutes. This includes such items as the affiliate financial data required in the Annual Reporting and the Inpatient Discharge and Billing Data. Additionally, Essent and the Hospital will obtain all local, state and federal approvals, licenses and permits necessary to operate a hospital.
- 8) If Essent sells the Hospital or if the owners of Essent sell Essent Healthcare, Inc. or Essent Healthcare of Connecticut, Inc., during the next five years from the official date of this document, the terms of this Order which have not expired will be binding on the purchaser and will be made a part of the purchase agreement between Essent and the new owner or any successor owners. SACHF, or a successor foundation, will be given the right of first refusal to purchase the Hospital for at least the next ten years.
- 9) Essent is required to seek permission and prior approval from OHCA for a period of five years from the official date of this document, to sell, transfer, or liquidate any of the assets transferred from the Sharon Corporation, Sharon Hospital, Inc. and the West Sharon Corporation to Essent as a result of this sale, including real estate. This Stipulation does not extend to transactions for which certificate of need approval is required and sought, nor does it extend to sales, transfers or liquidations related to the replacement of obsolete or worn machinery, equipment, furniture or fixtures in the ordinary course of business.

All of the foregoing constitutes the Final Order of the Office of Health Care Access in this matter.

In all other respects, the Final Decision dated October 17, 2001 remains the same.

By Order of the
Office of Health Care Access

Date

Raymond J. Gorman
Commissioner

By signing below, the Applicants agree that they have read the above Order issued by Commissioner Raymond J. Gorman on this 14th day of December 2001 and agree to abide by all of the stipulations that have been set forth and incorporated as part of this Approval with Modifications.

Further, the Applicants understand and agree that if there is any contradiction between the terms of this Order and the Asset Purchase Agreement or any other agreement between or among the parties, the terms of this Order will prevail. The Applicants refusal to sign this Order will result in the denial of the application by OHCA.

Date

Duly Authorized Representative of
Sharon Corporation

Date

Duly Authorized Representative of
Sharon Hospital, Inc.

Date

Duly Authorized Representative of
West Sharon Corporation

Date

Duly Authorized Representative of
Essent Healthcare, Inc. d/b/a
Essent Healthcare of Connecticut, Inc.