



Office of Health Care Access

Modification of Previously Authorized Certificate of Need

Final Decision

Applicants: Hartford Hospital and
Connecticut Surgical Group, P.C.

**Modification Docket
Number:** 07-30307-MD2

Modification Project Title: A request to modify a previous Certificate of Need authorization to change the designated applicancy for the authorized CON from Connecticut Surgical Group, P.C. and Hartford Hospital as joint Applicants to Hartford Hospital as the sole Applicant and owner of the ambulatory surgery center in West Hartford

**Original Project Docket
Number and Title** Docket Number 04-30307-CON
The establishment and operation of an ambulatory surgery center to be located on Memorial Drive in West Hartford (the West Hartford Surgery Center)

Statutory Reference: Sections 4-181a(b), Connecticut General Statutes

Filing Date: June 18, 2007

Decision Date: July 2, 2007

Staff Karen Roberts

Project Description: Connecticut Surgical Group, P.C. and Hartford Hospital (“Applicants”), request a modification of the Certificate of Need (“CON”) authorization issued under Docket Number 04-30307-CON in order to change the designated applicancy for the authorized CON from Connecticut Surgical Group, P.C. and Hartford Hospital as joint Applicants to Hartford Hospital as the sole Applicant and sole owner of the ambulatory surgery center.

Findings of Fact

1. On May 20, 2005, under Docket Number 04-30307-CON, the Office of Health Care Access (“OHCA”) granted a Certificate of Need (“CON”) pursuant to Sections 19a-638 and 19a-639 of the Connecticut General Statutes to Connecticut Surgical Group, P.C. and Hartford Hospital (“Applicants”) to establish and operate an ambulatory surgery center to be located on Memorial Drive in West Hartford, Connecticut, at a total capital cost of \$4,650,721, to be known as the West Hartford Surgery Center. *(CON authorization issued under DN 04-30307-CON)*
2. On May 9, 2007, under Docket Number 07-30307-MDF, OHCA granted a modification of the CON authorization in order to increase the authorized capital expenditure for the project and extend the CON expiration date. *(Modification authorization issued under DN 07-30307-MDF)*
3. The CON authorization under Docket Number 04-30307-CON was subject to the following conditions, as were modified under Docket Number 07-30307-MDF:
 1. West Hartford Surgery Center, LLC will consist of two (2) operating rooms and one (1) endoscopy room and one shelled operating room and have no more than 15,000 square feet of leased space. It is to be located on Memorial Drive, West Hartford, Connecticut.
 2. West Hartford Surgery Center, LLC will provide OHCA with utilization reports on a quarterly basis. The data elements and the format and submission requirements are described in Attachment 1.
 3. The Applicants are authorized to fit out the shelled operating room when the surgical demand requires the additional operating room. The Applicants shall provide OHCA with a letter stating the proposed date that the operating room will be put into service.
 4. The Applicants shall not exceed the approved total capital cost of \$6,897,516. In the event that the Applicants learn of potential cost increases or expect that the final project costs will exceed those approved, the Applicants shall file with OHCA a request for approval of the revised CON project budget.
 5. This authorization shall expire on September 30, 2007, unless the Applicants present evidence to OHCA that the West Hartford Surgery Center is licensed and operational. *(CON authorization under DN 04-30307-CON and modification authorization under DN 07-30307-MDF)*
4. On May 30, 2007, OHCA received a request from the Applicants to modify the CON Order under Docket Number 04-30307-CON, as modified by Docket Number 07-30307-MDF, in order to change the designated applicancy from Connecticut Surgical Group, P.C. and Hartford Hospital as joint Applicants to Hartford Hospital as the sole Applicant and sole owner of the ambulatory surgery center. Further information was received on June 18, 2007 and the modification request was deemed complete under Docket Number 07-30307-MD2. *(May 30, 2007 and June 28, 2007 submissions from Applicants under DN 07-30307-MD2)*

5. The Applicants provide the following information and rationale specific to this request:
- a. The West Hartford Surgery Center, LLC was legally formed to own and operate the West Hartford Surgery Center, and Hartford Hospital (“Hospital”) and Connecticut Surgical Group, P.C. (“CSG”) each have a fifty percent interest in the active LLC.
 - b. Despite the fifty percent interest each entity has in the LLC, the Hospital was to retain control over fundamental operational matters involving the LLC and the Center in order to ensure that the Center’s activities further the Hospital’s charitable purpose, including the development and implementation of a charity care policy, the initiation of charitable activities and the right to terminate any officer, any management company or the LLC itself, if the Hospital’s charitable purposes were not being served.
 - c. The legal entity, West Hartford Surgery Center, LLC will be terminated.
 - d. The license for the ambulatory surgery center will be held by Hartford Hospital and it will operate as a department of the Hospital.
 - e. The Applicants indicate that all other aspects of the Center’s operations will remain as described in the CON application and authorization.
 - f. The transfer of CSG’s interest in the LLC is prompted by developments in the federal reimbursement rules which would operate to the substantial disadvantage of a jointly-owned surgery facility relative to a hospital-owned surgery facility.
 - g. The project has incurred cost overages due to construction increases and the complexity of the Blue Back Project¹. These overages coupled with minimum levels of return on investment caused Hartford Hospital and Connecticut Surgical Group to reconsider the partnership model as a viable financial model.
(May 30, 2007 and June 28, 2007 submissions from Applicants under DN 07-30307-MD2)
6. Regarding the change in federal reimbursement for ambulatory surgery centers as it specifically effects this project, the Applicants provide the following information:
- a. At the time of the CON filing in 2004, rates in effect via Medicare reimbursement were used to project income for the proposal. On August 8, 2006, the Centers for Medicare & Medicaid Services (“CMS”) published changes to the 2007 payment rates for ambulatory surgery centers (“ASC”) and proposed a new payment system to be effective in 2008.
 - b. On January 1, 2007, CMS implemented a limit on ACS payments to no more than 75% of hospital reimbursed rates, reducing ASC payment rates on 274 procedures.
 - c. On January 1, 2008, CMS proposes to change the reimbursement system to pay ASCs using the same ambulatory payment classification used for hospital outpatient departments (“HOPD”). Furthermore, CMS proposes that 2008 ASC rates would be only 62% of the HOPD rates for the same procedures in most cases.
 - d. In 2009, CMS proposes no inflation update for ASC’s and future increases would be less than amounts planned for HOPD’s. The final regulations are due to be published by CMS in November 2007.

¹ These cost overages were considered by OHCA under modification Docket Number 07-30307-MDF.

- e. Given the increased cost of construction and these reduced payment rates, the Applicants estimated that the annual surgery center Gains from Operations as a LLC would be only \$108,000 to \$255,000 in years 1 to 3. The Applicants estimate that the same surgery center operated as a department of Hartford Hospital will experience a Gain from Operations of from \$1.6 million to \$1.9 million in years 1 to 3.
 - f. As a result of the above, the Applicants believe that the most fiscally responsible decision is to operate the Surgery Center as a department of Hartford Hospital.
(Page 2 of May 30, 2007 submission under Docket Number 07-30307-MD2)
7. In April 2007, the construction project for this authorized ambulatory surgery center was 70% complete and the opening of the surgery center was scheduled for August 2007. *(Page 4 of April 13, 2007 submission under Docket Number 07-30307-MDF and page 2 of the May 30, 2007 submission under Docket Number 07-30307-MD2)*
 8. With a change in applicancy to the Hospital, rate negotiations will not be necessary as the hospital has contracts with all payers. If the modification request for transfer of applicancy is not approved, the facility will have to open with no rates as rate negotiations take 3 to 4 months prior to operations. Losses due to rent, staff and other operating costs could amount to over \$300,000 a month beginning in August 2007. *(Page 2 of May 30, 2007 submission)*
 9. Previously, the LLC was to be managed by a six-person Management Committee consisting of three individuals selected by Hartford Hospital and three from Connecticut Surgical Group. With the proposed modified organizational structure, management of the ambulatory surgery center will be via a contract from Hartford Hospital to Connecticut Surgical Group. The six person management committee will remain as an advisory committee. *(Pages 2-3 of May 30, 2007 submission)*
 10. The estimated payer mix for the project is not altered by this modification proposal and Hartford Hospital is committed to providing access to all patients regardless of payer source. *(Page 3 of the May 30, 2007 submission)*
 11. Hartford Hospital already holds the lease on this physical space. With the modified organization structure, there will be no need for a sublease to the LLC. *(Page 3 of the May 30, 2007 submission)*

Discussion

OHCA has reviewed this request for a modification to a previously authorized CON and finds that the relationship of the CON authorized under Docket Number 04-30307-CON to Section 19a-637, C.G.S., is not altered by this request for a modification under Docket Number 07-30307-MD2. It appears to be the Applicants' intent for Hartford Hospital to implement the project in a timely manner and in the scope reviewed and authorized by OHCA in the original CON application. The requested change in applicancy will not result in a change in the services provided and the request appears to be for circumstances which were substantially unanticipated by the Applicants at the time of the CON filing in 2004. The requested change in applicancy for this project appears reasonable and is the result of a change in conditions.

Order

Based on the above discussion and the reasons provided in the Applicants' modification request, OHCA hereby grants the request and modifies the CON authorized under Docket Number 04-30307-CON, as previously modified by Docket Number 07-30307-MDF. The CON Order for this project shall now be as follows:

Hartford Hospital is hereby authorized to establish and operate an ambulatory surgery center to be located on Memorial Drive in West Hartford, Connecticut, at a total capital cost of \$6,897,516. The authorization is subject to the following conditions:

- 1 The authorized ambulatory surgical center will consist of two (2) operating rooms and one (1) endoscopy room and one shelled operating room and have no more than 15,000 square feet of leased space. It is to be located on Memorial Drive, West Hartford, Connecticut.
- 2 Hartford Hospital will provide OHCA with utilization reports on a quarterly basis. The data elements and the format and submission requirements are described in Attachment 1.
- 3 Hartford Hospital is authorized to fit out the shelled operating room when the surgical demand requires the additional operating room. Hartford Hospital shall provide OHCA with a letter stating the proposed date that the operating room will be put into service.
4. Hartford Hospital shall not exceed the approved total capital cost of \$6,897,516. In the event that Hartford Hospital learns of potential cost increases or expect that the final project costs will exceed those approved, Hartford Hospital shall file with OHCA a request for approval of the revised CON project budget.
5. This authorization shall expire on September 30, 2007, unless Hartford Hospital presents evidence to OHCA that the authorized ambulatory surgery center is licensed and operational.

By Order of the
Office of Health Care Access

Signed by Commissioner Vogel on July 2, 2007

Date

Cristine A. Vogel
Commissioner

CAV/kr

Attachment 1

Hartford Hospital shall submit patient-specific data as listed and defined below for those patients that receive service, care, diagnosis or treatment at the ambulatory surgery center located in West Hartford, Connecticut. This information may be extracted from either the medical abstract or billing records or both and submitted to the Office of Health Care Access (OHCA) in accordance with this Attachment.

- I. The data are to be submitted in ASCII format on a computer disk or electronically.
- II. Column headers to be used are listed below in parentheses after the name of each data element.
- III. Data formats to be followed are listed for each data element.
- IV. The disk or file should be clearly marked with the applicant's/facility's name, file name, docket number and its contents.
- V. Accompanying the data submission, the applicant/facility must submit a full written description of the data submitted and its record layout.
- VI. Initial data shall be submitted at the end of the first quarter in which the facility begins to provide the service it is licensed for. Subsequent data for a calendar quarter shall be filed before the end of the calendar quarter following the calendar quarter in which the encounter was recorded. This data set shall contain the data records for each individual encounter from that facility during the preceding calendar quarter. For example, the data set to be filed before June 31, 2002, shall contain the data records for each individual encounter at that facility from January 1, 2002 until March 31, 2002.
- VII. All data collected by OHCA will be subject to the laws and regulations of the State of Connecticut and the Office of Health Care Access regarding its collection, use, and confidentiality.