

Office of Health Care Access Certificate of Need Application

Final Decision

Applicants: Windham Community Memorial Hospital,
Inc. and Hartford Health Care
Corporation, Inc.

Docket Number: 08-31178-CON

Project Title: Integration of Windham Community
Memorial Hospital, Inc. into Hartford
Health Care Corporation, Inc.

Statutory Reference: Sections 19a-638, C.G.S.

Filing Date: November 3, 2008

Public Hearing Date: January 6, 2009

Decision Date: January 29, 2009

Default Date: February 1, 2009

Staff: Tillman Foster
Steven W. Lazarus
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Project Description: Windham Community Memorial Hospital, Inc. (“WCMH” or “Hospital”) and Hartford Health Care Corporation, Inc. (“HHCC”) propose the integration of WCMH into HHCC, with no associated capital expenditure.

Nature of Proceedings: On November 3, 2008, the Office of Health Care Access (“OHCA”) received the completed Certificate of Need (“CON”) Application of WCMH and HHCC for the integration of WCMH into HHCC, with no associated capital expenditure. WCMH and HHCC

(collectively known as the “Applicants”) are considered to be health care facilities or institutions for purposes of this CON as defined by Section 19a-630 of the Connecticut General Statutes (“C.G.S.”).

Pursuant to Section 19a-638, C.G.S., a public hearing regarding the CON application was held on January 6, 2008. On December 8, 2008, the Applicants were notified of the date, time, and place of the hearing. On December 6, 2008, notices to the public announcing the hearing were published in *The Hartford Courant* and on December 8, 2008, in *The Chronicle*.

Commissioner Cristine A. Vogel served as Presiding Officer. The hearing was conducted as a contested case in accordance with the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the Connecticut General Statutes) and Section 19a-638, C.G.S., the Presiding Officer heard testimony from the Applicants and their witnesses.

OHCA’s authority to review and approve, modify or deny this proposal is established by Section 19a-638, C.G.S. The provisions of this section as well as the principles and guidelines set forth in Section 19a-637, C.G.S., were fully considered by OHCA in its review.

Findings of Fact

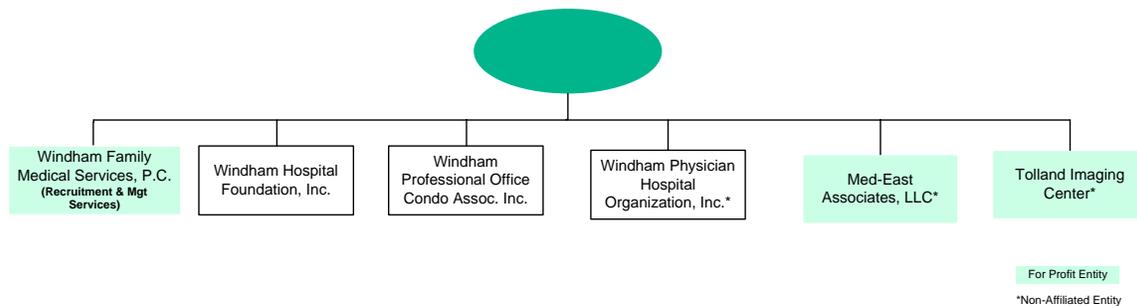
Clear Public Need

Impact on the Applicants’ Current Utilization Statistics Contribution of the Proposal to the Accessibility and Quality of Health Care Delivery in the Region

1. Windham Community Memorial Hospital, Inc. (“WCMH” or “Hospital”) is a Connecticut corporation located at 112 Mansfield Avenue, Willimantic, Connecticut and operates a 144 licensed bed acute care hospital. (*CON Application, 08-31178-CON, HHCC and WCMH Integration Agreement, Appendix B, and Office of Health Care Access, Hospital Reporting System, FY 2007, Report 400*)
2. Hartford Health Care Corporation (“HHCC”) located at 80 Seymour Street, Hartford, Connecticut, is the parent corporation of Hartford Hospital, in Hartford and MidState Medical Center in Meriden. (*November 3, 2008, CON Application, page 1 and Office of Health Care Access, Hospital Reporting System, FY 2007, Report 400*)

3. WCMH and HHCC (“Applicants”) are proposing the integration of WCMH into HHCC, with no associated capital expenditure. *(June 2, 2008, Letter of Intent and November 3, 2008, CON Application, pages 1-8)*
4. Under the proposed integration WCMH will become a wholly-owned subsidiary of HHCC similar to Hartford Hospital and MidState Medical Center. *(June 2, 2008, Letter of Intent)*
5. The organization chart of WCMH and its affiliates before integration with HHCC is as follows:

Chart One: WCMH Organization Chart Prior to Integration into HHCC:



Source: CON Application DN 08-31178-CON, Proposed Integration Agreement, Schedule 2.2

6. The following table lists affiliated and non-affiliated entities currently under WCMH (prior to the proposed the integration):

Table 1: Affiliated and Non-Affiliated WCMH Entities

Affiliated Entities		
Entity	WCMH Ownership Percentage	
Windham Family Medical Services, P.C.	One Hundred Percent	
Windham Hospital Foundation, Inc.	One Hundred Percent	
Windham Professional Office Condominium Association, Inc.	One Hundred Percent	
Non-Affiliated Entities		
Windham Physician – Hospital Organization, Inc.	Fifty Percent	
Med-East Associates, LLC	Fifty Percent	
Tolland Imaging Center, LLC	Fifteen Percent	
Health Connecticut, LLC (Connecticut Hospital Association Entity)	WCMH one of 18 Hospital owners	

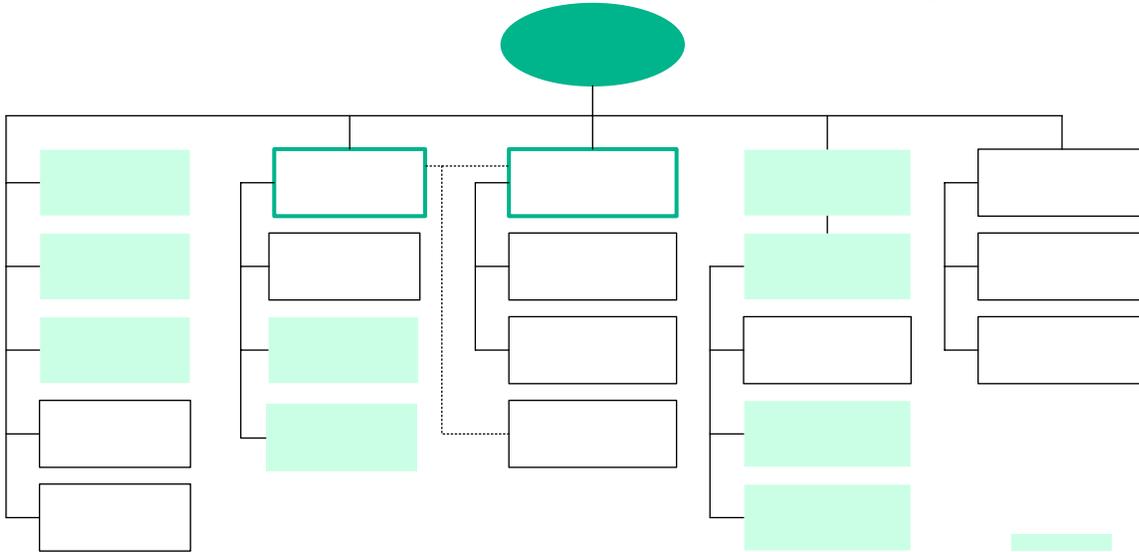
Note: “Affiliated” entities are describe as having greater than 50% WCMH ownership;

“Non-Affiliated” are described as having 50% or less WCMH ownership

(CON Application, 08-31178-CON, Schedule 2.2 of HHCC and WCMH Integration Agreement, December 30, 2008 Prefile Testimony, Response to OHCA Interrogatories, page 127 and January 6, 2009, Applicants Public Hearing Testimony)

7. The organization chart of HHCC before integration with WCMH is as follows:

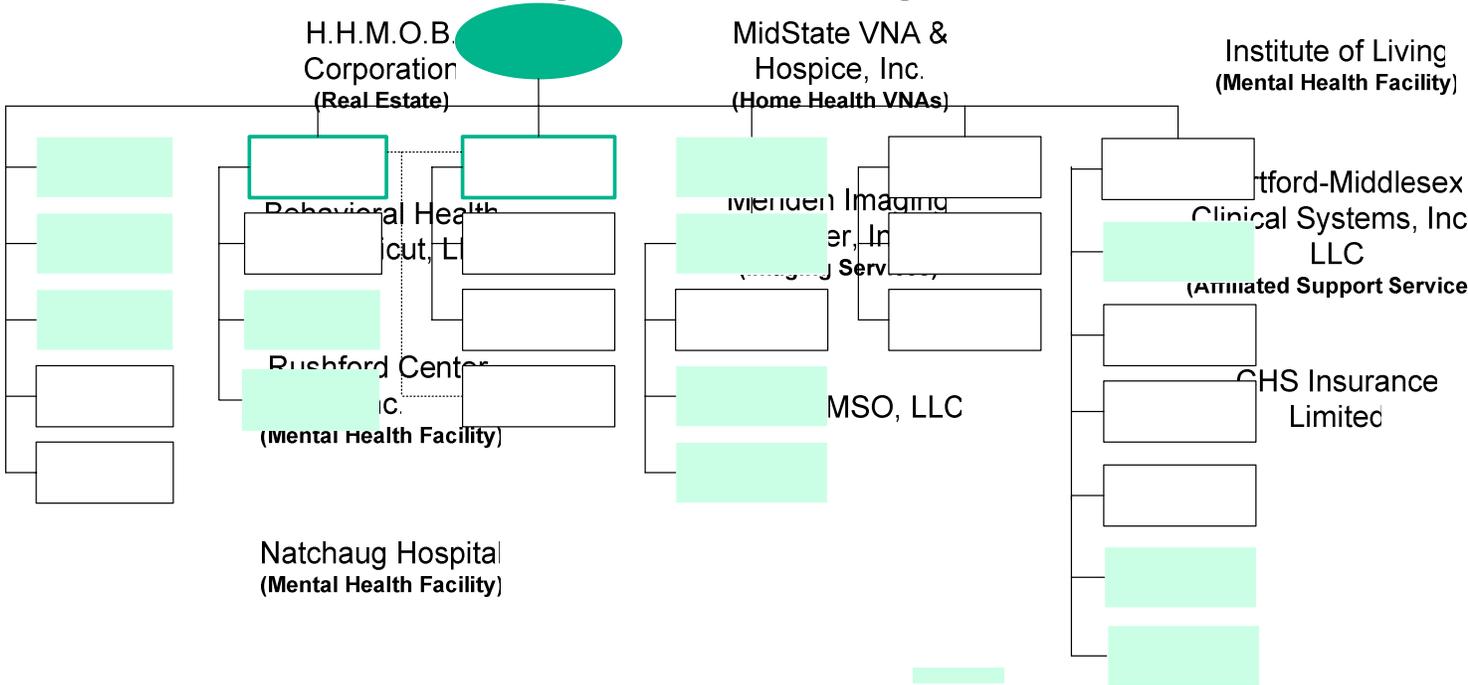
Chart Two: HHCC Organization Chart prior to the proposed Integration:



Source: Hartford Hospital, Docket Number 07-005AR, FY 2007 Annual Reporting

8. The proposed organization chart of WCMH and its affiliates after integration into HHCC as follows:

Chart Three: WCMH Organization Chart After Integration into HHCC:



Sources: CON Application DN 08-31178-CON, Proposed Integration Agreement, Schedule 2.2 and Hartford Hospital, Docket Number 07-005AR, FY 2007 Annual Reporting

9. As of Integration Agreement's closing date, the Board of Directors of WCMH will consist of eighteen (18) individuals, three (3) of which are ex-officio, serving on the WCMH Board of Directors as set forth in Schedule 1.3 of the Integration Agreement. *(CON Application, 08-31178-CON, December 30, 2008, Prefile Testimony and Response to OHCA Interrogatories, HHCC and WCMH Integration Agreement, page 126)*
10. Section 3.1 of the Pre-Closing Amended and Restated Bylaws (or Schedule 1.2 of Integration Agreement) sets forth that the WCMH Board shall not consist of any more than 18 directors, and only HHCC shall have the exclusive right to elect directors or fill any vacancy on WCMH's Board. *(September 18, 2008, Initial Certificate of Need Application, Pre-Closing Amended and Restated Bylaws or Schedule 1.2 of HHCC and WCMH Integration Agreement, page 4)*
11. Under Article V of the Pre-Closing Amended and Restated Certificate of Incorporation WCMH shall operate under the management of its Board of Directors having all the necessary corporate power and authority to own, lease and use its properties and to operate its businesses as now being conducted as set forth in Clause 2.2 of the Integration Agreement. *(September 18, 2008, Initial Certificate of Need Application, 08-31178-CON, Pre-Closing Amended and Restated Certificate of Incorporation or Schedule 1.1 of HHCC and WCMH Integration Agreement, Article V)*
12. HHCC shall have the following powers and rights as set forth in Section 1.3 of Schedule 1.2:
 - (a) The sole power to elect and remove, with or without cause members of the WCMH Board.
 - (b) Review and approve, disapprove, or modify annual operating and capital budgets; significant proposed programs and expenditures, the purchase of significant operating or capital assets not contemplated in an approved budget or plan; and the borrowing of any sum in excess of \$1,000,000 with a stated term of greater than one year.
 - (c) Approve, disapprove, modify or direct the implementation of strategic plans, programmatic plans; health care standards of care; utilization review; and program coordination with other entities or persons in HHCC's health care system.
 - (d) Approve or disapprove any voluntary dissolution, merger or consolidation of WCMH or the sale, pledging, leasing or transfer of any substantial amount of WCMH's assets or the creation or acquisition of any significant subsidiary or affiliate corporation, significant contracts which WCMH in its discretion may refer to HHCC for review or approval; the selection of certified public accountants for WCMH; the filing of any Certificate of Need application for an expenditure or program outside of WCMH's ordinary business.
 - (e) Approve or establish guidelines or parameters for governing WCMH's participation in managed care contracts. *(September 18, 2008, Initial Certificate of Need Application, Pre-Closing Amended and Restated Bylaws or Schedule 1.2 of HHCC and WCMH Integration Agreement, page 4)*
13. When WCMH is integrated into HHCC there will be no change in ownership of WCMH's affiliated entities except that HHCC will become the sole member of WCMH as set forth Section 1.2 of Schedule 1.2 and the affiliated entities will remain unchanged as listed in Schedule 2.2 of the Integration Agreement. *(September 18, 2008, Initial Certificate of Need Application, Schedule 1.2 of the*

Integration Agreement, Schedule 2.2 of HHCC and WCMH Integration Agreement, December 30, 2008, Prefile Testimony and Response to OHCA Interrogatories)

- 14.** WCMH shall maintain its Board of Corporators (“Corporators”) consisting of no more than 150 members who are adults who either work or reside in the towns listed in Section 2.4 of Schedule 1.2, but it will serve only in an advisory capacity to WCMH’s Board. *(September 18, 2008, Initial Certificate of Need Application, Pre-Closing Amended and Restated Bylaws or Schedule 1.2 of the HHCC and WCMH Integration Agreement, page 4)*
- 15.** The Independent Practice Association which owns fifty percent of Windham Physician-Hospital Organization, Inc., supports the proposed Integration of WCMH into HHCC. *(September 18, 2008, Initial Certificate of Need Application, Testimony of Windham Community Memorial Hospital, January 6, 2009, Public Hearing)*
- 16.** The Applicants state that historically, WCMH has had a close relationship with Hartford Hospital and with respect to medical staff referrals for tertiary level services as well as for other programmatic collaboration. This relationship has included successful clinical efforts in oncology, cardiology and emergency medicine. It has also assisted in allowing WCMH to participate in National Institutes of Health (“NIH”) clinical research trials and other research projects.
(September 18, 2008, Initial Certificate of Need Application, Prefile Testimony of Richard A. Brevnik, President and Chief Executive Officer of Windham Community Memorial Hospital, January 6, 2009, page 5)
- 17.** According to the Applicants:
 - (a). In spring 2006, a strategic partnership agreement was signed by the Boards of both organizations,
 - (b). In January 2007, the leadership of WCMH, including the Board, Administration and Medical Staff embarked upon a comprehensive strategic planning process. Principles for affiliation were identified and given the longstanding relationship of both institutions, formal discussions were pursued with HHCC. Concurrently with the formal adoption of the revised strategic plan in early summer 2007, actions were implemented by both administrations and boards to develop an agreement. These agreements were approved in August of 2007,
 - (c). Formal votes of WCMH were taken in the spring of 2008 and the Corporators of WCMH took a vote in June 2008, approving this affiliation and the documents necessary for implementation.
(September 18, 2008, Initial Certificate of Need Application, pages 2-3)
- 18.** The Applicants stated that:
 - (a). The day to day operations of WCMH will remain the responsibility of the WCMH Board of Directors, the Chief Executive Office and administrative staff,
 - (b) The reserve powers of the agreement require WMCH to get approval from HHCC for certain fundamental decisions that will be subject to HHCC’s or the members approval (e.g., annual budgets, major capital purchases exceeding certain capital thresholds, and Certificate of Need projects), and
 - (c) No consolidation of services are planned at this time. However, it is possible in accordance with further development of the HHCC integrated Health Care delivery system

that certain services will not be duplicated at each member entity. It is also anticipated that certain administrative, management and technical services may be consolidated more immediately in order to achieve economies of scale and enhanced quality of service. (November 3, 2008, Responses to OHCA's Completeness Letter, page 3)

19. According to the Applicants, WCMH will be integral to HHCC plan to advance the quality of Health Care delivered to residents in the region served by WCMH. (November 3, 2008, Responses to OHCA's Completeness Letter, page 4)

20. As set forth in Section 8.3 of the Integration Agreement, the HHCC Board of Directors will continue to be the principal policy making and decision making body for the System. Accordingly, WCMH management will have system accountability together with internal reporting relationships. (September 18, 2008, Initial Certificate of Need Application, Section 8.3 of the Integration Agreement, page 21)

21. The following utilization data is related to WCMH, as reported in the Patient Census Report of September 2008:

	2008	2007
Total WCMH Admissions	5,744	5,742
Medical-Surgical Service	4,724	4,651
Emergency Dept. Visits	29,054	26,822

(Patient Census Report, September, 2008)

22. WCMH stated that through the proposed integration, it will be better able to recruit primary care physicians and to explore development of primary care group sites in key locations throughout WCMH's service area. (December 30, 2008, Prefile Testimony of Mr. Richard A. Brvenik, President and Chief Executive Officer of WCMH, pages 5-6)

23. The Applicants state that the direct benefits of the integration to HHCC include the following opportunities:

- (a). Additional opportunities for Clinical research,
 - (b). Teaching,
 - (c) Implementation of quality initiatives,
 - (d) Shared best practices,
 - (e) Volume purchasing,
 - (f) Consolidation of certain administrative services,
 - (g) Deployment of expensive technologies throughout the system,
 - (h) Spreading of risk, and
 - (i) Recruitment of medical talent by virtue of system size and coordinated efforts.
- (November 3, 2008, Responses to OHCA's Completeness Letter, page 2)

24. According to the Applicants, benefits of the integration to be derived by WCMH include the following opportunities:

- (a) Improved ability to recruit physicians,
- (b) Increase market share in secondary service area communities,
- (c) Access managed care contracting expertise,
- (d) Purchase select clinical and administrative services,
- (e) Achieve economies of scale,
- (f) Improve the balance sheet by refinancing existing debt,
- (g) Increase the services and technology offered locally,
- (h) Decrease the out-migration of patients,
- (i) Improved ability to access capital at a lower cost, and
- (j) Reduce operating costs by being able to utilize the purchasing power of HHCC.
(September 18, 2008, Initial Certificate of Need Application, page 4)

**Financial Feasibility of the Proposal and its Impact on the Applicants’
Rates and Financial Condition
Impact of the Proposal on the Interests of Consumers of Health Care
Services and Payers for Such Services
Consideration of Other Section 19a-637, C.G.S. Principles and Guidelines**

25. The projected three-year incremental revenue from operations, total operating expense and losses/gains from operations associated with the proposed integration are presented in the table below:

Table 3: WCMH’s Incremental Financial Projections

Description	FY 2009	FY 2010	FY 2011
Incremental Revenue from Operations	\$0	\$0	\$0
Incremental Total Operating Expense	\$(600,000)	\$(600,000)	\$(600,000)
Incremental Gain from Operations	\$600,000	\$600,000	\$600,000
Revenue Over/(Under) Expenses	\$600,000	\$600,000	\$600,000

(September 18, 2008, Initial Certificate of Need Application, Financial Attach. I, number 12.C (i))

26. At a minimum is projected to save WCMH \$600,000 annually for FYs 2009-2011. The annual savings is primarily due to better financial terms attributable to WCMH’s new affiliation with HHCC. *(CON Application, 08-31178-CON, Pro Forma Attachment I, Appendix M and Prefile Testimony of Richard A. Brevnik, President and Chief Executive Officer of Windham Community Memorial Hospital, January 6, 2009, Public Hearing, page 5)*

27. HHCC's current payer mix and projected with the CON proposal is as follows:

Table 4: Current and Three-Year Projected Payer Mix with the CON Proposal

Total HHCC	Current Payer Mix	Year 1 Projected Payer Mix	Year 2 Projected Payer Mix	Year 3 Projected Payer Mix
Medicare	40%	40%	40%	40%
Medicaid (includes other medical assistance)	12%	12%	12%	12%
TRICARE and CHAMPUS	3%	3%	3%	3%
Total Government	55%	55%	55%	55%
Commercial Insurers*	45%	45%	45%	45%
Uninsured (1)				
Workers Compensation (1)				
Total Non-Government	45%	45%	45%	45%
Total Payer Mix	100%	100%	100%	100%

* Includes managed care activity

(1) Included in Commercial Insurers

(September 18, 2008, Initial Certificate of Need Application, page 17)

28. WCMH's current payer mix and projected payer mix with the CON proposal is as follows:

Table 5: Current and Three-Year Projected Payer Mix with the CON Proposal

Total WCMH	Current Payer Mix	Year 1 Projected Payer Mix	Year 2 Projected Payer Mix	Year 3 Projected Payer Mix
Medicare*	58%	58%	58%	58%
Medicaid *(includes other medical assistance)	20%	20%	20%	20%
TRICARE and CHAMPUS				
Total Government	78%	78%	78%	78%
Commercial Insurers*	21%	21%	21%	21%
Uninsured	1%	1%	1%	1%
Workers Compensation				
Total Non-Government	22%	22%	22%	22%
Total Payer Mix	100%	100%	100%	100%

* Includes managed care activity

(1) Included in Commercial Insurers

Based on hospital discharges

(September 18, 2008, Initial Certificate of Need Application, page 17)

29. WCMH stated that the most recent data indicate the payer mix for WCMH as a percent of gross revenue is: Medicare 39%, Medicaid 17%, commercial insurance 40% and self-pay 4%, which is significantly less positive than that of the average Connecticut acute care hospital. (December 30, 2008, Prefile Testimony of Richard A. Brevnik, President and Chief Executive Officer of Windham Community Memorial Hospital)

30. WCMH stated given the demographics of its patients, financial analyses and forecasts showed that as a free-standing hospital, WCMH would be hard pressed to achieve an operating gains of even 1% in future years, accordingly financial analysts seek operating margins in the range of 4-5% to

assure future viability and institutional financial health. *(December 30, 2008, Prefile Testimony of Richard A. Brevnik, President and Chief Executive Officer of Windham Community Memorial Hospital)*

- 31.** WCMH stated that it is a safety net provider for the region it serves. In order to sustain this role WCMH felt it needed to strengthen its long-term financial stability. Consequently becoming a part of HHCC was viewed as critical to its long-term financial stability. *(CON Application, 08-31178-CON, Schedule 2.2 of HHCC and WCMH Integration Agreement, December 30, 2008, Response to OHCA Interrogatories, pages 1 & 2)*
- 32.** Richard A. Brevnik, President and Chief Executive Officer of WCMH, stated that in order to achieve its institutional goals, WCMH required an estimated \$43 million dollars in capital over five year period covering, FY 2007 through 2012. The required capital would be earmarked for the following purposes:

 - a. Refinancing of WCMH's pension fund;
 - b. Refinancing of WCMH's Long-Term Debt;
 - c. Physician recruitment;
 - d. Facility upgrades; and
 - e. Acquiring other medical technologies.

(CON Application, 08-31178-CON, Testimony of Richard A. Brevnik, President and Chief Executive Officer of Windham Community Memorial Hospital, January 6, 2009, Public Hearing)
- 33.** There is no State Health Plan in existence at this time. *(September 18, 2008, Initial Certificate of Need Application, page 2)*
- 34.** The Applicants stated that this proposal is consistent with each of their respective long-range plans. *(September 18, 2008, Initial Certificate of Need Application, page 2)*
- 35.** The Applicants have improved productivity and contained costs in the past year through the application of new technology, undertaking energy conservation measures and employing group purchasing methods. *(September 18, 2008, Initial Certificate of Need Application, page 12)*
- 36.** The proposal will not result in any change to the Applicants' teaching or research responsibilities. *(September 18, 2008, Initial Certificate of Need Application, page 12)*
- 37.** There are no distinguishing characteristics of the Applicants' patient/physician mix that makes the proposal unique. *(September 18, 2008, Initial Certificate of Need Application, page 12)*
- 38.** The Applicants have sufficient technical and managerial competence and expertise to provide efficient and adequate service to the public. *(September 18, 2008, Initial Certificate of Need Application, pages 10-11 and Appendix D)*

Rationale

The Office of Health Care Access (“OHCA”) approaches community and regional need for Certificate of Need (“CON”) proposals on a case by case basis. CON applications do not lend themselves to general applicability due to a variety of factors, which may affect any given proposal; e.g. the characteristics of the population to be served, the nature of the existing services, the specific types of services proposed to be offered, the current utilization of services and the financial feasibility of the proposal.

Windham Community Memorial Hospital, Inc. (WCMH”) and Hartford Health Care Corporation, Inc. (“HHCC”) propose the integration of WCMH into HHCC, thereby, making WCMH a wholly owned subsidiary of HHCC, similar to Hartford Hospital and MidState Medical Center. WCMH has historically had a close relationship with Hartford Hospital (a subsidiary of HHCC) and its medical staff for referral for tertiary level services, as well as for other programmatic collaboration. Even though the Applicants are not planning any consolidation of service at this time, further development of HHCC integrated Health Care delivery system in the future will lead to certain services not being duplicated at each member entity of HHCC.

This partnership between the Applicants has been in place since January of 2007 and was formalized in June of 2008. As a result of this proposed integration, there will be no change in ownership of WCMH’s affiliated entities, as they will continue to operate under WCMH. HHCC will become the sole member of WCMH as set forth in the written agreements provided to this agency. The day to day operations of WCMH will remain the responsibility of the WCMH Board of Directors, the Chief Executive Officer and Administrative Staff; however, the reserve powers of the agreement between the Applicants require WCMH to get approval from HHCC for certain fundamental decisions which will be subject to HHCC’s or the members approval.

This proposal will improve the quality of health care delivered to patients in the region. This proposal will allow WCMH to improve its ability to recruit physicians, improve its managed care contracts, refinance its existing debt, access to capital at lower cost and reduce its overall operating costs. HHCC will intern have opportunities for additional clinical research, shared best practices and deploy expensive technologies through the system. It appears to OHCA that this proposal is mutually beneficial for both Applicants. WCMH’s utilization has stayed steady or increased between FY 2007 and 2008 for total admissions, medical surgical services and emergency department, leading OHCA to believe that the financial challenges appear to be more related to the patient mix. WCMH will be an integral part of HHCC’s plan to advance the quality of health care delivery to its patients in the region and the Applicants testified that they will improve access to primary care services. The Applicants, also stated that currently they will not be terminating any services; however, OHCA realizes that in the future the reduction of duplicative services may be necessary to further strengthen the financial viability of the system.

WCMH projects gains from operations, incremental to the proposal of \$600,000 for FYs 2009-2011, the first three years of the proposal, which is a result of WCMH’s relationship with HHCC which aided in restructuring of WCMH’s existing debt. This proposal provides longer term financial viability to the system of care. HHCC is projecting gains from operations, incremental to the proposal of

\$1,850,960, \$1,942,000 and \$1,238,000, for FYs 2009-2010. WCMH and HHCC's financial projections and volumes upon which they are based appear to be reasonable and achievable.

ORDER

Based on the foregoing Findings and Rationale, the Certificate of Need application of Windham Community Memorial Hospital (“WCMH” or “Hospital”) and Hartford Health Care Corporation, Inc. (“HHCC”) (together referred to as “Applicants”) for the integration of WCMH into HHCC with no associated capital expenditure, is hereby **Approved**, subject to the following conditions:

1. This authorization expires on January 31, 2010. Should the Applicants proposal not be completed (i.e. final agreement are executed) by that date, the Applicants must seek further approval from OHCA to complete the project beyond that date.
2. Within 60 days of the completion of the integration of WCMH into HHCC, the Applicants shall file with OHCA; a full copy of any and all signed, dated and completed final integration agreements including attachments indicating the integration of WCMH into HHCC has occurred.
3. If in the future there is any change in the ownership structure of WCMH or its affiliates or any change in control of WCMH, the Applicants shall file a CON Determination Form with OHCA.
4. If in the future there is any change in WCMH service availability as a direct result of this proposal, the Applicants shall file a CON Determination Form with OHCA.
5. As there is no associated capital expenditure with this proposal, in the event that the Applicants learn of potential costs associated with this proposal, the Applicants shall notify OHCA immediately

All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

By Order of the
Office of Health Care Access

Signed by Commissioner Vogel on January 29, 2009

Date

Cristine A. Vogel
Commissioner