



Via OHS Electronic CON Portal

AGREED SETTLEMENT

IN THE MATTER OF:

Applicant(s): Windham Hospital
112 Mansfield Avenue
Willimantic, CT 06226

Docket Number: 20-32394-CON

Project Title: Termination of Inpatient Obstetric Services

Project Description: Windham Hospital is seeking approval to terminate inpatient obstetrics services at its main hospital campus located at 112 Mansfield Avenue in Willimantic, CT

WHEREAS, Windham Hospital (the “Applicant” or “Windham”) is a not-for-profit entity licensed by the Connecticut Department of Public Health (“DPH”) as a General Hospital;

WHEREAS, the Applicant maintains a business mailing address at 112 Mansfield Avenue, Willimantic, Connecticut;

WHEREAS, the Applicant published notice of its intent to file a Certificate of Need (“CON”) application in the Chronicle (Willimantic) on July 8, 9 and 10, 2020, in which it indicated that it planned to seek authorization to terminate obstetric services provided at 112 Mansfield Avenue in Willimantic, Connecticut, pursuant to Connecticut General Statutes (“C.G.S.”) §19-638(a)(5) (the “Proposal”);

WHEREAS, on September 3, 2020, the Health Systems Planning (“HSP”) Unit of the Connecticut Office of Health Strategy (“OHS”) received the CON application from Windham for the Proposal;

WHEREAS, the total capital expenditure for the proposal is \$0.00;

WHEREAS, on February 25, 2021, OHS deemed the application complete;

WHEREAS, OHS received a written request(s) for a public hearing from three (3) or more individuals or an individual representing an entity with five (5) or more people in accordance with C. G.S §19a-639a(e);

WHEREAS, on November 10, 2022, OHS held a virtual public hearing pursuant to Connecticut Public Act 21-2 §149, as amended by CT Public Act 22-3 via Zoom teleconference service;

WHEREAS, 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;

WHEREAS, the individual negotiating this Agreed Settlement on behalf of OHS has determined that the evidence in the record supports the following with respect to the CON guidelines and principles set forth in C.G.S. § 19a-639(a):

C.G.S. § 19a-639(a)(1) is not applicable;

C.G.S. § 19a-639(a)(2) is not met;

C.G.S. § 19a-639(a)(3) is not applicable;

C.G.S. § 19a-639(a)(4) is met;

C.G.S. § 19a-639(a)(5) is not met;

C.G.S. § 19a-639(a)(6) is not met;

C.G.S. § 19a-639(a)(7) is not applicable;

C.G.S. § 19a-639(a)(8) is met;

C.G.S. § 19a-639(a)(9) is met;

C.G.S. § 19a-639(a)(10) is not met;

C.G.S. § 19a-639(a)(11) is not met; and

C.G.S. § 19a-639(a)(12) is not applicable;

WHEREAS, the Applicant maintains that all applicable CON guidelines and principles set forth in C.G.S. § 19a-639(a) have been met;

WHEREAS, the Parties wish to resolve this matter and the Applicant agrees to address the deficiencies determined by OHS by way of conditions included in this Agreed Settlement;

WHEREAS, the Applicant and OHS (collectively, the "Parties") desire to fully resolve this matter without further proceedings;

WHEREAS, this Agreed Settlement is a revocable offer of settlement that may be modified by mutual agreement of all the Parties and/or withdrawn at any time prior to its being signed by the Executive Director of OHS or her designee.

NOW, THEREFORE, pursuant to C.G.S. § 4-177, the Applicant and OHS hereby stipulate and agrees to the following:

1. The Applicant's Proposal is approved under C.G.S. § 19a-639(a) subject to these enumerated conditions;

2. The Applicant is authorized to terminate its in-patient obstetrics services at 112 Mansfield Avenue in Willimantic, Connecticut upon the execution of this Agreed Settlement. The Applicant agrees to abide by all of the terms and conditions of this Agreed Settlement;

3. The Applicant shall provide contact information for the individual(s) responsible for submitting compliance documents and responding to compliance inquiries within thirty (30) days of execution of this Agreement.

4. Windham will continue to abide by the communication plan currently in effect for pregnant patients of the Windham Women's Health Clinic ("WWHC"). Specifically, members of the WWHC staff will advise patients at the beginning of prenatal care of their ability to deliver at a hospital of their choosing and will coordinate a plan for delivery with the patient and the receiving hospital that includes, but is not limited to, the transfer of all necessary prenatal care records. Members of the WWHC staff will have regular conversations with patients about their care plan, answer all questions, and provide specific instructions both verbally, with interpreter services as needed, and in writing, in plain English and Spanish, about how to access care at the time of delivery including, but not limited to, arranging for emergent and non-emergent transportation.

5. Windham will continue to provide both emergent and non-emergent transportation for birthing people and their support person(s) to and from the hospital at no cost to the patient or the support person(s) in compliance with applicable law. This includes transportation for pre-delivery examinations, labor and delivery, and post-delivery visitation. Windham commits to provide transportation for as long as needed and will not terminate the transportation program without prior notice to and approval by OHS. If it is determined that Windham's transportation program no longer complies with applicable law, Windham will immediately notify OHS so that the Parties may discuss available options.

6. Windham will continue to provide comprehensive prenatal and postpartum care at the WWHC, as well as other wrap-around services including, but not limited to, lactation consulting and patient and infant wellness. Windham will also work with WWHC patients to facilitate access to community resources such as WIC/SNAP programs and the Diaper Bank. Windham commits to continue to provide these comprehensive prenatal and postpartum care and wrap-around services, and to facilitate access to community resource services, and will not terminate such services without prior notice to and approval by OHS. Notwithstanding the foregoing, Windham shall have the sole discretion to determine the manner in which it facilitates community resources or undertakes and/or modifies any services that are not hospital services but shall not terminate any such services without prior notice to and approval by OHS.

7. Windham will participate in the Family Bridge nurse home visit pilot program in Eastern Connecticut.

8. Windham will use its best efforts to recruit and maintain a multidisciplinary, bilingual staff at the WWHC, including Certified Nurse Midwives ("CNM") and social workers, and will continue to provide interpreter services for patients and their support person(s) as needed.

9. Windham and The William W. Backus Hospital ("Backus") will continue to participate with the Medicaid program.

10. Windham and Backus will continue to abide by the Hartford HealthCare Corporation ("HHC") Financial Assistance Policy.

11. Backus will maintain its labor and delivery services. Backus will also maintain its Level I Well Newborn Nursery and will open two (2) Level II Special Care Nursery/NICU beds upon completion of nurse training, which is anticipated to occur within six (6) months of the date of this Agreed Settlement. Within three (3) years of the date of this Agreed Settlement, Backus will renovate space to accommodate two (2) additional Special Care Nursery/NICU beds, bringing the total number of Special Care Nursery/NICU beds to four (4).

12. Commencing one (1) year from the date of this Agreed Settlement, Windham will report to OHS annually for three (3) years on the following:

- a. The number of birthing people from the WWHC who deliver each year;
- b. The hospitals at which these individuals deliver;
- c. The method of transportation to/from the hospital for these individuals and their support person(s);
- d. Patient sociodemographic information including language, ethnicity, race, and age; and
- e. Payer mix.

13. Windham will create a detailed community education and outreach plan to communicate to members of the Windham community the ongoing availability of women's health services at Windham and throughout the HHC system. The plan may include events and programs offering free women's health services to the community (e.g., women's health screenings), which may be done in conjunction with local healthcare providers and community services organizations.

14. Windham will dedicate a seat on its East Region Community Advisory Council to a community member representing the interests of women in obtaining the full spectrum of health services. This member may be, but is not required to be, a patient or consumer of women's health services at Windham.

15. HHC will formalize the role that certified doula play at system hospitals and will establish a training program for certified doula.

16. Windham hereby agrees to hire an Independent Third Party ("ITP"), mutually agreeable to Windham and OHS, at Windham's sole cost and expense, to undertake, complete and publicly issue an independent assessment and report, consistent with a mutually agreed upon Statement of Work ("SOW"), of the need for, and the feasibility (as defined in the SOW and discussed below) of, a freestanding birth center ("Birth Center"), as permitted under Public Act No. 23-147, in the Windham community.

a. The ITP shall have demonstrated experience, background and expertise in Birth Centers and the areas of maternal health care, community health, and the assessment of population health needs;

b. OHS and Windham must agree to, and sign off on, the SOW for the ITP. The SOW shall include, at a minimum, an assessment of the need for a Birth Center, as well as the feasibility of such a facility in the Windham community. Feasibility shall include the financial feasibility/viability of the Birth Center, as well as other measures of feasibility including, but not limited to, the ability of a given provider to recruit and retain qualified staff and take other measures necessary to ensure the quality and safety of patient care. The costs associated with the work to be performed by the ITP shall not exceed one hundred and fifty thousand dollars (\$150,000.00);

c. The ITP shall begin to conduct its assessment within three (3) months after the Department of Public Health ("DPH") publishes its Birth Center policies and

procedures (draft regulations) pursuant to Public Act No. 23-147 and in a timeframe established in the SOW;

d. The ITP shall seek appropriate and meaningful stakeholder input for such assessment from Windham community partners and the Windham community at large;

e. The ITP shall provide its final findings, assessment, and recommendations regarding the need for, and feasibility of, a Birth Center in the Windham community, made in accordance with the SOW, to both OHS and Windham; and

f. Windham shall facilitate a community forum in collaboration with the ITP to share and discuss the recommendations and findings with the Windham community.

17. If the ITP determines that a Birth Center is both needed and feasible (as defined in the SOW) in the Windham area, Windham agrees to assist in identifying a provider to establish such a facility in or around the Town of Windham within ninety (90) days of reviewing the ITP's report with OHS. More specifically, within such period, Windham agrees to:

a. Survey internal subject matter experts and compile a list of regional and local providers who have the resources and experience to establish a Birth Center;

b. Contact providers on the list to determine preliminary interest;

c. Distribute relevant sections of the ITP report to interested providers;

d. Meet with any interested providers in follow-up and/or facilitate meetings as necessary with any regulatory agencies; and

e. Provide OHS with periodic detailed updates on the process outlined in this paragraph 17.

18. If Windham is successful in identifying a provider interested in establishing a Birth Center within the ninety (90) day period contemplated in paragraph 17 above it will independently negotiate any financial or other support or arrangements with such provider related to the establishment and operation of a Birth Center. Windham will disclose to OHS the detailed support to be provided to such provider by Windham. Such ninety (90) day period may be extended by mutual agreement of OHS and Windham if Windham, working in good faith, requires more time to either identify a provider to undertake the establishment of the Birth Center or to negotiate any financial or other support or arrangements.

19. Windham's support to such provider for the establishment and operation of a Birth Center will, at a minimum, include the following:

a. Allowing certified nurse midwives who are affiliated with the Birth Center to serve in a support role for deliveries at HHC hospitals, become credentialed under HHC hospital bylaws, and participate in deliveries in accordance with state law and HHC hospital bylaws.

b. Allowing professionals from the Birth Center to participate in system Continuing Medical Education (CME) activities and make them aware of system patient safety initiatives;

c. Advising professional staff from the Birth Center on patient issues as necessary;

d. Accepting specialty consults and referrals from the Birth Center for ancillary services (e.g., ultrasound, labs) and accepting referral of obstetric patients, whether in the prenatal stage or during labor and delivery;

e. Implementing a communication and transfer plan with the Birth Center;

f. Exploring ways to share records with the Birth Center to ensure care coordination in the event of a transfer; and

g. Not terminating any of the support operations referenced in or contemplated by this paragraph without prior notice to and approval by OHS.

20. If, however, Windham is not successful in identifying a provider to establish and operate a Birth Center in the Windham area within the ninety (90) day period set forth in paragraph 17 hereof or any mutually agreed extension thereof, and if the ITP has determined that a Birth Center is needed and that it is feasible (as defined in the SOW) for Windham to establish, operate and maintain such a facility in the Windham area, Windham shall either (i) establish, operate, and maintain such a Birth Center, through a non-hospital affiliate, at its sole cost and expense, for a period of at least five (5) years, or (ii) at its sole discretion, propose an alternate solution to a Birth Center that meets OHS' approval. If Windham proposes an alternate solution, OHS shall consider that solution in good faith. Should OHS, in its sole discretion, not approve the proposed alternate solution, Windham shall proceed to establish, operate, and maintain a Birth Center as set forth in (i) above. If Windham establishes the Birth Center, it shall initiate the process to do so within six (6) months after the ninety (90) day period mentioned above, or any extension thereof, and shall commence operations within a time period to be agreed to by the Parties.

21. This Agreed Settlement fully and completely resolves the CON application bearing Docket No. 20-32394-CON without any further proceedings.

22. This Agreed Settlement embodies the full and entire agreement between the Parties with respect to the subject matter involved herein. All previous communications and agreements, written or oral, between the Parties with regard to the subject matter of this Agreed Settlement, are superseded unless expressly incorporated herein or made a part hereof.

23. This Agreed Settlement may be considered as evidence in any subsequent proceeding or determination before OHS in which (1) the Applicant's compliance with this Agreed Settlement and/or any related Agreed Settlement is at issue, or (2) the Applicant's compliance with any state or federal statute and/or regulation is at issue.

24. The Applicant waives any right it may have to a hearing and/or to further hearing, as the case may be, on the merits of this matter.

25. This Agreed Settlement and terms set forth herein are not subject to reconsideration, collateral attack, or judicial review under any form or in any forum, including any right of review under the Uniform Administrative Procedure Act, Chapter 368a of the Connecticut General Statutes, or Regulations that exist at the time the Agreed Settlement is executed or may become available in the future, provided that this stipulation shall not deprive the Applicant of any other rights that it may have under the laws of the State of Connecticut or of the United States. The Applicant waives any right to seek reconsideration or modification of this Agreed Settlement pursuant to C.G.S. §4-181a without the express consent and agreement of OHS.

26. This Agreed Settlement is a matter of public record and will be reported in accordance with state and federal laws and/or regulations and OHS policy. This Agreed Settlement may be posted on OHS's website including, but not limited to, the electronic CON portal and/or any successor thereto.

27. Any extension of time, grace period, and/or modification granted by OHS in its discretion for any condition of this Agreed Settlement shall not constitute a waiver or preclude OHS's right to take action at a later time. OHS shall not be required to grant future extensions of time, grace periods, and/or modifications.

28. All references to days in these conditions shall mean calendar days and OHS shall mean the Office of Health Strategy or its successor.

29. This Agreed Settlement represents a final agreement between OHS and the Applicant with respect to OHS Docket No. 20-32394-CON. The execution of this Agreed Settlement resolves all objections, claims, and disputes, which were either raised or could have been raised by the Applicant, about OHS Docket Number 20-32394-CON.

30. Legal notice of any action shall be deemed sufficient if sent to the Applicant's last address of record, as reported by the Applicant to OHS in Docket Number 20-32394-CON.

31. This Agreed Settlement is effective upon the signature of the OHS Executive Director or her designee, at which time it shall become final and an Order of the OHS Executive Director with all the rights and obligations attendant thereto. OHS may enforce this Agreed Settlement pursuant to the provisions of C.G.S. §§ 19a-642 and 19a-653, as amended by Public Act No. 23-171, Section 14, at the Applicant's expense, if the Applicant fails to comply with its terms.

32. This Agreed Settlement shall be binding upon and enforceable against the Applicant and its successors and assigns.


33. The Applicant had the opportunity to consult with an attorney prior to signing this Agreed Settlement.

34. Donna Handley represents that she is authorized to sign this Agreed Settlement on behalf of the Applicant, Backus, and HHC, and to bind all three entities to the terms and conditions contained in this Agreed Settlement applicable to each of said entities.

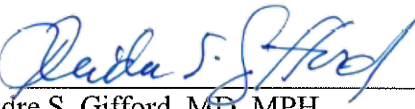
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IN WITNESS WHEREOF, the Parties hereto, which have caused this Agreed Settlement to be executed by their respective officers and officials, declare the execution of this Agreed Settlement to be their free act and deed.

12/1/23
Date

By: 
Donna Handley
President, East Region
Windham Hospital
Backus Hospital
Senior Vice President, Hartford
HealthCare

12/1/23
Date

By: 
Deidre S. Gifford, MD, MPH
Executive Director
Office of Health Strategy