

State of Connecticut

SENATOR LEONARD A. FASANO
SENATE MINORITY LEADER

34TH DISTRICT

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Len.Fasano@cga.ct.gov

July 14, 2016

Raul Pino, MD, MPH
Commissioner of Public Health
410 Capitol Ave., P.O. Box 340308
Hartford, CT 06134

Commissioner Pino:

On June 6th, the University of Connecticut Health Center informed legislative leaders that they would cease providing clinical pediatric services at their East Hartford and West Hartford locations, effective October 1, 2016. UCHC stated that as a result of Connecticut Children's Medical Center expanding their clinical pediatric services at the same sites and that "community access to care will not change."

Is your office aware of the proposed termination of services at UCHC? Can you please point me to the statute or regulation that exempts UCHC from the Certificate of Need process? Does your office have the ability to prevent the termination of services at a facility if a CON is not completed?

Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to be "Len Fasano", written over a horizontal line.

Len Fasano
Senate Minority Leader

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Raul Pino, M.D., M.P.H.
Acting Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

July 20, 2016

The Honorable Leonard A. Fasano
Senate Minority Leader – 34th District
Suite 3400
Legislative Office Building
Hartford, CT 06106-1591

Re: John Dempsey Hospital of the University of Connecticut Health Center


Dear Senator Fasano:

On July 18, 2016, the Department of Public Health (“DPH”) received your letter concerning the termination of clinical pediatric services at the John Dempsey Hospital of the University of Connecticut Health Center (the ‘Hospital”).

The Office of Health Care Access (“OHCA”) was not made aware of the anticipated termination of clinical pediatric services at the Hospital’s East Hartford and West Hartford locations. Conn. Gen. Stat. § 19a-638(a)(5) requires Certificate of Need (“CON”) authorization for the “[t]he termination of inpatient or outpatient services offered by a hospital,...” There is no statute or regulation that specifically exempts the Hospital from the CON process. OHCA will open an inquiry into this matter to determine if CON authorization is required for the anticipated termination. If OHCA determines that the Hospital’s actions require CON authorization, the Hospital may be subject to civil penalties pursuant to Conn. Gen. Stat. § 19a-653 if it does file a CON application prior to terminating the clinical pediatric services.

If you have any further concerns or questions, please feel free to contact Kimberly Martone, Director of Operations for OHCA at (860) 418-7029.

Sincerely,


Raul Pino, MD, MPH
Commissioner

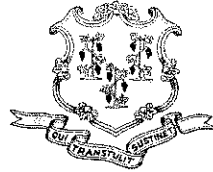


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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Raul Pino, M.D., M.P.H.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of Health Care Access

July 22, 2016

Anne Diamond
Chief Executive Officer
John Dempsey Hospital
University of Connecticut Health Center
263 Farmington Avenue
Farmington, CT 06032

RE: Termination of Clinical Pediatric Services

Dear Ms. Diamond:

The State of Connecticut Department of Public Health, Office of Health Care Access ("OHCA") is in receipt of a letter from Senator Leonard A. Fasano regarding the cessation of clinical pediatric services at your East Hartford and West Hartford locations, effective October 1, 2016. With this letter, OHCA is seeking further information related to these actions.

Pursuant to Connecticut General Statutes § 19a-638(a)(5), Certificate of Need ("CON") authorization from OHCA is required for "The termination of inpatient or outpatient services offered by a hospital, including, but not limited to, the termination by a short-term acute care general hospital or children's hospital of inpatient and outpatient mental health and substance abuse services;"

Based upon Senator Fasano's letter and the aforementioned law, it appears that the cessation of clinical pediatric services requires CON authorization. However, OHCA wants to provide John Dempsey Hospital of the University of Connecticut Health Center an opportunity to provide further information. Therefore, please provide any information that you believe negates the need for CON authorization by OHCA. Please respond to the above inquiry via mail by August 19, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Martone".

Kimberly R. Martone
Director of Operations
Office of Health Care Access
cc: Senator Leonard A. Fasano



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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Raul Pino, M.D., M.P.H.
Commissioner

July 27, 2016

The Honorable Leonard A. Fasano
Senate Minority Leader – 34th District
Suite 3400
Legislative Office Building
Hartford, CT 06106-1591

Re: John Dempsey Hospital of the University of Connecticut Health Center

Dear Senator Fasano:

On July 18, 2016, the Department of Public Health (“DPH”) received your letter concerning the termination of clinical pediatric services at the John Dempsey Hospital of the University of Connecticut Health Center (the ‘Hospital”).

The Office of Health Care Access (“OHCA”) was not made aware of the anticipated termination of clinical pediatric services at the Hospital’s East Hartford and West Hartford locations. Conn. Gen. Stat. § 19a-638(a)(5) requires Certificate of Need (“CON”) authorization for the “[t]he termination of inpatient or outpatient services offered by a hospital,…” There is no statute or regulation that specifically exempts the Hospital from the CON process. OHCA will open an inquiry into this matter to determine if CON authorization is required for the anticipated termination. If OHCA determines that the Hospital’s actions require CON authorization, the Hospital may be subject to civil penalties pursuant to Conn. Gen. Stat. § 19a-653 if it does not file a CON application prior to terminating the clinical pediatric services.

If you have any further concerns or questions, please feel free to contact Kimberly Martone, Director of Operations for OHCA at (860) 418-7029.

Sincerely,



Raul Pino, MD, MPH
Commissioner



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UCONN HEALTH

UCONN JOHN DEMPSEY
HOSPITAL

July 27, 2016

Kimberly Martone
Director of Operations
Department of Public Health
Office of Healthcare Access
410 Capitol Avenue
P.O. Box 340308
Hartford, CT 06134-0308

Dear Ms. Martone:

Thank you for your letter dated July 22, 2016 relative to Senator Fasano's letter concerning ".....the cessation of clinical pediatric services at your East Hartford and West Hartford locations....". The clinical practices to which Senator Fasano is referring are not, in fact, either hospital based or controlled by the John Dempsey Hospital. Rather, they are part of the University of Connecticut School of Medicine physician practice group. Because of that, it is our understanding that no Certificate of Need is required in this circumstance.

If I can provide you any further information, please do not hesitate to contact me.

Sincerely,



Anne Diamond, JD, CNMT
Chief Executive Officer
John Dempsey Hospital
P: (860) 679-2213
F: (860) 679-4515
Diamond@uchc.edu

cc: Len Fasano
Senate Minority Leader

Andrea Keilty, JD
Governmental Relations
UConn Health

Andrew Agwunobi, MD, MBA
Chief Executive Officer, UConn Health
Executive Vice President for Health Affairs



State of Connecticut

SENATOR LEONARD A. FASANO

SENATE MINORITY LEADER

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July 28, 2016

Kimberly Martone
Director of Operations
Office of Health Care Access
410 Capitol Ave. MS #13HCA
Hartford, CT 06134-0308

Dear Ms. Martone:

I understand that OHCA and UConn are now reviewing the question of whether a CON is required for the termination of pediatric services at UConn Health's East Hartford and West Hartford facilities. I also understand that UConn believes a CON is not required because the services in question are provided by the UConn School of Medicine physician group and not, strictly speaking, it's hospital.

While I understand there may be some distinction between UConn's John Dempsey Hospital, the UConn School of Medicine, and UConn Health (their affiliated medical group) I believe there are nevertheless legitimate statutory and policy questions raised by this situation. As I understand it, the providers involved are all "UConn Health" employees and John Dempsey Hospital, the School of Medicine and the "practice group" all fall under the umbrella of "UConn Health." Communications from UConn on this matter came from "UConn Health/ John Dempsey Hospital". Thus, I question whether the distinction UConn raises is a distinction without a difference from a policy perspective. While the services at issue are not directly provided by the hospital, I believe they are provided by a practice group that is affiliated, through common control or governance, with the hospital.

First, are the services provided by a medical group affiliated with a hospital effectively "outpatient services offered by a hospital" such that CON review should apply? As you know, hospitals have formed large medical groups that, in some communities, effectively control all or most of the market in certain medical specialties. If hospital controlled or affiliated medical groups can terminate low profit margin services with no CON review, communities will be at risk of losing access to services with no public input, review or recourse undermining the entire policy behind CON.

Second, as I understand it, UConn Health providers, including the providers staffing and operating the East Hartford and West Hartford facilities at issue here, are state employees. As such, it would seem to me that the pediatric services being terminated are "services offered by a ... facility or institution operated by the state" such that the termination of services at those facilities triggers CON review. (CGS 19a-638a(15) requires a CON for "(15) The termination of inpatient or outpatient services offered by a hospital **or other facility or institution operated by the state** that provides services that are eligible for reimbursement under Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended.") I assume that these facilities accept Medicaid patients and therefore, would fall under this provision?

Kimberly Martone

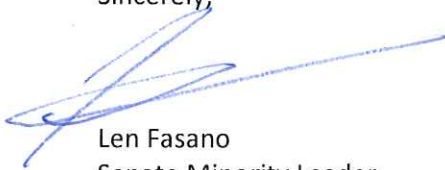
July 28, 2016

Page 2

I believe these questions pose legitimate questions of both statutory construction and policy. Your agency has some discretion in interpreting and applying the CON statutes to promote the purposes of the law. The statutes also require providers, if there is any question as to the need for a CON review, to ask your agency for clarification and guidance before proceeding with any action. Your agency's clarification on these points will not only help guide UConn in this instance, but also provide guidance to policy makers and members of the Governor's CON Task Force as they look to modify and modernize our CON laws.

Thank you for your time and attention.

Sincerely,



Len Fasano
Senate Minority Leader

cc: Anne Diamond, JD, CNMT
Chief Executive Officer, John Dempsey Hospital

Andrea Keilty, JD
Government Relations, UConn Health

Andrew Agwunobi, MD, MBA
Chief Executive Officer, UConn Health
Executive Vice President for Health Affairs



SHIPMAN & GOODWIN^{LLP}[®]
COUNSELORS AT LAW

Joan W. Feldman
Phone: (860) 251-5104
Fax: (860) 251-5211
jfeldman@goodwin.com

August 1, 2016

Kimberly Martone
Director of Operations
State of Connecticut
Office of Health Care Access
410 Capitol Avenue, MS # 13HCA
P.O. Box 340308
Hartford, CT 06106

Dear Ms. Martone:

I am writing on behalf of my client the University of Connecticut Health Center in response to questions raised by Senator Fasano in his letter to you dated July 28, 2016 (copied to Anne Diamond) regarding the question of whether or not the University of Connecticut Health Center's University Medical Group ("UMG") is required under Connecticut's statutory provisions to obtain a certificate of need ("CON") from the Office of Health Care Access in connection with UMG's decision to discontinue the provision of community-based pediatric services. Specifically, UMG, a multispecialty physician-practice group associated with the University of Connecticut's School of Medicine, decided to discontinue the provision of pediatric services by its three employed pediatricians at its two community locations. UMG is a community-based physician practice, not unlike other community-based physician practices, and is independent of John Dempsey Hospital ("JDH"). Specifically, UMG does not fall under the JDH license and thus, is not subject to the same regulatory and accreditation provisions applicable to JDH. In fact, in 1996 when the Connecticut Children's Medical Center was organized, JDH terminated its authority to provide pediatric services, other than in the context of neonatology or NICU services.

More specifically, UMG does not provide "outpatient" services in that the term "outpatient services" inherently refers to hospital services provided to patients who are not inpatients. While some hospitals have hospital-based physician practices and those are considered hospital outpatient services, UMG, including the pediatric practice, is not a hospital-based practice (i.e. no facility fees were ever charged to the patient and the two locations were never considered part of the hospital's campus). As you know, Connecticut General Statutes Section 19a-638 lists the situations wherein a certificate of

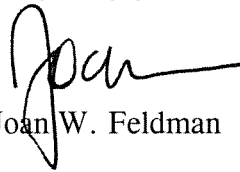
Kimberly Martone
August 1, 2016
Page 2

need ("CON") is required. The only relevant provision of such statute that relates to the termination of a service pertains to termination of inpatient or outpatient hospital services. The University of Connecticut Health Center does adhere to the CON laws when they are applicable. In the instant case, they are not applicable. While some may be of the opinion that the elimination of a service by a community-based physician practice should be subject to the certificate of need rules, a change in the statute would require significant input from both the legislative and the provider community.

Notwithstanding, there will be absolutely no interruption of services to patients as the Connecticut Children's Medical Center is assuming the services that UMG is planning to discontinue at the exact same location with the exact same physicians.

We are happy to provide any additional information you may need.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joan", with a long horizontal stroke extending to the right.

Joan W. Feldman

cc: Senator Fasano



State of Connecticut

SENATOR LEONARD A. FASANO
SENATE MINORITY LEADER

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August 3, 2016

Joan W. Feldman
Shipman & Goodwin
1 Constitution Plaza
Hartford, CT 06103

Ms. Feldman:

Thank you for sending me a copy of your letter to the Office of Health Care Access responding to the questions I raised on July 28, 2016.

I appreciate your response to the first concern I raised in my letter regarding the statute in relation to the termination of inpatient or outpatient services. However, I do still have concerns and I believe there is quite a bit of room for debate on this issue. That being said, I appreciate you sharing your analysis and perspective.

In your letter from August 1, 2016, I did not find a response to my question of whether UConn's physician offices are state facilities under the CON process. If you have an explanation regarding this question it would be helpful if you could share it with me at your earliest convenience. If it is more appropriate to have this question addressed by the Department of Public Health, I will wait for the Department to weigh in.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Len Fasano".

Len Fasano

cc: Kimberly Martone

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Raul Pino, M.D., M.P.H.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of Health Care Access

August 3, 2016

The Honorable Leonard A. Fasano
Senate Minority Leader – 34th District
Suite 3400
Legislative Office Building
Hartford, CT 06106-1591

Re: John Dempsey Hospital of the University of Connecticut Health Center

Dear Senator Fasano:

The Office of Health Care Access (“OHCA”) has reviewed the information you submitted, along with responses filed by the University of Connecticut Health Center, regarding the anticipated termination of certain clinical pediatric services in East Hartford and West Hartford. As explained in the attached Determination, the pediatric services are offered by a physician group over which OHCA has no jurisdiction.

Thank you for bringing this matter to our attention. If you have any further concerns or questions, please feel free to contact Kimberly Martone, Director of Operations for OHCA at (860) 418-7029.

Sincerely,


Raul Pino, MD, MPH
Commissioner

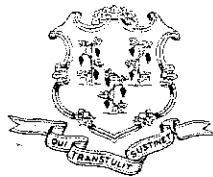
C: Brie Wolf



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Raul Pino, M.D., M.P.H.
Commissioner

Dannel P. Malloy
Governor
Nancy Wyman
Lt. Governor

Office of Health Care Access

August 3, 2016

VIA FACSIMILE ONLY

Joan W. Feldman, Esq.
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103

RE: Certificate of Need Determination Report Number 16-32111-DTR
Termination of Pediatric Services

Dear Attorney Feldman:

Thank you for the information you provided regarding the cessation of pediatric services in East Hartford and West Hartford by the University of Connecticut Health Center's University medical Group ("UMG").

According to the information provided, UMG is a multispecialty physician-practice group associated with the University of Connecticut's School of Medicine. However, UMG is independent of John Dempsey Hospital of the University of Connecticut Health Center ("John Dempsey"). A review of the licensing records within the State of Connecticut Department of Public Health confirmed that UMG is not included in John Dempsey's license.

Connecticut General Statutes § 19a-638(a)(5) requires a CON for the "termination of inpatient or outpatient services offered by a hospital...". Since UMG is a physician practice rather than a hospital, the cessation of pediatric services by UMG does not constitute a termination of inpatient or outpatient services by a hospital over which the Office of Health Care Access has regulatory authority. Consequently, a **CON is not required** for the actions taken by UMG.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Martone".

Kimberly R. Martone
Director of Operations

C: Senator Leonard A. Fasano, Senate Minority Leader
Rose McLellan, License and Applications Supervisor, DPH, DHSR



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