

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

February 23, 2017

VIA ELECTRONIC MAIL ONLY

Jennifer G. Fusco, Esq.
Updike, Kelly & Spellacy, P.C.
One Century Tower
265 Church Street
New Haven, CT 06510

RE: Certificate of Need Determination Report Number 17-32152-DTR
UnitedHealth Group/OptumCare/Surgical Care Affiliates

Dear Attorney Fusco:

Thank you for your response to the Office of Health Care Access' ("OHCA") letter dated February 3, 2017 regarding certain ownership transactions related to Surgical Care Affiliates, Inc., OptumCare, and UnitedHealth Group.

Pursuant to Connecticut General Statutes §§ 19a-638(a)(2) and (3), Certificate of Need ("CON") authorization from OHCA is required for "[a] transfer of ownership of a health care facility;" and "[a] transfer of ownership of a large group practice to any entity other than a (A) physician, or (B) group of two or more physicians, legally organized in a partnership, professional corporation or limited liability company formed to render professional services and not employed by or an affiliate of any hospital, medical foundation, insurance company or other similar entity;"

Connecticut General Statutes §§ 19a-638(16) defines a transfer of ownership as follows: "a transfer that impacts or changes the governance or controlling body of a health care facility, institution or large group practice, including, but not limited to, all affiliations, mergers or any sale or transfer of net assets of a health care facility."

Based upon the information provided in your letter dated February 10, 2017, the transactions involving UnitedHealth Group, OptumCare, and Surgical Care Affiliates, Inc. will not impact or change the governance or controlling body of any of the aforementioned entities. Instead, the only changes made will be at the parent level. Therefore, a *CON is not required*.

Sincerely,

Handwritten signature of Kimberly R. Martone.

Kimberly R. Martone
Director of Operations



Phone: (860) 418-7001 • Fax: (860) 418-7053
410 Capitol Avenue, MS#13HCA
Hartford, Connecticut 06134-0308
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Affirmative Action/Equal Opportunity Employer

Olejarz, Barbara

From: Jennifer Groves Fusco <jfusco@uks.com>
Sent: Thursday, February 23, 2017 3:23 PM
To: Olejarz, Barbara
Subject: RE: Determination

Thanks, Barbara.

From: Olejarz, Barbara [mailto:Barbara.Olejarz@ct.gov]
Sent: Thursday, February 23, 2017 3:00 PM
To: Jennifer Groves Fusco
Subject: Determination

2/23/17

Attorney Fusco,

Please see attached determination for Report Number: 17-32152-DTR regarding ownership transactions.

Barbara K. Olejarz
Administrative Assistant to Kimberly Martone
Office of Health Care Access
Department of Public Health
Phone: (860) 418-7005
Email: Barbara.Olejarz@ct.gov



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Olejarz, Barbara

From: Microsoft Outlook
To: 'jfusco@uks.com'
Sent: Thursday, February 23, 2017 3:00 PM
Subject: Relayed: Determination

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

['jfusco@uks.com' \(jfusco@uks.com\)](mailto:jfusco@uks.com)

Subject: Determination

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Dannel P. Malloy
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Nancy Wyman
Lt. Governor

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

Office of Health Care Access

February 3, 2017

VIA ELECTRONIC MAIL ONLY

Tyler Mason
UnitedHealth Group
P.O. Box 1459
Minneapolis, MN 55440-1459
Tyler.mason@uhg.com

Lauren Mihajlov
OptumCare
20414 N 27th Ave
Phoenix, AZ 85027
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Alison Donnelly
Surgical Care Affiliates, Inc.
520 Lake Cook Road, Suite 250
Deerfield, IL 60015
Alison.donnelly@scasurgery.com

RE: Transfers of Ownership

To Whom It May Concern:

The State of Connecticut Department of Public Health, Office of Health Care Access ("OHCA") has learned from various media reports that UnitedHealth Group, OptumCare, and Surgical Care Affiliates, Inc. have been engaged in various ownership transactions in the recent months. Specifically, Surgical Care Affiliates, Inc. and OptumCare will combine, and UnitedHealth Group is acquiring Surgical Care Affiliates, Inc.

Pursuant to Connecticut General Statutes §§ 19a-638(a)(2) and (3), Certificate of Need ("CON") authorization from OHCA is required for "[a] transfer of ownership of a health care facility;" and "[a] transfer of ownership of a large group practice to any entity other than a (A) physician, or (B) group of two or more physicians, legally organized in a partnership, professional corporation or limited liability company formed to render professional services and not employed by or an affiliate of any hospital, medical foundation, insurance company or other similar entity;"



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Connecticut General Statutes §§ 19a-638(16) defines a transfer of ownership as follows: "a transfer that impacts or changes the governance or controlling body of a health care facility, institution or large group practice, including, but not limited to, all affiliations, mergers or any sale or transfer of net assets of a health care facility."

Based upon the aforementioned law, it appears that the transactions being contemplated by UnitedHealth Group, OptumCare, and Surgical Care Affiliates, Inc. may require CON authorization. However, OHCA wants to provide UnitedHealth Group, OptumCare, and Surgical Care Affiliates, Inc. 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 by March 3, 2017.

Sincerely,



Kimberly R. Martone
Director of Operations

Olejarz, Barbara

From: Microsoft Outlook
To: mihajlov@optum.com; Tyler.mason@uhg.com; Allison.donnelly@scasurgery.com
Sent: Friday, February 03, 2017 3:15 PM
Subject: Relayed: Transfers of Ownership

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mihajlov@optum.com (mihajlov@optum.com)

Tyler.mason@uhg.com (Tyler.mason@uhg.com)

Allison.donnelly@scasurgery.com (Allison.donnelly@scasurgery.com)

Subject: Transfers of Ownership

Olejarz, Barbara

From: Microsoft Outlook
To: lauren.mihajlov@optum.com
Sent: Friday, February 03, 2017 3:19 PM
Subject: Relayed: FW: Transfers of Ownership

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

lauren.mihajlov@optum.com (lauren.mihajlov@optum.com)

Subject: FW: Transfers of Ownership

Olejarz, Barbara

From: Mihajlov, Lauren <lauren.mihajlov@optum.com>
Sent: Friday, February 03, 2017 3:20 PM
To: Olejarz, Barbara
Subject: Automatic reply: Transfers of Ownership

Hello –

I am out of the office on business travel the rest of the week, so I may be delayed in responding. If your need is urgent, please call or text my mobile at 612-382-1973. Otherwise, I'll be back to you as soon as I'm able.

Thank you.

Lauren

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Olejarz, Barbara

From: Microsoft Outlook
To: alison.donnelly@scasurgery.com
Sent: Friday, February 03, 2017 3:34 PM
Subject: Relayed: FW: Transfers of Ownership

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alison.donnelly@scasurgery.com (alison.donnelly@scasurgery.com)

Subject: FW: Transfers of Ownership

User, OHCA

From: Jennifer Groves Fusco <jfusco@uks.com>
Sent: Friday, February 10, 2017 1:32 PM
To: Martone, Kim
Cc: User, OHCA
Subject: Surgical Care Affiliates/OptumCare -- Response to Inquiry
Attachments: DOCS-#1478237-v1-SCA_OPTUM_LETTER_TO_OHCA_.pdf

Good afternoon, Kim.

Attached please find a response on behalf of Surgical Care Affiliates, OptumCare and UnitedHealth Group to OHCA's inquiry, dated February 3, 2017. Please let me know if you require any additional information or if you have further questions.

Thanks and have a nice weekend.

Jen

Jennifer Groves Fusco, Esq.
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February 10, 2017

VIA ELECTRONIC & REGULAR MAIL

Kimberly Martone
Director of Operations
Office of Health Care Access Division
Department of Public Health
410 Capitol Avenue
Post Office Box 340308
Hartford, CT 06134-0308

Re: UnitedHealth Group/OptumCare/Surgical Care Affiliates

Dear Ms. Martone:

This office represents Surgical Care Affiliates, Inc. (“SCA”) and its various subsidiaries in connection with their operation of licensed outpatient surgical facilities located in Connecticut. We are in receipt of your February 3, 2017 letter addressed to UnitedHealth Group (“UHG”), OptumCare (“Optum”) and SCA (collectively the “Parties”) requesting information regarding a proposed transaction among these entities. Specifically, you have asked about the applicability of Sections 19a-638(a)(2) and (3) of the Connecticut General Statutes to this transaction. These statutes require Certificate of Need (“CON”) approval for the transfer of ownership of a healthcare facility and large group practice, respectively. As detailed more fully below, the transaction being contemplated by the Parties does not result in the transfer of ownership of a healthcare facility or large group practice and does not, therefore, require CON approval.

SCA Facilities in Connecticut

SCA is the indirect owner of interests in five (5) outpatient surgical facilities licensed by the Connecticut Department of Public Health (“Department”). These include Connecticut Surgery Center, located at 81 Gillett Street in Hartford; Danbury Surgical Center, located at 73 Sand Pit Road in Danbury; Surgery Center of Fairfield County, located at 112 Quarry Road in Trumbull; River Valley Ambulatory Surgery Center, located at 45 Salem Turnpike in Norwich; and Surgical Center of Connecticut, located at 4920 Main Street in Bridgeport (collectively the “Connecticut Surgical Facilities” or individually a “Connecticut Surgical Facility”). Each of the Connecticut Surgical Facilities is owned by a limited partnership or limited liability company licensed by the Department to operate an outpatient surgical facility (collectively the “Licensed Entities” or individually a “Licensed Entity”).

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By and through its subsidiaries SCA owns a majority interest in the Licensed Entities that own and operate Connecticut Surgery Center, Danbury Surgical Center and Surgery Center of Fairfield County. An SCA subsidiary (individually an “SCA Entity” or collectively the “SCA Entities”) serves as either the General Partner or Managing Member of each Licensed Entity. An SCA Entity also owns a minority interest in each of the Licensed Entities that own and operate River Valley Ambulatory Surgery Center and Surgical Center of Connecticut.¹ All of the Connecticut Surgical Facilities have individual physician investors as well (collectively the “Physician Investors”).

Each of the Connecticut Surgical Facilities is governed and controlled by a governing body comprised of representative of the SCA Entity and Physician Investors. In addition, each Licensed Entity has an Operating Agreement in place, the parties to which include the SCA Entity and Physician Investors.

Optum Management Services in Connecticut

Optum, through its subsidiaries, is an indirect owner of ProHealth Physicians, Inc. (“ProHealth Inc.”). ProHealth Inc. provides management services to ProHealth Physicians, P.C. (“ProHealth P.C.”). ProHealth P.C. is a large group practice with physician office locations throughout Connecticut. ProHealth P.C. is owned and governed by its physician shareholder. The proposed transaction (as described below) will not result in any change in the governance, control or ownership of ProHealth P.C.

Description of the Proposed Transaction

SCA is a publicly-traded corporation that, by and through its subsidiaries, operates one of the largest networks of surgical facilities in the United States, which as of December 31, 2016, included 198 ambulatory surgery centers and seven (7) surgical hospitals. As previously noted, five (5) of these facilities are located in Connecticut. UHG is a publicly-traded corporation that, by and through its subsidiaries, operates a diversified family of businesses dedicated to helping people live healthier lives. UHG has two main divisions: UnitedHealthcare (“UHC”), which operates insurance companies, and Optum, which operates providers (among other things).

SCA and UHG are parties to an agreement that, subject to the satisfaction or waiver of certain conditions, will result in the merger of SCA with a wholly-owned subsidiary of UHG (the “Proposed Transaction”). As a result, following the closing of the Proposed Transaction, SCA will cease to be a publicly-traded corporation and will become a wholly-owned subsidiary of UHG. SCA will operate as part of UHG’s Optum business line. The Proposed Transaction is expected to be completed in the first half of 2017.

¹ SCA-River Valley, LLC and SCA-Main Street, LLC, the minority owners of the Licensed Entities that operate River Valley Ambulatory Surgery Center and Surgical Center of Connecticut, respectively, have filed CON applications for the acquisition of majority, controlling interests in each facility.

CON Analysis & Precedent

Section 19a-638(a)(2) of the General Statutes requires CON approval for the transfer of ownership of a healthcare facility. Similarly, Section 19a-638(a)(3) requires approval by OHCA for the transfer of ownership of a large group practice. Transfer of ownership is defined as “a transfer that impacts or changes the governance or controlling body of a health care facility or large group practice, including, but not limited to, all affiliations, mergers or any sale or transfer of net assets of a health care facility.” Conn. Gen. Stat. § 19a-630(16). The Proposed Transaction is taking place at the parent level and will not result in any change in the governance or control of a health care facility (i.e. the Connecticut Surgical Facilities) or a large group practice (i.e. ProHealth P.C.)

More specifically, the Proposed Transaction will not result in any change in the governance, control or direct ownership of the Licensed Entities that own and operate the Connecticut Surgical Facilities. Instead, the Proposed Transaction will result in a change in the ownership structure many levels up the ownership chain from the Licensed Entities themselves. In each case, the legal entity that owns and operates a Connecticut Surgical Facility will retain its assets, and there will be no change in the direct ownership of its stock. The SCA Entities will retain their ownership interests in the Licensed Entities and their status as either General Partner or Managing Member (with respect to majority-owned centers) will remain unchanged. The Physician Investors are expected to retain their ownership interests in the Connecticut Surgical Facilities as well.

In addition, there will be no changes to either the composition or membership of the governing body of any of the Connecticut Surgical Facilities by virtue of the Proposed Transaction. Nor will there be any changes to the Operating Agreements for any of the Licensed Entities. Facility management will remain in place and the Parties anticipate that day-to-day operations, including services offered, will be unaffected by the Proposed Transaction.

The Licensed Entities will also retain their respective legal business names, federal tax identification numbers and Medicare provider numbers. Accordingly, the Proposed Transaction will not result in a change of ownership of any of the Connecticut Surgical Facilities for Medicare purposes. Moreover, the Department has been notified and of the Proposed Transaction and is not requiring the issuance of new licenses for the Connecticut Surgical Facilities.

Moreover, as previously mentioned, the Proposed Transaction will not result in any change in the governance, control or ownership of ProHealth P.C. ProHealth P.C. is and will remain wholly owned, governed and controlled by its physician shareholder.

The Proposed Transaction, with its indirect impact on the Connecticut Surgical Facilities, is consistent with similar parent-level merger transactions reviewed by OHCA. In each case, OHCA determined that CON approval was *not* required because there was *no change in the governance or control of a health care facility*. By way of example, the following transactions involving ambulatory surgery providers were allowed to proceed without CON authorization:

- Wilton Surgery Center, LLC (Report No. 11-31700-DTR) – Wilton Surgery Center, LLC (“WSC”), the licensed operator of an ambulatory surgery center located in Wilton and a subsidiary of National Surgical Care, Inc. (“NSC”), requested a determination regarding the need for CON approval for the merger of NSC with AmSurg Corp. (“AmSurg”). With the merger NSC became a wholly-owned subsidiary of AmSurg. Ownership of WSC remained unchanged, with Stamford/NSC Management, LLC (“Stamford/NSC”) (an NSC-Stamford Health joint venture) remaining the majority owner and individual physician investors retaining their minority ownership interests. None of the assets of WSC were transferred or sold. The Operating Agreement for WSC was not changed or amended in any way. In addition, governance of WSC was unchanged and Stamford/NSC remaining the Managing Member. Based on the foregoing, OHCA concluded that the merger would not impact or change the governance of controlling body of WSC and found that *a CON was not required.*
- North Haven Surgery Center, LLC (Report No. 11-31707-DTR) – North Haven Surgery Center, LLC (“NHSC”), the licensed operator of an ambulatory surgery center located in North Haven and a subsidiary of Titan Health Corporation, Inc. (“THC”), requested a determination regarding the need for CON approval for the merger of THC with United Surgical Partners International, Inc. (“USPI”). With the merger THC became a wholly-owned subsidiary of USPI. Ownership of NHSC remained unchanged, with Titan Health of North Haven, Inc. (“THN”) (a THC subsidiary) remaining the majority owner and individual physician investors retaining their minority ownership interests. The Operating Agreement for NHSC was not changed or amended in any way. In addition, governance of NHSC was unchanged and THN remaining the Managing Member. Based on the foregoing, OHCA concluded that the merger would not impact or change the governance of controlling body of NHSC and found that *a CON was not required.*

OHCA has undertaken similar analyses, and reached the same conclusion regarding lack of CON jurisdiction, with respect to parent-level changes of ownership involving other types of healthcare facilities. By way of example:

- Essent Healthcare of Connecticut, Inc. d/b/a Sharon Hospital (Report No. 11-31720-DTR) – Essent Healthcare of Connecticut, Inc. d/b/a Sharon Hospital (“Essent Connecticut”), the licensed operator of an acute-care general hospital located in Sharon and a subsidiary of Essent Healthcare, Inc. (“Essent”), requested a determination regarding the need for CON approval for the merger of Essent with RegionalCare Hospital Partners, Inc. (“RegionalCare”). With the merger Essent became a wholly-owned subsidiary of RegionalCare. Ownership of Essent Connecticut remained unchanged and Essent Connecticut continued to own and operate Sharon Hospital. Neither the Articles of Incorporation nor the By-laws of Essent Connecticut were changed or amended in any way. In addition, governance of Essent Connecticut and Sharon Hospital itself, as well as

the composition of a Local Advisory Board established when the Hospital converted to a for-profit entity, were unchanged. Based on the foregoing, OHCA concluded that the merger would not impact or change the governance of controlling body of Essent Connecticut and found that *a CON was not required.*

Moreover, OHCA has made similar determinations in the context of internal reorganizations where there is no transfer or sale of assets and governance of a healthcare facility is unaffected (e.g. Report No. 15-32030-DTR; Report No. 14-31956-DTR; and Report No. 14-31904-DTR).

Based on the plain language of the CON statutes and the foregoing precedent, the Proposed Transaction does not result in a change of ownership of either a healthcare facility or large group practice requiring OHCA approval. With respect to the Connecticut Surgical Facilities, the proposed structure is comparable to the transactions involving WSC and NHSC whereby a corporate parent merged with and became a wholly owned subsidiary of another entity. In those cases the governance and control of the facility itself did not change, and that was the factor OHCA found to be determinative of whether a CON was required. Here, the governance and control of the Connecticut Surgical Facilities is not changing and, therefore, OHCA should also determine that a CON is not required. With respect to ProHealth P.C., the practice is neither owned nor controlled by Optum and is therefore not affected by the Proposed Transaction.²

In light of the foregoing, the Parties respectfully ask OHCA to determine that no CON approval is required in connection with the Proposed Transaction. Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,



Jennifer Groves Fusco

JGF/dla

cc: Richard Sharff, Esq.
John Liethen, Esq.
Travis Lloyd, Esq.

² Similarly, the Proposed Transaction will have no impact on the ownership or control of ProHealth Inc., which provides management services to ProHealth P.C. ProHealth Inc. is now, and will continue to be, an Optum subsidiary. Regardless, ProHealth Inc. is neither a healthcare facility nor a large group practice, so whether a change of ownership is occurring is irrelevant to a CON analysis.