



April 8, 2014

Lisa Davis, Deputy Commissioner
Department of Public Health
Office of Health Care Access
410 Capitol Avenue
Hartford, CT 06106

RE: Docket No. 13-31884-CON

Dear Deputy Commissioner Davis:

I am writing as the President of UNITE HERE, Local 34 concerning the above referenced docket. Local 34 represents over 3,700 clerical and technical workers at Yale University, including 900 who work in the School of Medicine specialty clinical practices. Eleven of our members were laid off as a result of the proposed transaction. I am requesting a public hearing in the city of New Haven and that our union be accorded status as a party to the transaction.

Our union is concerned about how the consolidation of medical practices staffed by Yale University physicians under the control of Yale-New Haven Hospital impacts cost and access to both patients and taxpayers. The closure as described in the Certificate of Need is actually part of a larger transaction that will significantly reduce access to needed services. The full extent of this transaction is evading Office of Health Care Access (OHCA) scrutiny.

The Termination of Gaylord Hospital's Sleep Services in North Haven is Fictitious

The matter before OHCA is not a simple facility closure. We believe the above referenced docket covers only one part of a complex three-way transaction, only a small percentage of which has come under OHCA scrutiny:

1. The takeover of the Yale Medical Group Sleep Center by Yale-New Haven Hospital, and Yale-New Haven's assumption of YMG's doctors and patients
2. The termination of Gaylord Hospital's sleep medicine services in North Haven
3. Yale-New Haven Hospital's purchase of the Gaylord Hospital sleep medicine assets in North Haven

Prior to the announced termination of services, in a purportedly unrelated transaction, Yale University School of Medicine closed its outpatient sleep medicine laboratory. Yale's sleep medicine practice involves office visits with physicians and sleep testing in laboratory facilities or, more rarely, at a patient's home. Yale temporarily transferred its patients to alternate university sites for office visits and sent patients for sleep studies to Gaylord in North Haven and to other local laboratories. The timeline of the closures and the experiences of employees reveal that the "closure" was in fact a transfer of control of the practice from Yale University to Yale-New Haven Hospital:



- YMG's Sleep Center in Norwich closed on June 30, 2012. The technicians were transferred to the Guilford and New Haven offices.¹
- On January 26, 2013, the Guilford lab closed and YMG's sleep services were consolidated into the New Haven lab, located at the Temple Medical Center.²
- Our members in the New Haven lab were given their 90-day notification of layoff on March 8, 2013. As of June 9, one clerical worker and two technicians were laid off.³ On July 2013, a day technician was laid off.⁴
- In October 2013, the rest of the clerical and technical staff at the Temple Medical Center in New Haven received layoff letters.⁵ They were told that the lab would be closing January 6, 2014.⁶
- In December 2013, YMG mailed a letter to patients saying that YMG physicians would continue to provide care at the Yale-New Haven Hospital Shoreline Medical Center in Guilford and the Yale Physicians' Building in New Haven for consultations and follow-up appointments.⁷
- By December 2013, all of the clerical and technical staff at the Temple Medical Center had been laid off.

After YMG laid off the clerical and technical staff in New Haven, it brought in temps and clerical staff from other parts of the university to help out. These temporary workers were instructed to tell patients that their doctors would be moving to Yale-New Haven Hospital Sleep Center locations in North Haven and Madison. Melissa Dawkins, an Administrative Assistant in the Internal Medicine Department, was one of the workers helping out in the Sleep Center after the layoffs. She said she was told to say: "Yale-New Haven Hospital will be opening up a sleep center. They'll be taking over our practice. All of your charts and medical records will be switched over to the hospital."⁸ This directive from YMG management clearly suggests that YNHH is taking over a YMG practice.

Yale-New Haven Hospital Must Submit a Certificate of Need

The public record gives no indication that Yale-New Haven Hospital has filed a Certificate of Need in advance of purchasing the Gaylord Hospital's sleep medicine practice in North Haven. The original CON for the termination of Gaylord Hospital's sleep medicine services in North Haven made no mention of an asset transfer. Only once pressed by OHCA for additional information did Gaylord, in passing, indicate plans for an asset transfer. The CON deemed complete includes a letter from the President & CEO of Gaylord Hospital, Inc. that specifically refers to the "...sleep medicine asset purchase transaction contemplated between YNHH and Gaylord Hospital..."⁹ Additionally, the draft

¹ Affidavit by Geraldine Haddon, March 21, 2014.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Affidavit by Gretchen Rose, March 24, 2014.

⁷ Letter from Dr. Christine Won of Yale Sleep Medicine to a patient, December 2013.

⁸ Affidavit by Melissa Dawkins, March 17, 2014.

⁹ Letter dated Feb. 10, 2014 from George Kyriacou to Richard D Aquila enclosed in Connecticut Department of Public Health's Office of Health Care Access, Docket No. 13-31885-CON.



notice to patients included in the CON deemed complete says: "As of [DATE], Gaylord Hospital will be selling the assets of its North Haven laboratory to Yale-New Haven Hospital, and closing its Glastonbury, Trumbull and Guilford Locations."¹⁰ These statements clearly indicate a transfer of ownership. OHCA regulations state that a certificate of need is required for the "transfer of ownership of a health care facility."¹¹

Gaylord Hospital's CON refers to the North Haven facility as a "physician's practice."¹² Yale-New Haven Hospital may claim that it does not have to file a CON prior to purchasing the North Haven facility because it meets the exemption for the purchase of physician practices stated in the OHCA regulations. Either the purchase is an instance of one hospital transferring assets to another hospital, requiring a CON, or it is not. If it is not, this transaction demonstrates acutely the need for a CON process for the acquisition of physician practices.

Even if this transaction is not deemed a transfer of ownership of a health care facility, then it will certainly result in an "increase in in the licensed bed capacity of a health care facility." Gaylord Hospital's North Haven location consists of 12 beds designated for day and overnight sleep testing.¹³ According to OHCA regulations, this increase in the number of beds for Yale-New Haven Hospital should require a CON.¹⁴

The Transaction Viewed in its Entirety Will Reduce Access to Adult Outpatient Sleep Services

(a.) Moving Sleep Medicine Services to the Suburbs Limits Access to Low-Income and Vulnerable Groups

In response to a question regarding the potential reduction in access for Medicaid patients, Gaylord Hospital said:

"There will be no adverse impact on the Medicaid population, and the termination of services will not impact access to services for Medicaid recipients. Gaylord has made arrangements with Yale-New Haven Hospital for the transition of its adult and pediatric patients and with Connecticut Children's Medical Center for the transition of its pediatric patients."¹⁵

Additionally, when asked to "[i]dentify any special populations that utilize the services and explain how these clients will continue to access this service after the service location closes," the Applicant responded "Not applicable." When the three-way transaction is understood in its entirety, the resulting array of available regional outpatient sleep center services compared to what was available likely will have an adverse impact on access for the Medicaid population and certain special populations.

¹⁰ "NOTICE TO OUR SLEEP MEDICINE PATIENTS" enclosed in Docket No. 13-31885-CON. Note: the original letter in the file does not specify a date.

¹¹ Conn. Gen. Stat. § 19a-638

¹² Connecticut Department of Public Health, Office of Health Care Access. Certificate of Need CT DPH OHCA Docket No. 13-31885-CON, pg. 13.

¹³ CT DPH OHCA Docket No. 13-31885-CON, pg. 5.

¹⁴ Ibid.

¹⁵ CT DPH OHCA Docket No. 13-31885-CON, pg. 50.



The closure of the Sleep Center at the Temple Medical Center leaves a void in crucial services for New Haven residents. Yale-New Haven Hospital's decision to take over the Yale Medical Group sleep medicine practice and provide those services in North Haven and Madison may provide excellent service to suburban patients. However, YNHH has not provided sufficient assurance of continued access to affordable sleep medical care to the entire community previously served by the Yale University physicians soon to be working in YNHH's North Haven facility. The new locations are potentially inconvenient to low-income patients – whether insured by Medicaid, private insurance or uninsured – dependent on public transportation. Certain demographics with a strong need for services may disproportionately see a marked decrease in access to sleep medicine. For instance, African-American men are more likely to suffer from sleep apnea.¹⁶ YMG's closure of its urban sleep center and Yale-New Haven Hospital's purchase of a suburban clinic may thus have a disparate negative impact on African-American men, particularly low-income African-American men.

(b.) The Likely Reimbursement Models for the post-transaction sleep center will dramatically reduce access for patients.

In the CON application, OHCA asks Gaylord Hospital to “[d]emonstrate how this proposal will affect the financial strength of the state’s health care system.” Gaylord’s response was, “[t]his proposal will have no effect on the current financial state of the health care system.”¹⁷ In fact, the entire transaction will be likely to lead to increased costs to patients, private payers and to the state.

The Medicare Payment Advisory Commission’s (MedPAC) analysis of Medicare data shows that as physician services shift from doctors’ offices to sites controlled by hospitals, Medicare spending increases. MedPAC contends that treatment in an office converted to a satellite hospital outpatient department can cost patients and insurers an average of 80% more than equivalent treatment at a doctor’s office that is not owned by a hospital.¹⁸

The reopened sleep medicine facility in North Haven under YNNH ownership may bill as if it is part of a hospital outpatient department and charge facility fees on top of what the physicians will charge. If so, it will be part of a growing pattern in which Yale University Medical School ambulatory clinics come under nominal hospital management with resulting increased reimbursement. In the case of the Yale Congestive Heart Failure and Transplant Clinic, patients arrived one day to find new signage and to having wristbands put on them as if they were hospital patients. They were billed second copays or even large charges to their deductibles for what were once routine office visits. Some of the same patients visiting the same doctors served by the same staff suddenly had to pay twice as much or even more.¹⁹

OHCA must determine if Yale-New Haven Hospital intends to bill for outpatient services as if its proposed North Haven location were “provider-based,” that is, part of a hospital outpatient department. If so, patients previously treated by YMG physicians in New Haven will almost certainly face higher out of pocket costs at the point of service in North Haven. The CON indicates that Gaylord’s current North Haven operation is “a physician practice.” If Gaylord has been billing

¹⁶ Pranathiageswaran, Sukanya, M. Safwan Badr, Richard Severson, and James A. Rowley. “The Influence of Race on the Severity of Sleep Disordered Breathing.” *Journal of Clinical Sleep Medicine*, 9(4): 303-309.

¹⁷ CT DPH OHCA Docket No. 13-31885-CON, pg. 12.

¹⁸ Medicare Payment Advisory Commission (MedPAC), Report to the Congress: Medicare Payment Policy, Pg. 72.

¹⁹ Affidavit by Gloria Timpko, April 1, 2014.



insurers and patients as if North Haven were a physician office, two sets of patients – those previously treated by YMG physicians in New Haven and Gaylord physicians in North Haven, may shortly be treated in a “hospital” facility, with much higher overall costs, much higher out-of-pocket cost at the point of service, and an accompanying reduction in access.

Our members are witnessing the impact of the higher out-of-pocket costs generated by hospital “facility fees.” Gloria Timpko, a Senior Administrative Assistant at Yale University’s Department of Cardiology, testified on this issue in front the Public Health Committee. She said:

“Heart transplant patients need to be seen on a weekly basis for the first couple of months following transplant and they already have high costs for the medications they need to prevent rejection of the transplant. Suddenly getting a second bill for a weekly clinic visit is proving to be a severe burden.”²⁰

The experience of workers in clinics that have undergone the transformation to nominal hospital control highlights the need for OHCA to carefully review the full transaction. Many of our members have seen patients struggle with paying increased fees and fear that some may choose to reduce the frequency of doctors visits or cease treatment all together.

The Transaction Viewed in its Entirety Will Likely Increase Costs to the State

The likely increase in cost, in addition to affecting patients and their families directly, will impact the state’s budget. The trend of the conversion of physician practices to hospital outpatient departments is driving costs up dramatically – both systemically and for patients out of pocket. MedPAC estimates that Medicare is overspending by \$2 billion nationally for services that are equivalent in the two settings, and has repeatedly recommended that Congress and the Centers for Medicare and Medicaid Services close this loophole by equalizing payment for equivalent services.²¹ The state is in the process of determining how the “provider-based” reimbursement model affects Medicaid patients and those on the state’s plan. It is likely that the state is spending more to cover services to be performed in a “hospital setting.” Left unchecked, the post-transaction sleep center’s ability to bill as a “provider-based” facility will result in higher fees for patients and the state and create additional barriers to treatment.

Health care reform is supposed to drive patients into the most cost-effective setting possible. But just as payers are succeeding in keeping patients out of the hospital with a stronger emphasis on primary and preventive care, the rapid consolidation of physician practices is spreading high hospital prices across what used to be lower-cost settings.

Request for a Public Hearing

Gaylord Hospital is not terminating its sleep services in North Haven. Instead, Yale-New Haven Hospital is buying the Gaylord assets, taking over the sleep medicine practice of the Yale University School of Medicine, and consolidating those operations in North Haven and Madison. This entire transaction will reduce access to sleep medicine services and likely increase costs to patients and taxpayers. I request a public hearing regarding Docket No. 13-31884-CON take place in New Haven

²⁰ Gloria Timpko, testimony in favor of S.B. 35 (An Act Concerning Acquisitions, Joint Ventures and Affiliation of Group Medical Practices), CT General Assembly Public Health Committee, March 5, 2014.

²¹ Medicare Payment Advisory Commission (MedPAC), Report to the Congress: Medicare Payment Policy, Pg. 73.



in the evening so that members of the public who work daytime hours may attend. In addition, given our direct interest in the operations involved in these transactions and the unique information our members bring to the process, I am requesting that our union be accorded status as a party or in the alternative as an intervenor.

Thank you and I look forward to your response.

Sincerely,

Laurie Kennington
President
UNITE HERE, Local 34