VIA ELECTRONIC CON PORTAL, EMAIL & FIRST-CLASS MAIL

January 16, 2024

Claudio A. Capone, FACHE
Regional Vice President of Strategy
Trinity Health Of New England Corporation, Inc.
1000 Asylum Avenue
Hartford, CT 06105
Claudio.Capone@TrinityHealthOfNE.org

David A. DeBassio
Hinckley, Allen & Snyder LLP
20 Church Street
Hartford, Connecticut 06103
ddebassio@hinckleyallen.com

RE: Certificate of Need Application / Docket Number: 22-32612-CON
Johnson Memorial Hospital, Inc.
Termination of Inpatient or Outpatient Services by a Hospital
Proposed Final Decision

Dear Mr. Capone and Attorney DeBassio:

Enclosed please find a copy of the Proposed Final Decision rendered by Hearing Officer Alicia J. Novi in the above-referenced case.

Pursuant to Connecticut General Statutes § 4-179, Johnson Memorial Hospital, the applicant and party in this matter, may request in writing the opportunity to file exceptions, a brief, and a request to present an oral argument, with the Executive Director of the Office of Health Strategy within twenty-one (21) days from the mailing of the decision, or by **February 6, 2024**. If no such request is received by this date, the Executive Director will take those rights to be waived and will render a Final Decision in this matter.

If you wish to expedite the process and avoid the necessity that the Executive Director await the expiration of the aforementioned twenty-one days, you may submit a written statement to the Executive Director affirmatively waiving those rights.

Sincerely,

Deidre S. Gifford MD, MPH
Executive Director

cc: W. Boyd Jackson Esq. (boyd.jackson@ct.gov)
Antony A. Casagrande, Esq. (antony.casagrande@ct.gov)
Daniel Shapiro, Esq. (daniel.shapiro@ct.gov)
Alicia J. Novi Esq. (Alicia.novi@ct.gov)

Encl.

Proposed Final Decision

Applicant:	**Johnson Memorial Hospital, Inc.** **201 Chestnut Hill Road** **Stafford Springs, CT 06076**
Docket Number:	**22-32612-CON**
Project Title:	**Termination of inpatient or outpatient services (inpatient labor and delivery services) by a hospital (Johnson Memorial Hospital)**

I. Project Description

Johnson Memorial Hospital, Inc. ("Johnson" or "JMH") seeks authorization to terminate inpatient labor and delivery services ("L&D" or the "Services") at 201 Chestnut Hill Road, Stafford Springs.

II. Procedural History

The Applicant published notice of its intent to file a Certificate of Need ("CON") application in *Journal Inquirer* (Manchester) on July 13, 14, and 15, 2022. On September 29, 2022, the Health Systems Planning unit ("HSP") of the Office of Health Strategy ("OHS") received the CON application from the Applicant for the above-referenced project and deemed the application complete on January 20, 2023. OHS received a number of timely requests for hearing, thereby requiring that OHS hold a hearing in this matter. Ex. F.

On March 29, 2023, OHS issued a Notice of Hearing, which notified JMH and the public of the date, time, and place of the hearing – May 10, 2023. Ex. G. Also on March 29, 2023, Executive Director Deidre S. Gifford, MD, MPH designated Attorney Alicia J. Novi, Esq. as the hearing officer. Ex. G.

OHS convened the public hearing pursuant to Connecticut General Statutes ("C.G.S.") § 19a-639a(e). The proceedings were conducted pursuant to the provisions of the Uniform Administrative Procedure Act (Chapter 54 of the General Statutes). Attorney Novi closed the hearing record on October 17, 2023. The undersigned attests to having reviewed the record in its entirety.

III. Provisions of Law

The proposal constitutes the termination of inpatient or outpatient services offered by a hospital pursuant to C.G.S. § 19-638(a)(5). OHS considered the factors set forth in C.G.S. § 19a-639(a) in rendering its decision.

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. The Applicant bears the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

Findings of Fact

Introduction and Background[1]

1. JMH is a 92-bed and 9 bassinets hospital at 201 Chestnut Hill Road, Stafford Springs, CT 06076. Services at JMH include a medical-surgical unit as well as an ICU, an emergency department, cardiac rehabilitation, physical therapy, wound center, outpatient services, labor and delivery unit ("L&D"), and an adult inpatient psychiatric unit. Ex. A – Application, p. 14

2. JMH is a member of Trinity Health Of New England ("THOfNE"), an integrated health care delivery system that is a member of Trinity Health based in Livonia, MI. Ex. A – Application, p. 14

3. The geographic area served by JMH's inpatient L&D program is mostly comprised of patients from Enfield, Stafford/Union, Windsor Locks, and Somers. Ex. A – Application, p. 14

4. JMH provided notice to OHS in April 2020 that inpatient L&D services had been suspended. Ex. A – Application, p. 15

5. On July 1, 2020, JMH filed a letter notifying OHS of its' intention to resume Labor and Delivery services on or about July 6, 2020. Ex. A – Application, p. 15

6. Labor and Delivery services resumed at JMH on or around July 6, 2020. Ex. A – Application, p. 15.

7. There was a second and final stoppage of L&D services at JMH in October of 2020. Ex. A – Application, p. 15

8. When JMH had an L&D unit, it did not deliver high risk pregnancies and did not have a neonatal intensive care unit. Ex. U-Hearing transcript, pp. 21, 22

9. There are currently no nurses or ancillary providers on staff in the L&D department. There are a number of OB/GYN physicians with privileges to read Level 2 Ultrasounds and accept phone calls from the JMH Emergency Department. Ex. EE– Late File Response, p. 341

[1] Use of header descriptions in this document are for organizational purposes only and are not intended as restrictions on the use of information in relation to the CON statutory criteria.

10. There are no OB/GYN physicians with privileges to admit patients or perform deliveries at JMH. Both Dr. Michael Morosky and Dr. Christopher Morosky, at their request, have relinquished their medical staff privileges, and no longer have the ability to admit patients or perform deliveries at JMH. Ex. EE– Late File Response, pp. 341, 343

11. Until 2022, there was only one OB/GYN obstetrics doctor, who referred patients to be delivered at Johnson and who was on the medical staff (Dr. Michael Morosky). Dr. Michael Morosky ceased deliveries in April of 2020, but did not remove himself from the medical staff until October 2022. Ex. U-Hearing transcript, pp. 42, 57-58

12. JMH has been unable to maintain adequate nursing resources for the L&D unit. Ex. A – Application, pp. 15, 23

13. Between FY 2017-2019, JMH averaged 172 annual deliveries in the PSA, down from a height of 302 deliveries in FY 2008. Ex. A – Application, pp. 14, 21

14. In the fall of 2020, JMH launched a nurse recruitment program to increase its L&D nursing staff. Because JMH was not successful in hiring nurses trained in L&D, it decided to hire nurses with little or no L&D experience and then trained them at St. Francis Hospital. The training lasted anywhere from eight to sixteen weeks, depending upon the individual nurse's L&D experience. Once the newly hired nurses completed the training program, they were supposed to work at JMH. However, once the nurses completed their training, they took positions at either St. Francis or other hospitals. Ex. A – Application, p. 23, Ex. O-Pettorini-D'Amico testimony, pp. JMH000052-55.

15. No attempts were made to hire an obstetrics doctor after the last doctor delivering at JMH ceased deliveries in April of 2020 and later left the staff. Ex. D – Response to CL#1, p. 165, Ex. U – transcript, pp. 42, 61-63,

Relationship to the Statewide Health Care Facilities and Services Plan (the "Plan")[2]

16. JMH's primary service area ("PSA")[3] for its inpatient services consists of Connecticut towns: Enfield, Stafford/Union, Windsor Locks, and Somers. Over Seventy-five percent (75%) of inpatient L&D patients originated from these towns in FY 2020. Ex. A – Application, p. 16

17. 61% of the labor and delivery patients at JMH had a government payor, meaning Medicaid, Medicare, or TRICARE, made up mostly of Medicaid patients. Ex. U – Hearing Transcript, p. 29

[2] Connecticut's first and only full Statewide Health Care Facilities and Services Plan was published in 2012. Subsequently, supplements to the Plan were published in 2014, 2016, 2018, and 2020. They can all be accessed online at https://portal.ct.gov/OHS/Services/Health-Systems-Planning/Facilities-Plan-and-Inventory.
[3] A PSA is defined as the "geographic area (by town), for the service location in the application, consisting of the lowest number of contiguous zip codes from which the applicant draws at least 75% of its patients for this service at such location."
https://portal.ct.gov//media/OHS/ohca/Publications/2012/OHCAStatewideFacilitiesandservicespdf.pdf, p. 149

18. In FY 2020, JMH's L&D payer mix was 55 (59%) Medicaid, 1(1%) Medicare, 1 (1%) TRICARE, and 36 (39%) commercial:

APPLICANT'S CURRENT & PROJECTED PAYER MIX [Johnson's Labor & Delivery inpatient unit]

Payer	Most Recently Completed FY 20		Projected					
			FY 22		FY 23		FY 24	
	Volume: (Number of Deliveries)	%	Volume: (Number of Deliveries)	%	Volume: (Number of Deliveries)	%	Volume: (Number of Deliveries)	%
Medicare	1	1%	0	0%	0	0%	0	0%
Medicaid	55	59%	0	0%	0	0%	0	0%
TRICARE	1	1%	**0**	**0%**	**0**	**0%**	**0**	**0%**
Total Government	**57**	**61%**	**0**	**0%**	**0**	**0%**	**0**	**0%**
Commercial Insurers: In-Network	36	39%	0	0%	0	0%	0	0%
Commercial Insurers: Out-of-Network	0	0%	0	0%	0	0%	0	0%
Uninsured	0	0%	0	0%	0	0%	0	0%
Self-pay	0	0%	0	0%	0	0%	0	0%
Workers Compensation	0	0%	0	0%	0	0%	0	0%
Total Non-Government	**36**	**39%**	**0**	**0%**	**0**	**0%**	**0**	**0%**
Total Payer Mix	**93**	**100%**	**0**	**0%**	**0**	**0%**	**0**	**0%**

Ex. A – Application, pp. 37-38

Access

19. Patients are still appearing at the JMH emergency room for pregnancy related issues. When possible, these patients are transferred to another facility for care.

Number of transfers from JMH for L&D services	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYTD 2022
Saint Francis Hospital and Medical Center	Information is unavailable	Information is unavailable	6	2	4	6
Hartford Hospital			1	0	2	1
Manchester Memorial Hospital			1	0	0	0
Baystate Medical Center			0	0	1	0
Other (Rehabilitation Facility)			1	0	0	0

Ex. D – Response to CL#1, p. 158

20. The following table provides the number of deliveries by Hospital originating from JMH's PSA for FY 2017 through FYD 2022(August):

Number of Deliveries by Hospital originating from JMH's PSA	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYTD 2022 (August)
Saint Francis	233	183	219	239	303	265
Hartford	117	108	124	143	113	114
Manchester Memorial	65	82	53	89	57	68
UConn John Dempsey	9	18	13	12	13	15
Hospital of Central CT	3	4	3	6	6	9
Middlesex	2	1	-	4	-	3
Yale New Haven	-	1	1	2	5	2
MidState	-	-	-	-	2	2
Backus	1	-	-	1	-	2
Johnson Memorial	110	126	125	70	-	1
Day Kimball	-	1	-	4	1	1
Griffin	1	2	-	-	-	1
Bridgeport	-	-	-	-	-	1
Waterbury	1	1	-	1	-	-
Bristol	1	-	-	1	1	-
Danbury	-	-	2	1	-	-
Grand Total	**543**	**527**	**540**	**573**	**501**	**484**

Ex. D – Response to CL#1, p. 159

21. Prior to closure of the L&D unit, JMH had a small but steady number of deliveries from patients outside its PSA for FY 2017 through FYD 2022(August):

JMH Deliveries for Patients from Non-JMH PSA Towns	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FYTD 2022 (August)
EAST WINDSOR	11	10	10	5	-	-
VERNON	4	4	8	4	-	-
GRANBY	2	2	-	2	-	-
AGAWAM, MA	-	-	1	1	-	-
AVON	1	1	-	1	-	-
MANSFIELD	1	1	-	1	-	-
CHICOPEE, MA	-	-	-	1	-	-
WETHERSFIELD	-	1	-	1	-	-
EAST GRANBY	1	1	1	1	-	-
LUDLOW, MA	-	-	-	1	-	-
ASHFORD	1	1	4	1	-	-
SOUTH WINDSOR	-	3	1	1	-	-
ELLINGTON	2	5	3	1	-	-

WILBRAHAM, MA	-	-	-	1	-	-
WILLINGTON	2	2	-	1	-	-
EAST HARTFORD	-	-	1	-	-	-
MIDDLETOWN	-	-	1	-	-	-
TOLLAND	2	5	1	-	-	-
BROOKLYN	-	1	-	-	-	-
ROCKY HILL	-	-	1	-	-	-
GLASTONBURY	1	-	-	-	-	-
SPRINGFIELD, MA	-	4	1	-	-	-
BETHANY	1	-	-	-	-	-
WARREN, MA	-	-	1	-	-	-
COLCHESTER	-	-	1	-	-	-
MONTVILLE	-	-	1	-	-	-
BARRE, MA	1	-	-	-	-	-
SIMSBURY	1	1	1	-	-	-
COLUMBIA	-	-	1	-	-	-
SOUTHWICK, MA	1	-	-	-	-	-
COVENTRY	-	-	2	-	-	-
SUFFIELD	7	5	4	-	-	-
MANCHESTER	2	1	2	-	-	-
EAST LONGMEADOW, MA	1	-	-	-	-	-
BLOOMFIELD	1	-	-	-	-	-
BRIMFIELD, MA	-	1	-	-	-	-
MARLBOROUGH	-	-	1	-	-	-
WINDSOR	4	2	2	-	-	-
WINDHAM	1	-	-	-	-	-
HARTFORD	1	1	1	-	-	-
WOODSTOCK	-	-	1	-	-	-
KILLINGLY	-	1	-	-	-	-
LEBANON	-	1	-	-	-	-
Grand Total	**49**	**54**	**51**	**23**	**-**	**-**

Ex. D – Response to CL#1, pp. 159-160

22. Within the PSA, the number of females that are of child-bearing age is projected to decline slightly (-1.5%) over the next five years. Ex. A – Application, p. 21

23. The target population impacted by the Proposal is pregnant women in need of L&D services within the PSA. Ex. A – Application, pp. 20-21.

24. Medicaid recipients and indigent persons made up 59% (or 55 patients) of the inpatient delivery discharges at Johnson in the most recently completed fiscal year 2020. Ex. A – Application, pp. 37-38, 46

25. FY 2017 through FY 2020, approximately 80% of patients in the PSA travel to a hospital other than JMH to deliver. Ex. A – Application, p. 23

26. JMH has a transfer agreement with Saint Frances Medical Center for L&D patients from its Emergency Department. JMH may also offer transfer to Mercy Medical Center in Massachusetts. Ex. A – Application, p. 13

27. From FY 2017 to FY 2019 the percentage of births from the PSA that occurred at JMH increased and held steady until services were suspended in April 2020 as shown in the table below. Ex. A – Application, pp. 21-22

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021*	FYTD 2022 Annualized (May)
Saint Francis Hospital and Medical Center	42.9%	34.7%	40.6%	41.7%	60.5%	54.3%
Hartford Hospital	21.5%	20.5%	23.0%	25.0%	22.6%	25.4%
Manchester Memorial Hospital	12.0%	15.6%	9.8%	15.5%	11.4%	11.5%
Johnson Memorial Hospital	20.3%	23.9%	23.1%	12.2%	0.0%	0.3%
UConn John Dempsey	1.7%	3.4%	2.4%	2.1%	2.6%	3.5%
Other CT Hospitals	1.7%	1.9%	1.1%	3.5%	3.0%	5.0%

Ex. A – Application, p. 22

28. In the PSA more than 90 percent have access to private transportation and utilize that to go to their health care services. Ex. U-Hearing Transcript, p. 84.

29. The following hospitals are geographically the closest to Johnson Memorial Hospital or are part of the same health system, such as Saint Francis Hospital and Medical Center:

    - Saint Francis Hospital and Medical Center – Using the fastest route from JMH, it takes 35 minutes across 27.8 miles to arrive at the destination.
    - Mercy Medical Center - Using the fastest route from JMH, it takes 32 minutes across 17.7 miles to arrive at the destination.
    - Manchester Memorial Hospital – Using the fastest route from JMH, it takes 30 minutes across 20.1 miles to arrive at the destination.
    - Day Kimball Hospital – Using the fastest route from JMH, it takes 51 minutes across 32.9 miles to arrive at the destination. Ex. A – Application, p. 45

30. These sites currently have staffing, OBGYN coverage, and are open 24/7. Saint Francis Hospital and Medical Center and Manchester Memorial Hospital both have neonatal intensive care units for newborns with additional needs. Ex. A – Application, p. 45.

Quality

31. Metrics for the L&D unit have not been recorded since 2020 Ex. D – Response to CL#1, p. 156.

32. JMH received two citations in early 2020 specific to L&D services. A corrective action plan was submitted to the Department of Public Health (DPH) to address these citations and reeducation was undertaken. Ex. D – Response to CL#1, p. 156.

33. Johnson Memorial Hospital is a member of the Accountable Care Organization ("ACO"), Southern New England Healthcare Organization ("SoNE Health"), a clinically integrated network. This network focuses on positively impacting care by providing high quality care at lower costs. Ex. A – Application, p. 26

34. The out-of-pocket costs for an individual patient who is commercially insured may be affected by this proposal depending on their health plan and/or their insurer and which alternate delivery hospital they select. Ex. A – Application, p. 29

Financial Soundness

35. The Proposal does not require any capital expenditure. Ex. A – Application, p. 31

36. JMH does not anticipate any financial losses resulting from the termination. JMH has seen a migration away from their L&D unit over the past 5 years, thus the majority of financial changes have already occurred. Ex. A – Application, p. 31

Cost Effectiveness and Cost to Consumers

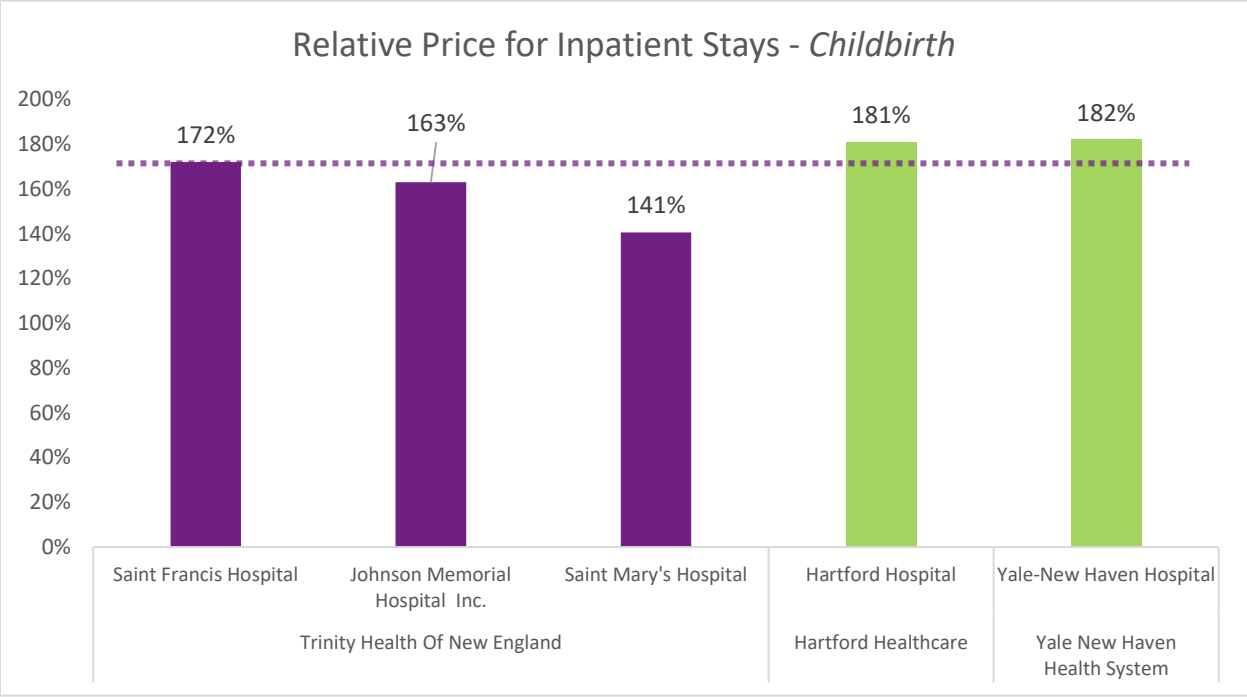
37. The Proposal will not result in a change to JMH's Charity Care policies. Ex. A – Application, p. 28

38. For patients seeking delivery care at other hospitals, patient health care costs may be adversely affected as Johnson's services were provided at a lower cost, at least compared to Saint Francis Hospital and Medical Center. Ex. A – Application, p. 28

39. With regard to the cost of L&D services for self-pay patients, JMH has indicated that there are few if any self-pay patients. Ex. D– Response to CL#1 p. 161

40. Medicaid coverage for childbirth is the same regardless of the hospital at which a patient chooses to deliver. Ex. A – Application, p. 28

41. The relative price paid by private employer sponsored health insurers (as a percentage of Medicare reimbursement) for inpatient childbirth between 2016 and 2018 was less expensive at JMH than Saint Francis, Hartford Hospital, and Yale-New Haven Hospital as shown in the table below based on a 2020 analysis by the RAND Corporation. Ex. A – Application, p. 26.



Existing Providers

42. JMH is the only hospital and L&D unit within the PSA. Ex. A – Application, p. 15

43. The following table demonstrates the September 2021 to May 2022 available transfer and referral capacity at the four (4) hospitals closest to JMH with a L&D unit:

PROVIDERS ACCEPTING TRANSFERS/REFERRALS

Accepting Transfers/Referrals Provider(s)				Terminating Service	
Provider Name	**Provider Address**	**Total Capacity****	**Available Capacity*****	*[ADC**** of inpatient Deliveries]* **FY _2020_**	*[ADC**** of inpatient Deliveries]* **CFY_2022_ ***
Saint Francis Hospital and Medical Center	**114 Woodland Street Hartford, CT 06105**	**26**	**19**		
Mercy Medical Center	271 Carew Street Springfield, MA 01104	16	7		
Manchester Memorial Hospital	**71 Haynes Street Manchester, CT 06040**	**34**	**10**		
Day Kimball Hospital	320 Pomfret Street Putnam, CT 06260	18	4		
Total		94	40	0.7	0.0

*Months include __September 2021 – May 2022_____
**Total Capacity is based on the number of licensed bassinets at each hospital
***Available Capacity based on most recently completed fiscal year 2021 ADC from total days related to delivery DRGs
****ADC = Average Daily Census

Ex. A – Application, pp. 45-46

44. The following table shows the current (at the time of hearing) L&D capacities and occupancy rates for all Hospitals closest to JMH. Ex. EE – JMH Late File, p. 339

	FY 2022					FY 2023 to date (October – July)				
Hospital	**Beds**	**D/C***	**Patient Days**	**ADC****	**% Occupancy**	**Beds**	**D/C***	**Patient Days**	**ADC****	**% Occupancy**
Day Kimball Hospital	7	447	1090	3	43%	7	334	814	3	38%
Manchester Memorial Hospital	20	1583	4017	11	55%	20	1130	2949	10	49%
Saint Francis Hospital and Medical Center	56 staffed	2677	7553	21	37%	56	1992	5631	19	33%
Mercy Medical Center	16 staffed	839	2067	6	35%	16	643	1607	5	33%

*D/C = Discharge **ADC = Average Daily Census

Ex. EE – JMH Late File, p. 339

Discussion

Johnson Memorial Hospital has failed to establish that four (4) of the six (6) applicable statutory criteria set forth in C.G.S. § 19a-639 are met. Therefore, for the reasons described below, JMH has failed to carry its burden of demonstrating that a CON should be approved for this Proposal.

A. C.G.S. § 19a-639(a)(1): Whether the proposed project is consistent with any applicable policies and standards adopted in regulations by the OHS

Subsection (a)(1) is *not applicable* because OHS has not yet established policies and standards as regulations.

B. C.G.S. § 19a-639(a)(2): The relationship of the proposed project to the state-wide health care facilities and services plan

The Applicant has *not demonstrated* that the Proposal is consistent with the Plan.

The mission of OHS is "to implement comprehensive, data driven strategies that promote equal access to high quality health care, control costs and ensure better health for the people of Connecticut." In furtherance of this mission, the legislature tasked OHS with preparing the Plan because OHS's planning and regulatory responsibilities "are intended to increase accessibility, continuity and quality of health services; prevent unnecessary duplication of health resources; and provide financial stability and cost containment of health care services."[4]

When asked in the Application to describe how the Proposal aligns with the Plan, JMH listed multiple areas of focus including: the Proposal seeks to prevent unnecessary duplication of health resources; that there is a projected decrease in demand for delivery services in the service area. JMH also reasoned that the projected need for maternity beds in Tolland county is 3 beds and that by terminating services at JMH there would still be surplus beds in the county at both Day Kimball Hospital and Manchester Hospital. Ex. A – Application, p. 19. Additionally, JMH argued that its low volume of L&D services yields a lower quality of care than can be obtained at other hospitals with higher volumes, however, the record did not sufficiently support this argument.

As evidenced by the agency's mission and the Executive Summary of the Plan, quality, financial stability, accessibility and cost containment are important considerations, but they are certainly not the only ones. Also important are the Plan's goals of continuity of care (and its relationship to quality of healthcare services) and the avoidance of duplication of services. And inextricably intertwined with these goals is the Plan's emphasis on identifying persons at risk and vulnerable populations and taking action to improve health equity across the state.[5]

While the Applicant's Proposal aligns with the Plan's goal of quality of services (*see* Section E below), for the reasons set forth below in Sections E, F, and J of this Proposed Final Decision,

[4] *See* C.G.S. § 19a-634; Plan (2012), p. ix (Executive Summary)
[5] Plan (2012), pp. 81-88; Plan (2014 Supplement), pp. 6, 50-80; Plan (2016 Supplement), pp. 5, 64-102

the Applicant has failed to demonstrate that the Proposal aligns with the Plan's goals of improving accessibility, continuity of care (and its relationship to quality of healthcare services), and cost containment.

As to health equity, the negative impact on Medicaid recipients and indigent persons (addressed below in Sections E and F) alone is a sufficient basis to determine that the Proposal is not consistent with the Plan. In FY 2020—the last FY JMH's L&D unit was open-- sixty-one percent (61%) of the labor and delivery patients had a government payor, mostly Medicaid patients. FF 17, 18. As to accessibility, JMH also states that although there would be no L&D units remaining in the PSA, there would be adequate coverage for Tolland county. However, Day Kimble Hospital and Manchester Hospital are located at least 30 minutes away by car Ex. A – Application, p. 45, FF 29. Thus, the Proposal has not shown that it will improve health equity for residents of the PSA.

Accordingly, JMH has *failed to establish* that this criterion is met.

C. **C.G.S. § 19a-639(a)(3): Whether there is a clear public need for the health care facility or services proposed by the Applicant**

Subsection (a)(3) is *not applicable* because there cannot be clear public need for a termination of services.

D. **C.G.S. § 19a-639(a)(4): Whether the Applicant has satisfactorily demonstrated how the proposal will impact the financial strength of the health care system in the state or that the proposal is financially feasible for the Applicant**

The Applicant *has demonstrated* that the Proposal is financially feasible.

The Proposal does not require any capital expenditure. FF 35. Additionally, JMH does not anticipate any financial losses from the termination. JMH has seen a migration away from their L&D unit over the past 5 years, thus the majority of financial changes have already occurred. FF 36. In fact, JMH anticipates a 3% increase in operating revenue due in part to the reopening of an infusion center. Ex. A – Application, p. 32.

Therefore, the Applicant *has demonstrated* that this criterion is met.

E. **C.G.S. § 19a-639(a)(5): Whether the Applicant has satisfactorily demonstrated how the proposal will improve quality, accessibility and cost effectiveness of health care delivery in the region, including, but not limited to, provision of or any change in the access to services for Medicaid recipients and indigent persons**

The Applicant *has not satisfactorily demonstrated* that the Proposal will improve accessibility, and cost effectiveness of health care delivery in the region, particularly for Medicaid recipients and indigent persons. The Applicant *has satisfactorily demonstrated* the Proposal will improve quality.

Quality:

The Applicant has demonstrated that the quality of health care would be improved by the termination of L&D services.

Johnson Memorial Hospital is a member of the Accountable Care Organization ("ACO"), Southern New England Healthcare Organization ("SoNE Health"), a clinically integrated network. This network focuses on positively impacting care by providing high quality care at lower costs. FF 33. Although JMH received two citations in early 2020 specific to L&D services, a corrective action plan was submitted to DPH to address these citations and reeducation was undertaken. FF 32.

When asked to describe how the Proposal will improve quality of health care, Robert Roose, MD, MPH, Chief Administrative Officer for JMH, stated that the closure will improve the quality of L&D services that patients are able to receive by transferring them to other facilities with higher birth volumes, more staff resources, and additional specialized resources. Ex. N-Roose testimony & CV, p. JMH000030. After cessation of L&D services, JMH implemented a transfer agreement with Saint Frances Medical Center for L&D patients from its Emergency Department, which allows patients in need of specialized resources to receive the appropriate level of care. FF 26. JMH has also indicated that it may transfer L&D patients to Mercy Medical Center in Massachusetts, as a back up to Saint Francis Medical Center. FF 26.

However, there is no evidence in the record to support the argument that a low birth volume alone causes a lower quality of services than those that are offered at a hospital with a higher birth volume. Further, JMH provided evidence that until it first ceased its L&D services in 2020, the number of births remained high. FF 20. Instead, JMH focused on the staffing challenges it has faced.

One of the reasons JMH seeks to terminate L&D is because of its challenges recruiting and retaining qualified nurses so that it can maintain a viable L&D unit. Ex. A – Application, pp. 15, 23, FF 12. From the original cessation of L&D services in April 2020 until the resumption of services in July 2020, the staffing remained consistent. Ex. EE– Late File Response, p. 342. By October 2020, when services ceased for a second and final time, the staffing levels were lower. Ex. EE– Late File Response, p. 342. In response to this drop in staffing, JMH launched a nurse recruitment program in an effort to grow its L&D nurse numbers. The program involved the new hires completing training at Saint Francis Hospital then returning to work at JMH. However, many nurses who trained at Saint Francis Hospital chose to remain at St. Francis Hospital after completing training. FF 14.

Until 2022, Dr. Michael Morosky was the only OBGYN obstetrics doctor on the medical staff, who referred patients for delivery at JMH. He stopped deliveries at JMH in 2020, but did not remove himself from the medical staff until October 2022. FF 11. No attempts were made to hire an obstetrics doctor after the last doctor delivering at JMH ceased deliveries in April of 2020 and later left the staff in October of 2022. FF 15. Dr. Michael Morosky and Dr. Christopher Morosky, the last two doctors with admission privileges, no longer have the ability to admit patients or perform deliveries at JMH. FF 10. Even if JMH had been able to hire and retain a full L&D

nursing staff, they would not have been able to deliver newborns without a doctor willing to admit patients to the hospital. Thus, the termination of L&D services will improve the quality of care for L&D patients.

Accessibility:

The Applicant has failed to demonstrate that the accessibility of L&D services would be improved with this termination. The Proposal reduces access to patients in the PSA who utilized JMH for L&D services, and the suggested alternative hospitals can be much further away depending on the patient's location.

JMH believes that since the majority of patients in the PSA are choosing to deliver at other hospitals this proposal should not significantly affect access to care. Ex. A – Application, p. 28. Between FY 2017 and FY 2020, the most recent years in which JMH operated its L&D services, approximately 80% of patients in the PSA traveled to a hospital other than JMH to deliver. Ex. A – Application, p. 23, FF 25. From FY 2017 to FY 2019 the percentage of births from the PSA that occurred at JMH increased and held steady until services were suspended in April 2020. FF 27. Additionally, in FY 2020, despite the suspension of services from April through July 2020, and again in October of 2020, there were 70 births originating from the PSA at JMH. Ex. A – Application, p. 21. These numbers also do not include the 68 OB-related calls in the PSA reported by the local EMS services. Ex. EE-JMH Late File Response, p. 350.

Travel distances and times by car from JMH to the four (4) nearest hospitals (Saint Francis Hospital and Medical Center, Manchester Memorial Hospital, Mercy Medical Center, and Day Kimble Hospital) are, respectively: 27.8 miles, 35 minutes; 20.1 miles, 30 minutes; 17.7 miles, 32 minutes; 32.9 miles, 51 minutes. FF 29. Although Mercy Medical Center is the closest hospital distance wise, the hospital is located out of state and takes more time to reach than Manchester Memorial Hospital. FF29. These travel times do not account for patient travel time to JMH when they begin labor. Nor does it take into account other variables that can increase the time it would take to get to a hospital, such as having to access personal transportation. Driving times listed by JMH, which list milage and drive times from the hospital location, may vary from the drive time experienced by the patient especially if the patient is in Union which is located father from Hartford than JMH.

JMH believes that there is a greater need for "wrap-around services" like pre- and post-delivery care than for L&D services. Ex. A – Application, pp. 23-24. While these pre- and post-delivery services would be useful to the community, these services are not the subject of the CON application, which is the termination of inpatient L&D services. The hospital is free to institute these services at any time outside of this CON.

For all of the foregoing reasons, the Applicant has failed to demonstrate that the accessibility of L&D services would be improved with this termination.

Cost Effectiveness:

The Applicant has failed to demonstrate that the Proposal would improve cost-effectiveness of health care delivery. Patients seeking delivery care at other hospitals may face higher costs, as Johnson's services were provided at a lower cost compared to Saint Francis Hospital and Medical Center. FF 38

When JMH was asked to describe how the Proposal will improve the cost effectiveness of health care delivery, JMH stated that the cost to retain and continuously recruit staff required to fully run the unit outweighs the annual demand and that rather than expending already limited resources to keep the unit afloat, the effectiveness of healthcare delivery in the region can be improved if Johnson were permitted to allocate them to services with higher community demand. Ex. A – Application, p. 24. In addition, JMH anticipates that the out-of-pocket costs for commercially insured individual patients may be adversely affected by this proposal depending on their health plan and/or their insurer and which alternate delivery hospital they select. Ex. A – Application, pp. 28-29 . The price charged to private employer sponsored health insurers between 2016 and 2018 for inpatient childbirth at JMH is less expensive than Saint Francis, Hartford Hospital, and Yale-New Haven Hospital when price is calculated as a percentage of the Medicare reimbursement amount for such services. FF 41.

The Applicant has failed to demonstrate that the Proposal would improve cost-effectiveness of health care delivery because of the Applicant's admission that L&D services performed at Saint Francis, JMH's primary alternative hospital are more expensive. Additionally, the 2020 RAND study provided by the Applicant, showed that costs for L&D at JMH are less expensive than those of large alternative hospitals in competitor hospital systems as well.

As the Applicant has failed to establish each of the three prongs, it has *failed to establish* that this criterion is met by the Proposal.

F. **C.G.S. § 19a-639(a)(6): The Applicant's past and proposed provision of health care services to relevant patient populations and payer mix, including, but not limited to, access to services by Medicaid recipients and indigent persons**

Subsection (a)(6) is *not applicable* because there cannot be a proposed provision of services and payer mix in the termination of services.

G. **C.G.S. § 19a-639(a)(7): Whether the Applicant has satisfactorily identified the population to be served by the proposed project and satisfactorily demonstrated that the identified population has a need for the proposed services**

Subsection (a)(7) is *not applicable* because there is no population that can be served by the termination of services, and even if there was, there cannot be need for a termination of services.

H. **C.G.S. § 19a-639(a)(8): The utilization of existing health care facilities and health care services in the service area of the Applicant**

The Applicant *has demonstrated* the utilization of existing health care facilities and health care services in the Applicant's service area.

The following hospitals are geographically the closest to Johnson Memorial Hospital or are part of the same health system: Saint Francis Hospital and Medical Center, Mercy Medical Center, Manchester Memorial Hospital, and Day Kimball Hospital. These sites currently have staffing, OBGYN coverage, and are open 24/7. FF 30. Saint Francis Hospital and Medical Center and Manchester Memorial Hospital both have neonatal intensive care units for newborns with additional needs. FF 30. Prior to service interruptions in 2020, JMH averaged 172 annual births in the PSA between FY 2017 and FY 2019, down from a height of 302 deliveries in FY 2008. FF 13. Within the PSA, the number of females that are of child-bearing age are projected to decline slightly (-1.5%) over the next five years. FF 22. Since 2017, approximately 80% of patients in JMH's PSA have been traveling to a different hospitals to deliver. FF 25.

Accordingly, JMH *has satisfied this criteria*.

I. C.G.S. § 19a-639(a)(9): Whether the Applicant has satisfactorily demonstrated that the proposed project shall not result in an unnecessary duplication of existing or approved health care services or facilities

Subsection (a)(9) is *not applicable* because there cannot be an unnecessary duplication of existing or approved health care services in the termination of services.

J. C.G.S. § 19a-639(a)(10): Whether an Applicant, who has failed to provide or reduced access to services by Medicaid recipients or indigent persons, has demonstrated good cause for doing so, which shall not be demonstrated solely on the basis of differences in reimbursement rates between Medicaid and other health care payers

The Applicant *has not demonstrated* that there is good cause for its reducing access to services by Medicaid recipients and indigent persons.

The Applicant has stated that there is good cause for reducing access to L&D services because patients are choosing to go to other hospitals. Ex. A – Application, p. 28 Robert Roose, MD, MPH, Chief Administrative Officer for JMH, stated that since Medicaid reimbursement rates are the same for any hospital there will not be an increase in costs for Medicaid recipients due to the closure. Ex. N-Roose testimony, p. JMH000036-37, FF 44.

Medicaid recipients and indigent persons made up 59% (or 55 patients) of the inpatient delivery discharges at Johnson in the most recently completed fiscal year 2020. FF 18. In FY 2020, JMH's L&D payer mix was 55 (59%) Medicaid, 1(1%) Medicare, 1 (1%) TRICARE, and 36 (39%) commercial. FF 18. In contrast to this, JMH's payer mix for FY 2021 was 53.2% Government, 46.8% commercial and self-pay. Ex. DD- Financial Workbook. Even after L&D services were terminated, patients in need of L&D services continued to present at the emergency room. FF 19,

20. Therefore, JMH's L&D patients were more likely to be Medicaid beneficiaries, and less likely to have commercial insurance coverage.

While Medicaid reimburses at the same rates across all hospitals, that it is not sufficient to constitute good cause for reducing access to L&D services needed by Medicaid recipients or indigent persons who represented 59% of the deliveries in the last year the unit was open. FF 18, 24. Even though 80% of patients within the PSA chose to access services at other hospitals between FY 2017 and FY 2020, there were still 20% of birthing mothers in the PSA who sought L&D service from JMH. FF 25. Additionally, 61% of the people who still accessed services at JMH in FY2020 utilized a government payer. FF 17, 18. The reasons put forth by the Applicant do not show good cause for terminating these services.

Accordingly, the Applicant *has not demonstrated* that this criterion is met.

K. C.G.S. § 19a-639(a)(11): Whether the Applicant has satisfactorily demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the geographic region

The Applicant *has not satisfactorily demonstrated* that the Proposal will not negatively impact the diversity of health care providers and patient choice in the geographic region. Without the approval of the Proposal, patients would have the option of choosing to deliver at any of five (5) different hospitals: Johnson Memorial Hospital, Saint Francis Hospital and Medical Center, Mercy Medical Center, Manchester Memorial Hospital, or Day Kimball Hospital. FF 29. If the Proposal is approved, there would be one (1) less health care provider in the area providing L&D services. This necessarily means less diversity of health care providers and less patient choice in the geographic region. If JMH was allowed to close there would be no L&D services in the PSA, and the closest services would be located out of state at Mercy Medical Center in Springfield, Massachusetts. FF 29, 42. In fact, JMH has acknowledged that the Proposal will result in a negative impact to the diversity of health care providers and patient's cost for L&D services because JMH's services were provided at a lower cost. FF 38, 41.

Accordingly, the Applicant *has not demonstrated* that this criterion is met.

L. C.G.S. § 19a-639(a)(12): Whether the Applicant has satisfactorily demonstrated that any consolidation resulting from the proposal will not adversely affect health care costs or accessibility to care

Subsection (a)(12) is *not applicable* because there is no consolidation that would result from the Proposal.

Conclusion

The Applicant has failed to meet its burden of proof in satisfying the statutory requirements of C.G.S. § 19a-639. Specifically, the Applicant failed to satisfy four (4) of the six (6) applicable criteria set forth in C.G.S. § 19a-639(a), to wit: (2) consistency with the Plan; (5) improvement of quality, access, and cost effectiveness of the Proposal; (10) good cause for reducing access to services by Medicaid recipients or indigent persons, and (11) no negative impact on the diversity of health care providers and patient choice. The Applicant has demonstrated that the Proposal meets Subsections (4) and (8). Subsections (1), (3), (6), (7), (9) and (12) are not applicable.

Based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, I respectfully recommend that the Certificate of Need application of Johnson Memorial Hospital to terminate L&D services be **DENIED**.

Respectfully Submitted,

01/16/2024
Date

A. Novi
Alicia J. Novi, Esq.
Hearing Officer