



May 23, 2012

John Calabria, Director  
Certificate of Need and Acute Care  
Licensure Program  
NJ Department of Health and Senior Services  
Office of Legal and Regulatory Compliance  
Market and Warren Streets,  
P.O. Box 360  
Trenton, New Jersey 08625-0360

Re: CN #FR 120404-09-01, Application for Transfer of License of  
Christ Hospital to Hudson Hospital Opco LLC.

Dear Mr. Calabria:

Please accept this written submission on behalf of New Jersey Appleseed Public Interest Law Center. As stated herein, we request that the Department deny this Certificate of Need (“CN”) application because the business model implemented by Hudson Hospital Opco LLC’s (“HHO”) affiliated corporations currently operating Bayonne Medical Center (“BMC”) and Hoboken University Medical Center (“HUMC”) does not serve the public interest, despite the rhetoric included in the CN Application to the contrary.

Notwithstanding our strong opposition to this sale, we acknowledge that the Department has already indicated to the Bankruptcy Court that it does not oppose this sale. Accordingly, we urge the Department to take an active role in ensuring that the proposed sale of the assets of Christ Hospital (“Christ”) to Hudson Hospital Holdco., LLC, and specifically the transfer of its license to HHO, does not “result in the deterioration of the quality, availability or accessibility of health services” in the communities currently served by Christ Hospital. N.J.S.A. 26:2H-7.11(b). We believe that such action must include the development of strong, meaningful and targeted conditions that your Department intends to enforce. Such conditions must ensure maintenance of service to Medicaid, uninsured and other indigent patients at current levels (not just a percentage of volume), fair pricing and contracting, maintenance of significant and unique clinical services such a psychiatric services, financial transparency, and community accountability. For if the new operators of Christ Hospital cannot be restrained from engaging in several practices that

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prevail at BMC, and are beginning to appear at HUMC, the transfer of license to them is likely to have an adverse impact on the two remaining nonprofit hospitals in Hudson County and the residents of the County. We also respectfully request the opportunity to submit additional comments and/or appear before the State Health Planning Board once the staff's recommendations on this application have been submitted to the Board.

#### Incorporation of CN Comments re transfer of HUMC to HUMC Holdco, LLC

Given the fact the proposed new owners of Christ are primarily the same three investors who purchased HUMC from the Hoboken Municipal Hospital Authority, we believe that NJ Appleseed's CN comments dated July 28, 2011 and August 3, 2011, are relevant to the proposed transfer. Rather than repeat those comments, we hereby incorporate those comments herein and highlight our analysis of the Department's obligation pursuant to N.J.S.A. 26:2H-8 and N.J.A.C. 8:33-4.9. As we stated in our comments dated July 28, 2011 on page 3,

[I]t is clear that pursuant to the CN process, the Commissioner has an obligation to "satisfy the legislative preference for a regulatory review that will serve as a check on undue harm to [New Jersey's] valuable, and vulnerable, urban hospitals," such as Jersey City Medical Center and [Palisades Hospital], both located in the same county as [Christ]. In re Application of Virtua-West Jersey Hospital Voorhees for a Certificate of Need, 194 N.J. 413, 436 (2008). In order to satisfy this obligation "to guard against severe or pervasive negative impacts on urban hospitals," id., the Commissioner must provide an analysis of the impact that a particular CN will have on the delivery of health care services in a region, and conversely, cannot just accept the proffers of an applicant. Id. at 435.

The importance of the Commissioner's obligation to provide an analysis of the impact that a particular CN will have on the delivery of health care services in a region is especially important in this case because the community has limited resources to secure and analyze relevant data which the Department routinely collects, and in some instances, may not release due to proprietary concerns. Specifically, the Department has access to data regarding emergency room admissions, service charges, readmission rates, quality indicators, insurance claims data, charity care levels by number of patients as well as cost, and other information that may provide an insight as to what is actually occurring on the ground in Hudson County. At this time, less than one year after HUMC Holdco took over HUMC, members of the community are limited to anecdotal evidence as to the changes occurring at the facility, and how the dynamic created by the shared ownership of BMC and HUMC has affected patients and other facilities in the county. Anecdotes include, commercially insured patients being told by physicians at HUMC that they can access services at the hospital but only through the emergency room, uninsured patients being released from HUMC's emergency room with referrals for further treatment at JCMC, and patients at BMC being directed to appear at the emergency department for previously scheduled elective surgeries. It is thus the obligation of DHSS to do a thorough analysis of the current practices occurring at BMC and HUMC prior to handing yet another nonprofit hospital (i.e., a community, socially owned asset) to their shared private owners. **Examining the track**

**record of a potential licensee is the heart of the Department's CN process, and the Department cannot shut its eyes simply because of the strength of the political connections that the new owners may have with the Governor.** More specifically, the Department simply cannot accept empty promises nor excellent rhetoric about improving quality while lowering costs for patients and taxpayers without careful scrutiny as to what is really going on at these hospitals.

The need to further investigate the details of BMC's and HUMC's practices is underscored by HHO's description of its "Quality Initiatives" as described in its March 15, 2012 letter to the Department. No one who is concerned with transforming the delivery of health care so as to deliver quality services at lower costs while improving residents' health status is likely to criticize the described Medical Home Management Program or the development of a Charity Care Physician Practice. However, we in the public are highly skeptical that such programs actually exist at BMC, as represented in that letter, and if they exist, whether they are implemented at a level that is likely to have a significant impact.

#### The Navigant Report and Commitments to Implement Its Recommendations

As you know, the New Jersey Health Care Facilities Financing Authority Department released the Hudson County Hospital Services Consolidation/Regionalization Assessment (the "Navigant Report"), the day before DHSS held the public CN hearing regarding the transfer of HUMC from the Hoboken Municipal Hospital Authority to HUMC Holdco LLC. The Report does an analysis of current and projected need for utilization of hospital services in Hudson County (in the context of resident payer mix by zip code, an assessment of the physical state of the relevant facilities, age of current medical staff, and quality indicators) and makes recommendations to consolidate services among JCMC, Christ and HUMC. The Report directly states that "the continuation of the status quo is not a viable option," and also states that Christ and HUMC "will require significant capital expenditures to address their significant facility and infrastructure needs in order to extend their useful lives beyond ten years." Navigant Report at 93-94.

Despite the Report's explicit directive to consolidate services, it does not consider the business models of the three entities or BMC even though it was asked to assess the impact of the sale of HUMC to the owners of BMC. That is primarily because the three hospitals were all nonprofit or publicly owned and it was implicitly assumed, correctly or not, that they were organized around their public or charitable community mission. Specifically, that all three hospital entities are driven by the goal of providing necessary medical and population health services at lower costs and higher quality to all people regardless of insurance status. However, at this time, this assumption is no longer accurate. In this way, the Navigant Report falls short. It does not provide a sufficient guide as to how to consolidate services among the three facilities so as to ensure access to those services by all Hudson County residents.

Seen in this light, HHO's commitments to implement the Navigant Report and follow its "guiding principles" strike members of the public as meaningless; that is, mere lip service to the Department's directive, made solely to secure approval of the proposed transaction. Inconsistent statements in the CN application as to how long the hospital will remain open, how

much money will be invested post-closing, and what services will remain also leave the public wondering as to the actual intentions of the new owners. Specifically, HHO has committed to operating Christ Hospital for at least 10 years in the Asset Purchase Agreement (APA, §5.14(b)), while committing to operate the hospital as an acute care facility for a minimum of 7 years in the CN Application. (CN, Project Summary, at 8). Similarly, HHO has committed to maintaining for no less than 5 years “the essential services” offered by Christ including “emergency services, medical/surgical services, cardiac services, outpatient services, pediatric services, cancer services and labor and delivery services” in the APA, and has committed not “to make any material modification to any such service” (APA, §5.14(c)), while committing to maintain a host of unspecified “essential services” for 7 years in the CN Application (Project Summary). (Please note the absence of psychiatric or behavioral health services from the list of services set forth in the APA). That is, while some of HHO’s answers acknowledge the need to reduce beds, consolidate services, and eliminate duplicative services, other answers insist that they do not contemplate “changes in services provided or access thereto,” (CN Application, Part C, p.8), or conversely indicate an intent to expand and develop new clinical programs in order to improve employee and clinical staff satisfaction. (Completeness Questions, AK/JK, Response to Question 20). Our conclusion from this contradictory information is that the new owners intend to pick and choose which services they want to continue, expand or eliminate based on profit margins—no more, no less.

HHO’s statements regarding the amount of money it intends to commit to capital improvements supports our conclusion that HHO is unclear as to how long it intends to operate this facility as an acute care hospital (especially given the assessment of Christ’s physical infrastructure found in the Navigant Report) and what services it intends to provide. The APA is clear that HHO represented to Christ’s Board of Trustees that it intends to expend at least \$35 million over a period of 5 years, with at least \$10 million available during the first year for capital expenditures and working capital. (APA, §5.14(a)). However, in the CN application it seems to state that it intends to invest \$7.5 million post-closing in “needed programs and technology” although “the exact areas of investment have not as yet been fully identified.” (Completeness Questions, AK/JK, Response to Question 1). See also CN Application, Part C, p.13)(“Depreciation resulting from initial capital investment of \$10 million” for 2012, 2013 and 2014).

The proposed owners’ intentions are further clouded by vague answers to completeness questions, responses that undercut their stated commitment to maintain charity care “in amounts at least equal to the levels of charity care provided by the hospital prior to the bankruptcy.” (CN, Project Summary), and the rhetoric of their Short, Medium and Long Range Vision and quality initiatives (discussed in the March 15, 2012, letter mentioned above); such rhetoric could have been written by Elliot Fisher, Director of Population Health and Policy of The Dartmouth Institute for Health Policy and Clinical Practice, but from the public’s perspective contradicts their known track record and thus renders it suspect. New Jersey Appleseed is most concerned with the subtle reminders embedded in the CN application that HHO intends to implement an out-of-network model, with an emphasis on delivery of elective services to commercially insured patients, and delivery of such services through emergency room admissions.

First and foremost, in the APA, Hudson Hospital Holdco, LLC, commits to utilize the assets of Christ Hospital “ to operate the Hospital as an acute care facility for no less than ten (10) years after Closing with an open and accessible emergency department and independent medical staff.” (APA, §5.14(b)) An open and accessible emergency room operated by out-of-network doctors is essential to HHO’s business model, and now, if this transaction is approved it’s owners will control 3 out of the 5 emergency rooms in Hudson County, capturing for themselves a stream of patients to be directed to any one of their three facilities for further treatment (if insured, commercially or through Medicare). Other statements also indicate a similar intention. See e.g., CN Application, Part B, Addendum to Section IIIk, #4 (“The reduction in Medicaid’s percentage of revenue does not result from any anticipated decline in Medicaid patients, but from a higher net recovery per unit of service from non-governmental patients through improved managed care contracts.”); CN Application, Financial Projections, at p.12 (though asserting that it intends to keep inpatient and outpatient volume constant, HHO assumes that “Net patient revenue is expected to increase during the projected period as a result of improved clinical documentation, charge capture and other revenue cycle improvements.”); Completeness Questions, AK/JK, Response to Question 12, at p.7 (HHO assumes that it “will be able to compete for those insured patients who are leaving Hudson County for elective care, including those going to NY. . .”)

#### Essential Conditions

From the above comments, it is apparent that New Jersey Appleseed is primarily concerned with the details of consolidation contemplated in the Navigant Report, and the expansion of the out-of-network/reliance on emergency room admission model in Hudson County. Accordingly, we believe that the process of coordinating care and consolidation among HUMC, Christ and JCMC must be a public process involving all stakeholders, and not one left to the owners of HUMC and Christ to be decided behind closed doors with or without the participation of JCMC. Physicians, community service providers, elected officials, insurance plans, consumer advocates and planners, and hospital administrators must all be engaged in a process, and the outcome must be accepted by the hospitals involved. JCMC is a community asset; HUMC and Christ will be private. Nonetheless, they are all licensed by the State and thus are subject to regulation and restraint to ensure the public interest. We therefore request that you condition the transfer of license to HHO on its participation in such a public process, and on its consent to implement the recommendations emerging from that process and approved by DHSS.

Second, the State must take action to stop the out-of-network model implemented by the owners of Hudson Hospital Holdco., LLC. NJ Appleseed understands that DHSS may prefer New Jersey Legislators to take the first step, but administration and oversight of New Jersey’s health care system is within its purview, and it must take all steps necessary to protect the health, safety and well-being of New Jersey residents as it relates to the State’s healthcare infrastructure. The “dance” set forth in DHSS Completeness Question No. 23 propounded by Anthony Kobylarz and Jeff Kasko, and HHO’s response, where one party asks the other to acknowledge a possible condition and fails to do so, but provides its own version of such condition, is not sustainable. Now, at the time, when HHO is requesting the State for the privilege of operating a hospital is the time to act. The State must require HHO to operate as an in-network facility and

to require it to condition physician privileges on that requirement as well. In the alternative, we request that any approval of the CN application before you include the following conditions:

1. HHO must be required to assume and continue each of the current commercial insurance contracts of Christ (not just its Medicaid managed care contracts) that were in effect on March 27, 2012, for at least 18 months after licensure;
2. Upon transfer of Christ to Hudson Hospital Holdco, LLC and for one year thereafter, HHO shall not modify the charge master for Christ to increase any rate more than 10% of the charge in effect on March 27, 2012; and
3. If HHO provides notice to terminate any insurance contract at any time, or imposes excessive charges at least 10% above the statewide average, it may be ordered to pay rebates or subject to other appropriate remedies to be determined by DOBI and DHSS.

Consumers have been, and continue to advocate for strong insurance rate review with prohibitions against excessive and unreasonable health insurance premiums. Now is the time for consumers to focus on the role of physicians and hospital providers in causing excessive and unreasonable health care costs. DHSS must take an aggressive stance on this issue and, in this matter, must condition the transfer of Christ's license to HHO on requirements that will end, if not radically restrict HHO's reliance on an out-of-network model.

#### Other Considerations

New Jersey Appleseed also urges DHSS to impose certain conditions we have previously supported with respect to other hospital conversions. Such conditions include:

1. HHO must be required to infuse Christ with a minimum of \$35 million for capital improvements and working capital, and they must provide DHSS with information supporting such investments in the facility, in addition to any other debt incurred on the hospital's behalf;
2. HHO must hire at least 90% of Christ's current employees on a full-time basis, which must include 100% of those covered by the collective bargaining agreement, continue to maintain nurse/patient ratios sufficient to ensure safety and quality, and must continue to provide such employees with health insurance coverage; and
3. HHO must make adequate commitments to continue to serve its fair share of indigent persons in the community by accepting a specifically defined commitment to maintain at minimum the same level of charity care that is now provided at Christ.

A review of the CN Application also reveals that there are no commitments to ensure financial transparency and avoid conflicts of interest in patient referrals. Historically, the Department has conditioned its approval of for-profit conversions by requiring the for-profit

hospital to report to the Department all monies going into the entity, and all monies going out of the entity for a minimum of three years. The operators of BMC and HUMC resisted that condition, and the Department relented. We urge that you do not do so again. The Legislature is currently considering legislation which seeks to equalize the financial reporting requirements of nonprofit and for-profit hospitals. It is our understanding that the current operators of BMC and HUMC are leading the charge against that bill. Given that such persons are seeking the privilege of operating yet another hospital in New Jersey, we respectfully request that you impose that requirement on them for at least three years.

HHO has also failed to provide information indicating that it will avoid conflicts of interest in patient referrals. Because this transfer of assets will result in a hospital that will now be accountable only to private investors, it is critical that DHSS compel HHO to adopt strict procedures to avoid conflicts of interest inpatient referrals. These procedures must be applied if healthcare providers, physicians, insurers, board members of the staff of the new Christ are offered the opportunity to invest or own an interest in Hudson Hospital Holdco or any of its affiliates. It is clear that a failure to adopt a conflicts of interest policy in patient referrals may have an adverse impact on the quality of services provided, and the capacity of the hospital to respond to the actual needs of the community.

On the other hand, HHO has acknowledged in its CN application the need for community accountability. In the Project summary, HHO notes that it intends to “form an advisory board of the hospital comprised of physicians, community members and hospital executives to provide oversight and guidance regarding the operation of the hospital.” However, as we noted in our comments dated July 27, 2011, BMC’s track record regarding the creation of such a Community Advisory Group (CAG) has been less than exemplary. (7/27/11 Letter, at p. 9) Indeed, a review of the proposed By-Laws of the CAG indicates that there is no guarantee that the member of the CAG that will sit on Christ’s Board of Trustees will be someone other than the Co-Chair of the CAG that is already a Board member. (Proposed By-Law, §7.01(b))

In any case, New Jersey Appleseed does want to point out, more generally, that the creation of hospital CAGs, whose members are appointed by hospital boards and typically include several locally elected officials, have not provided sufficient accountability anywhere in New Jersey, at least in communities where there has been an elimination of services or diminished access to services. If hospital CAGs were able to effectively monitor and ensure access to quality services as currently constituted, St. Michael’s would not have been able to renege on its commitments to the Newark community upon the closing of Columbus and St. James Hospitals; Meadowlands, would not have been able to transform itself into an enlarged ambulatory care center (as predicted by NJ Appleseed in its CHAPA remarks submitted at that time); and BAC would not have been able to eliminate its obstetrics and gynecology department, contrary to the conditions set forth in its CN. New Jersey Appleseed does not have an immediate solution to this problem, but invites DHSS to redesign its CAG requirement so as to ensure community accountability.

As you know, CHAPA permits DHSS to hire an independent health care monitor (paid for by HHO) for a period of three years to monitor and report quarterly on community health care access by the owners, including levels of uncompensated care for indigent persons.

N.J.S.A. 26:2H-7.11(i). New Jersey Appleseed will address this issue in our comments before the Attorney General and the Commissioner tomorrow evening.

### Conclusion

As we stated in our CN comments dated July, 28, 2011, attached hereto, New Jersey Appleseed can no longer merely ask for imposition of conditions since many of those conditions do not seem to adequately restrain business practices that have an adverse impact on the delivery of health care in Hudson County and the State generally. We strongly urge the State Health Planning Board and DHSS to disallow the operators of BMC and HUMC from operating another hospital in New Jersey. A denial of the CN application in this case does not mean the closure of HUMC. Rather, the Board of Christ can return to the bankruptcy court and select the JCMC/CHA bid that it chose to overlook. NJ Appleseed believes that such alternative would place the license in a nonprofit operator that will adequately serve all the residents in Hoboken and its environs and would contribute to solving New Jersey's systemic problems in its health care system rather than exacerbating them.

Respectfully submitted,

Renée Steinhagen  
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