

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL ESTABLISHMENT AND PROJECT REVIEW COMMITTEE MEETING
NOVEMBER 16, 2023 9:15 AM
90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC
TRANSCRIPT

Mr. Robinson Good morning, everyone. We have two items of business at this special committee. We'll begin by calling the first one, which is 231325C, NYU Langone Hospital and Nassau County. I want to note a conflict and recusal by Dr. Kalkut has left the room and an interest by Dr. Lim. This application certifies a new hospital extension clinic at 210 Crossways Park Drive in Woodbury and perform renovations to create an ambulatory radiation oncology facility. The department is recommending approval with conditions and contingencies.

Mr. Robinson Am I on the wrong one?

Mr. Robinson I withdraw that previous monologue.

Mr. Robinson Let me begin again. This, by the way, does involve NYU Langone as well. My apologies. I was getting ahead of myself. Application 231108C, NYU Langone Hospital, Long Island and Nassau County. Again, a conflict and recusal by Dr. Kalkut and an interest by Dr. Lim. This is to certify a new extension clinic at 101 Mineola Boulevard in Mineola. The department is recommending approval with conditions and contingencies.

Mr. Robinson May I have a motion?

Mr. Robinson Dr. Torres.

Mr. Robinson A second, Dr. Berliner.

Mr. Robinson Ms. Glock, here we go.

Ms. Glock Hi. This is Shelly Glock from the department. This project is a request to approval for an ambulatory radiation oncology extension clinic from NYU Langone Hospital, Long Island, which is an 813 bed non-for-profit hospital with four divisions. This CON is actually a companion to a CON that was brought to the previous EPRC meeting 231325, which Mr. Robinson just referenced. Through this project NYU Langone Hospital, Long Island is proposing to add radiation oncology as a new service, including the addition of new CT scanner and four LINAC machines to treat existing outpatients at the NYU Hospital, Long Island. Currently, they provide radiation oncology services at two offices in Mineola, one at the hospital campus and the other on Old County Road. According to the applicant, the facility is experiencing a backlog of patient with wait times. Thus, the reason for adding the extension clinic. The hospital is in the Long Island region, which currently has twenty-six approved or existing and a

determined need for eighteen according to the need methodology. The projected volume is based upon projections that currently treated outpatients will transition to this new facility and inpatients will remain at the hospital. Projecting over 20,000 visits in the first year, with Medicaid at almost 10% and 11% for year three and charity care at 1. Approval of this project will allow for expanded access to ambulatory radiation oncology services for those who reside in and around Nassau County. The project cost will be met with accumulated funds. Based on our review, the department is recommending approval with conditions and contingencies.

Mr. Robinson Thank you.

Mr. Robinson Questions from the committee or other members of the council?

Mr. Robinson Ms. Monroe.

Ms. Glock They're providing an additional site in an extension clinic to treat those outpatient treatment. I believe they're all being treated right now in the two sites that I mentioned in the exhibit. This is expanded capacity to allow for patients to be treated with less wait times.

Ms. Monroe (Inaudible)

Ms. Glock Or maybe more convenient times, could be closer. It's expanding capacity.

Ms. Monroe Thank you.

Mr. Robinson You're welcome.

Mr. Robinson Thank you.

Mr. Robinson Anything from the applicant?

Mr. Robinson Questions only.

Mr. Robinson Anybody from the public wishing to speak on this application?

Mr. Robinson I'm going to call the question.

Mr. Robinson All in favor.

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Mr. Robinson Thank you.

Mr. Robinson Dr. Kalkut is returning.

Mr. Robinson Calling application 231288E, Our Lady of Lourdes Memorial Hospital in Broome County. I am going to declare an interest on this application. This is to establish the Guthrie Clinic as the active parent and cooperater of Our Lady of Lourdes Memorial Hospital.

Mr. Robinson Does the department have a recommendation?

Mr. Robinson The recommendation is for approval. Just wanted to see that.

Mr. Robinson May have a motion to that end?

Mr. Robinson Thank you, Dr. Berliner.

Mr. Robinson Second, Dr. Torres.

Mr. Robinson Ms. Glock.

Ms. Glock The Guthrie Clinic is a Pennsylvania not for profit corporation registered to do business in New York State. They are seeking approval to be established as the sole member, active parent and cooperater of Our Lady of Lourdes Memorial Hospital through a membership substitution agreement. The authorized services, number and types of beds will remain the same. Ascension Health is the current sole member and the passive parent of Our Lady of Lourdes Memorial Hospital. In June of 2023, the Guthrie Clinic entered into a membership substitution agreement with Ascension Health to acquire its sole corporate membership of Lourdes. The Guthrie Clinic acts as the parent of the Guthrie Clinic System, which is an integrated not for profit health care delivery system providing services in North Central Pennsylvania and South-central New York. The system includes four acute care hospitals; Robert Packer Hospital in Pennsylvania, Troy Community Hospital in Pennsylvania and two New York State hospitals, Corning Hospital in Corning, New York and Guthrie Cortland Medical Center located in Cortland, New York, as well as related health care facilities in a multi-specialty group medical practice. Our Lady of Lourdes Memorial Hospital is a 242 bed General Acute Care Hospital located in Binghamton. They also operate Lourdes Home Care, a certified Home Health Agency, a hospice and outpatient clinic treatment programs. The price for the transfer of the sole corporate membership will be \$126,000,000, plus certain adjustments to be determined at closing. The total consideration for the transaction is estimated to be approximately \$303,000,000 to be funded with equity by Guthrie after the transaction has closed. Sources of funds for this transaction will come from the Guthrie Clinic's corporate funds and Lourdes will not be diminished by the transaction. Lourdes will remain a separate nonprofit corporation post-transaction with net assets of approximately \$200,000,000. Approximately \$170,000,000 of that will be net working capital at Lourdes and an additional

\$30,000,000 will be in the Lourdes Foundation, which operates for the sole benefit of Lourdes. Therefore, the difference between the consideration paid by Guthrie to Ascension and the net assets remaining at Lourdes is approximately \$104,000,000. That's what represents the net impact on Guthrie's balance sheet. Guthrie has demonstrated that they have sufficient cash and investments to close on this transaction. The department did receive several letters of support for this project, including letters from Lourdes, letters from the Broome County Executive, the Mayor of the City of Binghamton, a local FQHC, a rural health network and a collaborative of the IDA, the Industrial Development Agency and the local development corporation. The department also received comment from United Health Services. UHS stated that they were not opposed to, and they understand the need for the parent substitution at Lourdes. While they welcome appropriate and healthy competition in the service area they did state that although the proposed member substitution could provide additional patient access as Guthrie integrates their provider network with the existing Our Lady of Lourdes network they were concerned that any change to the relationship between UHS hospitals and Our Lady of Lourdes, including the disruption of patient referral patterns could have a potential adverse effect on the mission driven services offered by UHS. According to the applicant they've addressed this concern. They are committed to every community that they serve and will serve, including in the State of New York where they have demonstrated a strong track record for Corning and Cortland. It is the applicant's intent to similarly reinvest in the Lourdes organization. They state that Guthrie remains committed to meeting community needs by improving quality, safety, access and patient experience for Binghamton. The exhibit does outline some of the ways Guthrie offered in vision supporting these needs, including deepening support of the significant behavioral and mental health outpatient programming that Lourdes currently provides today. Amplifying the collaboration that Lourdes currently engages with UHS and also exploring new collaborations with UHS and other local providers to address the unmet behavioral health and mental health needs of the community. Based upon our review, the department is recommending approval with the condition of the project.

Mr. Robinson Thank you.

Mr. Robinson I just want to make note on the starting motion that we had for this application, which was just for approval. It's approval with a condition.

Mr. Robinson Can I have a second motion and a second?

Mr. Robinson Thank you.

Mr. Robinson That that's added to the framework?

Mr. Kraut Could I ask a question?

Mr. Robinson Yes, please.

Mr. Kraut It's tough when you give up the mic.

Mr. Kraut I hear the commitments that you just enumerated that were in the staff report. I remember when we considered a similar relationship for Cortland and for Corning. There were concerns expressed much in the same way. There were commitments made. To the best of your knowledge has Guthrie fulfilled all the commitments they made when they took over Corning and Cortland? Have they increased the stability of those institutions as a consequence of this relationship?

Ms. Glock I would state that the department is comfortable that Guthrie and those communities have provided a strong commitment to the community and meeting the needs of the community. We do not have a concern with their track record there.

Mr. Kraut I can't recall there being a flare. I know there was concern before, but after it I don't recall hearing there was a problem. I just wanted to make sure because I have a sense that they did keep their word.

Ms. Glock I would defer to the applicant on any specifics.

Mr. Robinson Dr. Berliner and then Dr. Ruge.

Dr. Berliner If this application is approved, what percentage of the beds in the Southern tier will Guthrie own?

Ms. Glock I don't know the number of beds. If you look at the staff exhibit, you can see that Lourdes right now... You can see the market share within the zip code. Currently, Lourdes has approximately 35.7% of the discharges in the zip codes that make up 85% of Lourdes. They would become Guthrie's holdings.

Dr. Berliner If this is approved, Guthrie will now own three hospitals in that region of New York. I'm just trying to get a sense of what percentage of the total beds does that represent?

Mr. Robinson It's not a majority. It's not a majority.

Dr. Berliner Thank you.

Mr. Robinson I mean, if the applicant, when they come up, if you want to add to that.

Dr. Ruge John Ruge, member of the council. Just building and Jeff and Howard's questions. There are an increasing number of health care institutions with by state identities. I just wonder if the department is giving any special attention or consideration to the implications of those linkage. Are the reasons for smiles or scowls that we might want to know about?

Ms. Glock I'll defer to the applicant. I will make the statement that I believe that Guthrie will actually have a larger book of business in New York State than they will in Pennsylvania based on this transaction. I'll defer to the applicant.

Mr. Robinson Why don't we kind of have them respond to both of your questions?

Ms. Monroe If I'm following all of this, it's like the equivalent of a nonprofit takeover, right? I mean, they bought out the other partner. Who gets that did you say \$126,000,000?

Ms. Glock The transaction is between Guthrie and Ascension.

Ms. Monroe Ascension gets \$126,000,000.

Ms. Monroe Are there any expectations about Ascension's use of that money?

Mr. Robinson The money is leaving New York.

Ms. Monroe Where is Ascension?

Mr. Robinson The money was in Pennsylvania.

Ms. Monroe It was Pennsylvania.

Mr. Robinson It was never in New York.

Ms. Monroe Where is Ascension?

Ms. Glock I believe they're based in Missouri.

Mr. Robinson Saint Louis.

Ms. Monroe The money is leaving New York. It never was in New York.

Mr. Robinson But the payment is coming out of Pennsylvania.

Ms. Monroe I got that.

Ms. Glock The payment is going from Guthrie, a Pennsylvania based to Ascension, which is Missouri based leaving Lourdes with net working capital of almost \$200,000,000.

Ms. Monroe For me, the important piece is where is Ascension? It's not in New York.

Ms. Glock I believe that Lourdes was their last membership in New York State.

Ms. Monroe Thank you.

Ms. Glock You're welcome.

Mr. Robinson I think maybe it would be a good idea, Mr. Cicero, after introducing yourself and your colleagues if you would just sort of contextualize this conversation. I think that'd be helpful.

Mr. Cicero Very good.

Mr. Cicero Thank you.

Mr. Cicero I'm Frank Cicero. I'm a consultant to the applicant. To my right is Kathy Connerton, who is the President and CEO of Our Lady of Lourdes Memorial Hospital. To my left is Dr. Edmund Sabanegh, who is the President and CEO of the Guthrie Clinic. I think it may help, Ms. Monroe, with your question some context on this transaction. The first thing is to think that New York State gets an active parent. I think Dr. Sabanegh will talk a little bit more about the Guthrie Clinic and what it has done in New York State versus a passive parent that is proposing to exit the state. This is its last outpost in New York State. Not to steal Dr. Sabanegh's thunder but in terms of Cortland, the promises that were discussed before. Primarily the concern was, and this has been discussed in front of this council with a home care transaction in the last few years as well. Were patients going outside the state? Well, the number of patients versus the first year that Guthrie was with Cortland versus two years later, which was the third year. Only 83 more went out of state. That's on a base of almost 16,000 patients. Over 600 more went to Cortland. There was a significant improvement in the number of patients who use that hospital subsequent to Guthrie coming in. A very small number of people went out of state. That was the concern that was addressed. They lived up to their promises. In addition, at Corning, we don't have those numbers because they came into Corning as the active parent back in 1999. It's a long time ago. We weren't measuring that. One thing we know, and this council saw it before Guthrie provided the funding for an entirely new hospital, rebuilt Corning Hospital. Good work goes on there today. I don't know the numbers. I believe it is less than 50%. There are other hospitals that remain in each of those markets and there was no hart-scott-rodino issue in terms of anti-competitiveness here. The other thing just and again, to get at your issue, Ms. Monroe, regarding the dollars. The dollars the department has in the staff report are correct. They are coming from Pennsylvania to Missouri. I think to give comfort on what's left with our Lady of Lourdes. The net working capital position is roughly \$170,000,000 of liquid assets that they have. They're going to be in a better position or at least equal position. Cash isn't being stripped out. Nothing like that is happening. The total net asset position improves a little bit. They're being left in a better position. This is Guthrie which can afford to make its payment on the transaction, making a payment from Pennsylvania to Missouri. I'm going to stop there. I think Dr. Sabanegh at least would like to make a few comments. Thank you.

Dr. Sabanegh Thank you.

Dr. Sabanegh A couple of things I would say. We are a mile and a half from the New York border. That is true. We are in Pennsylvania from a headquarters viewpoint. From a heart spirit commitment... We are very much in New York well over 50% of our caregivers, which are our employees, and our patients are in New York and stay in New York. We have really worked hard to keep care local. If you look at it, since the Cortland acquisition in 2019, you see less than a 1% growth in referrals from the Cortland market out into Pennsylvania. That was during a pandemic when flow for patterns could have been much changed. In fact, if you look at Cortland, we've made over \$87,000,000 in investments since 2019. We've opened a new cancer center. We have augmented the OBGYN services because we really had a very challenging situation is the FQHC she had to back off some of its O.B. or labor and delivery services. We made a multimillion-dollar investment to make sure we could take care of that community. The other thing I would like to say is we really are not here to take patients anywhere but to the highest quality in their own areas. As you look at how our hospitals are performing, places like Corning, where we now have a leapfrog be and as you know that CMS derived safety and quality data. That hospital is taking great care of patients. Cortland has very high outpatient patient experience scores. As a system, we are now in the top 20% of ambulatory experience as benchmark nationally. We're very proud of the commitment to keep care local.

Mr. Robinson Thank you for those comments.

Mr. Robinson We'll give you an opportunity if there's anything you'd like to add from the Lourdes standpoint.

Ms. Connerton I would just say that over the course of the last year and a half, Ascension and our Lady of Lourdes have had many, many conversations about both the wonderful things that we have gotten from the daughters of Charity from where we started and then going into Ascension in 2000. There is now a time for our viability for the future that having a strong regional partner who shares our mission and values is important. We reached that decision together. This was not an Ascension alone decision. This was certainly our local hospital also having a very active voice in this. We took very seriously the partnership with Guthrie. Certainly, as we have come to know them and be keen to go through this transition, we have found a very strong alignment between our mission and our values and how they take care of patients, their commitment to quality, to safety and to engagement and see a strong opportunity for us to grow strong together. Thank you.

Mr. Robinson Thank you for that comment.

Mr. Robinson I'm going to open it up for questions.

Mr. Kraut I just want to ask you a question.

Mr. Kraut When was this announced? I mean, when did the community, the staff made aware of this and when was it?

Ms. Connerton June 6th.

Mr. Kraut It was June. It's now almost six months.

Ms. Connerton Yes.

Mr. Kraut These things, if they drag on, have a deleterious impact on staffing because of the uncertainty. Have you experienced any staff leaving you because people or using that uncertainty?

Ms. Connerton Yes. I would like to thank the council for this special meeting today. It was at our request; Lourdes requested a special meeting because when we looked at the potential for another three-month delay. Over the course of the last year, we have lost 182 RNs and 13 LPNs. That represents almost 40% of our nursing staff. Staffing is obviously a problem throughout the state. We're not unique in that. However, the fact that we're not able to bring the transaction to conclusion creates a good amount of stress in any organization going through a transition like this. We have last year in our last fiscal year; we spent \$26,000,000 on travelers. We are on pace. Our run rate this year will exceed that. We need to be able to have a good, strong regional partner that we can work together with collectively. Being the sole Ascension facility in a community-based facility surrounded by tertiary care health systems is difficult. Having the ability to have a strong partner and work collaboratively is very important.

Mr. Kraut I just want to be clear there. There is an urgency.

Ms. Connerton Yes.

Mr. Kraut I'm not surprised by what you're describing.

Mr. Kraut Thank you.

Mr. Robinson Other questions from members of the committee of the council?

Mr. Robinson Dr. Ruggie and then Dr. Berliner.

Dr. Ruggie It's interesting to know you're paying special attention to the expected referrals out of state. My question is really back to Shelly in the department. Is that an issue that you look at when we're looking at by state affiliations? Are there any of the special concerns you bring when we're looking at a bi state arrangement? As a second question, is there awareness of other hospitals in New York under distress that may be looking at out of state arrangements? Is there any kind of anticipatory preparation for such?

Ms. Glock I think with any transaction, and this one included we're always looking at the impact on the community, Dr. Ruggie. The actual numbers of the patients that would be treated in Pennsylvania would be part of the Pennsylvania's data. But of course, we're always looking at every transaction and affiliation and how do we impact the access to care? How can patients receive care in a quality, accessible and convenient way? That's the long way of saying, yes, those are the types of things that we would consider.

Dr. Ruggie One more direct consideration is the loss of data and charity pool funds when an out-of-state referral is made for high level care. Again, just one more financial consideration among multitudes that need to be brought to the table.

Ms. Glock I can't address that comment. I'd have to get back to you on that. Sorry.

Mr. Robinson Dr. Berliner.

Dr. Berliner Oh, I have a bunch, but I'd like to follow up on John's first. Shelly, if a Pennsylvania resident who's on Medicaid comes to New York to get care does Pennsylvania Medicaid pay for that?

Ms. Glock I really can't comment on the reimbursement. I apologize. I just don't know.

Mr. Robinson There's a reciprocity.

Dr. Berliner Is it paid at the Pennsylvania rate or the New York rate?

Mr. Kraut Pennsylvania rate.

Dr. Berliner Is the Pennsylvania rate higher or lower than the New York rate?

Mr. Kraut It's nothing to write home about.

Ms. Glock I was going to say, I believe it's a slightly lower rate.

Dr. Berliner the insurance follows the patient rather than the geography, right?

Ms. Glock That's right.

Dr. Sabanegh May I make one comment on that?

Dr. Berliner Sure.

Dr. Sabanegh The only thing I would say is it's saying that we don't know. That tells you that we are not intentionally steering or factoring that into our decision-making process.

Ms. Connerton Yes, the ethical and religious directives.

Dr. Berliner Will that change under the new arrangement?

Ms. Connerton Yes, it will.

Dr. Berliner How will it change?

Ms. Connerton When the transaction closes, we will no longer be Catholic. There is a process that you go through as a Catholic institution.

Dr. Berliner the third thing is maybe, perhaps facetiously. Do you shift from the Phillies to the Mets?

Mr. Kraut He's a Met fan.

Mr. Robinson I'm going to turn to Dr. Lim for the next question.

Dr. Lim Sabina Lim, council member Ms. Glock referenced as part of the commitment a lot of focus on behavioral health services. I know this is still early. Could you provide a little bit more specifics on sort of what you mean by deepening support of the outpatient clinic and the potential collaborations that you're looking at with UHS and other providers? Is there anything more specific or sort of more priorities that you can think of? Whatever you can sort of further expound on.

Dr. Sabanegh A couple of things on this. We know that this is if you review community needs assessments probably for anywhere in the country, but certainly for Broome County this is one of their two highest needs is behavioral health. I will tell you that those were my words on Page 4 of the document about our commitment. As we get into working together, I think it will become clearer. What I will tell you at a high level we are excited about deepening the support to the current programs. They have programs such as the Stich program, which is about Medicaid, behavioral health patients who are coming into the E.R. a lot. We see that as a very scalable program. We really see outpatient and interventions before people come in the hospital is critically important. I think the specifics will come as we understand together all the capabilities in the market. We are very, very committed to this. We are actually in the process of hiring an adolescent and behavioral health psychiatrist. We are expanding our services. We have two inpatient units, behavioral health units. I think there's a lot more we can do.

Dr. Lim You do have psychiatric?

Dr. Sabanegh We do. We have two inpatient units as well as outpatient services.

Dr. Lim Oh, okay.

Dr. Lim I totally understand. I think I would sort of encourage you sort of thinking. I totally agree with you about expanding that outpatient platform to think beyond because even those outreach and engagement types of professionals they need a place to

actually send people for treatment. Looking beyond just a clinic platform like partial hospitals, intensive outpatient programs, substance abuse clinics. It sounds like you're on that path. Thank you.

Mr. Robinson Dr. Soffel.

Dr. Soffel I was just curious and maybe Shelly you know the answer to this question. An out of state owner operating a hospital in New York is subject to all of the regulations that apply in New York Community benefit rules and the planning and the community outreach and all of those things that we require of our hospitals.

Ms. Glock That's correct.

Dr. Soffel That is correct.

Dr. Soffel Thank you.

Mr. Robinson Dr. Berliner, you're back.

Dr. Berliner You said you lost over 40% of your nurses. Was it mostly to retirement or was it to other institutions?

Ms. Connerton It was a combination. There were certainly a number of people who decided to retire, but there also have been some that have left to travel as we all know. Certainly, recruitment is a hot topic in our community like it is across the state. As we've gone through this transition we've seen an increase in the number of recruiters that are sort of focused on us at the moment. Very important to us to be able to bring this to a successful conclusion as soon as we can.

Dr. Berliner Is Lourdes currently unionized?

Ms. Connerton No.

Dr. Berliner Will that change?

Ms. Connerton No.

Dr. Berliner Thank you.

Mr. Robinson Other questions?

Mr. Robinson Dr. Ruge, go ahead.

Dr. Ruge This is no way intended to be critical or hostile or whatever. Certainly, we are seeing consolidation of health care organizations all across the time. It seems like these are mostly driven by concerns for either greater efficiency or increased volume or

both. I wonder, in this case with Lourdes are those considerations. What justifies this investment from Pennsylvania to New York by way of long-term advantage?

Dr. Sabanegh Maybe I could take that one.

Dr. Sabanegh From my perspective, we are a nonprofit organization which has very similar mission to what I think PHHPC has, which is maintain the public health to serve the public. I think that we have demonstrated that consistently. It is no question it's a hard time in health care. We are looking to expand that in spite of that. We see opportunities for enhancing quality and experience and access in the Binghamton community. We have A and B hospitals, the only ones in a 9,000 square mile radius. We see opportunity. The primary driver, I believe, should be about quality, access and experience and then it has to be economically sustainable. We have this mantra. You lead with quality experience are job one for us. We see an opportunity to enhance the care in the region.

Mr. Cicero Dr. Rugge, there's one other thing I just would add on that that may resonate with you. When the phrase triple aim was first created a number of years ago, one of the ten organizations in this country that were invited to the original meeting was Guthrie.

Mr. Robinson Thank you very much.

Mr. Robinson I'm going to excuse all of you from the table. Thank you very much for your participation in the conversation.

Mr. Robinson I do want to see if there is anybody else from the public that wishes to speak on this application.

Mr. Robinson Hearing none I'm going to call the question.

Mr. Robinson All in favor?

All Aye.

Mr. Robinson Any opposed?

Mr. Robinson Motion carries.

Mr. La Rue Just for the record, I'm abstaining from the vote.

Mr. Robinson You're abstaining?

Mr. La Rue Yes.

Mr. Robinson The motion passes.

Mr. Robinson Thank you very much.

Mr. Robinson Now that the vote has happened, I just want to make a comment that I do believe that this is going to be in the best interests of the of the Binghamton community. I look forward to a strong partnership between Lawrence and Guthrie. I think that it will actually be a benefit to New York.

Mr. Robinson With that, I am going to adjourn this meeting of the Special Meeting of the Establishment and Project Review Committee and turn it back over to our distinguished Chair.

Mr. Kraut Thank you very much.