New Jersey
APPLESEED

April 25, 2008

John Calabria, Director
Certificate of Need and Acute Care
Licensure Program
NJ Department of Health and Senior Services
P.O. Box 360, Rm. 403
Trenton, New Jersey 08625-0360

Re: CN #FR080125-07-01, Application to cease acute-care services at Columbus Hospital

Dear Mr. Calabria:

Please accept this written submission on behalf of New Jersey Appleseed Public Interest Law Center in lieu of oral comments that could have been made during the public hearing held the other evening at the Hilton Hotel in downtown Newark.

On Wednesday, the New Jersey Supreme Court issued its decision in In re Application of Virtua-West Jersey Hospital Voorhees for a Certificate of Need (A-127-06)(April 23, 2008) ("In re Virtua's CN") What emerges from the decision are two legal principles that are relevant to the pending application: 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, and conversely, not just to accept the proffers of a petitioner (pp 28-31); and her obligation "to guard against severe or pervasive negative impacts on urban hospitals." (p.32). See generally N.J.S.A. 26:2H-8(1)-(4). As we have stated in our comments and court submission with respect to the closing of St. James Hospital, New Jersey Appleseed asserts that this mandate requires the Commissioner to undertake a Community Impact Study that includes a community health needs assessment prior to determining whether to grant a CN to close a hospital with or without conditions. This is the case because the Commissioner simply cannot conclude whether there will be an adverse impact upon the persons served by the closing hospital, or identify which services are "necessary" and must be continued to prevent such negative impact merely by relying on the information provided by the applicant. See N.J.S.A. 2H:8-(1)("necessary to provide required health care in the area to be served").

In this instance, New Jersey Appleseed is working under the assumption that the Commissioner has already undertaken such examination given her decision in January of this year to condition financing of this transaction with Catholic Health East on the closing of inpatient acute care services at Columbus Hospital within twelve (12) months of the issuance of bonds. See Memorandum to CHE from DHSS and HCFFA, dated January 8, 2008 at 3. At minimum, we assume that the Commissioner has determined that inpatient services at Columbus Hospital are not "necessary" (*i.e.*, essentiality prong set forth in Report by New Jersey Commission on Rationalizing Health Care Resources), are not financially sustainable (N.J.S.A. 26:2H-8(2); financial viability prong set forth in Commission Report), will have a positive impact on the remaining hospitals in downtown Newark and the immediate environs (N.J.S.A. 26:2H-8(3)), and will contribute to the orderly development of adequate services to Newark's residents. N.J.S.A. 26:2H-8(4). Notwithstanding our trust, we formally request that the factual predicates supporting such conclusions be set forth in her decision as required by In re Virtua's CN (even if such information has not been supplied by either the petitioner or other people participating in the public process).

On the other hand, we do know that the Commissioner has ordered that a Community Needs Assessment be undertaken within six (6) months of the transfer of ownership of St. Michael's Medical Center and Saint James Hospital to CHE affiliates that will include an assessment of the medical needs and status of the residents in the North Ward who are served by Columbus Hospital. Again, although New Jersey Appleseed urges the Commissioner to require such assessments prior to permitting a hospital to close, we do not assert that her failure to do so in this case requires disapproval of this CN.

Within this context, we offer the following comments about the CN process, and our support for the emergency and specified non acute care services that CHE has committed to provide at Columbus Hospital.

It is the routine practice of the Department not to release any information related to a CN application prior to point at which the Department deems the application complete[1] This practice unnecessarily shortens the time in which members of the public are able to garner resources to investigate and develop counter facts to those raised by the petitioner. There is little doubt that being given the opportunity to review the application is important, but given the time constraints often imposed on the process during a hospital closing there is real doubt as to whether the public can undertake a meaningful substantive review. Of course, one can point to inconsistencies or questionable numbers regarding operating losses and debt mentioned on different pages of an application, as is the case herein,[2] or challenge whether services are really available at all the 'alternative

[1] With respect to this application, New Jersey Appleseed was able to obtain a copy of the application directly from the applicant prior to its completion; and, in turn made it available to several interested persons.

[2] For example, on page 1/19 of the application we are told that since 1999, Columbus Hospital's losses are nearly $68 million; and on page 7/19, we are told that the audited

sites" listed by the applicant; but, as a member of the public, we really do not have the time to secure audited financials or contact all the facilities listed in the application to determine whether the information provided by the petitioner is actually (and actuarially) accurate.

The insufficient time for members of the public to investigate is further heightened when, as the case herein, the completed application is released only several days prior to the hearing. Access to copies of the petition is also often logistically difficult. When I went to the public library in Newark to review the Columbus Hospital CN application one day prior to the hearing, I was told that I had been the only person who had requested to see it; and I was then directed to make copies of the document one page at a time. Given the many benefits of distributing large documents electronically, New Jersey Appleseed requests that, in the future, the Department scan CN petitions and make such documents available by disk, or through e-mail communication.

In addition, although over the past year as the number of hospital closings have increased, there has been some discussion between advocates and the regulators about the inadequacy of the CN process (from both a procedural and substantive prospective) to effectively deal with the myriad issues arising from the closing of a hospital. I would like to add one further issue that emerged when reading this application. Instead of being presented with an objective description of the Hospital's role in the community and its financial situation, we, in the public, were provided with a scathing tirade against Columbus Hospital that gave the picture that it has no value and is irredeemable. From the information presented by the applicant and the Attorney General, we know that the Hospital is in grave financial difficulty, but what we do not know is whether this difficulty is due to structural problems created by reimbursement rates, charity care and other systemic factors or simply by historical mismanagement that could be remedied. Similarly, we know that the Hospital serves 10% of the Newark population with respect to inpatient acute care services, but there is limited information about the number of patients, range of services and quality of care that the Hospital provides the community through its outpatient clinics and programs.

There are usually two sides of a story, and in the absence of a presentation by a "dissident" administrator or provider employed by the applicant, this process does not

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losses from 1999-2006 are $36.034 million, with a projected $7.92 million loss projected for 2007. On that page, we are also told that the differential $24 million between the two statistics are losses that could have occurred if Cathedral had charged Columbus for certain services, but did not. Further confusion is added when several lines later, we are told that operating losses continue despite the fact that over the years, Cathedral has given Columbus Hospital $33 million in support, not $24 million. Similarly, on page 7, we are told that the debt of the hospital is $68.5 million dollars, but in the Attorney General's Review of the Asset Purchase Agreement, the public was told that Columbus was valued at a $33.057 as a going concern, with $47.880 million of debt (including long term debt, lease obligations and accounts). AG Review Letter, dated April 8, 2008 at p.20, n15.

offer the public a nuanced presentation of the objective role that the physicians, other health care providers and employees of the Hospital play in the community. Accordingly, New Jersey Appleseed urges the Department to create a process where the applicant works with the community to focus on the positive role the closing hospital plays in providing essential health services to the residents and to identify which services have to remain on site. Although New Jersey Appleseed recognizes and commends Cathedral's efforts to create such dialogue, we have no information to conclude that the process was effective and/or inclusive. We know many physicians that were not part of the process concerning Columbus Hospital, and with respect to the East Ward, numerous residents who were confused and felt left out.

Notwithstanding our agnostic stance on the effectiveness of the process improvised by Cathedral Health , we support the commitments made by CHE to the residents of the North Ward and ask that you condition your approval of the CN on the provision of such services at the Columbus Hospital site for a minimum of five (5) years. They include: 24/hr Satellite Emergency Department with accommodations for health programs coordinated with the Newark Department of Health; Pediatric Clinic; Pre-Natal clinical service; expanded primary care presence on site; an ambulatory surgery center; and a satellite PACE program and other services targeted at senior residents. We, however, see missing from the list of commitments an intention to provide transportation services to those person to whom they will provide "centralized scheduling" services. Furthermore, we request that the Commissioner clarify that the separate CAGs created for the North and East Wards based on their respective "Subcommittees of the Newark Health-care Steering Committee" will function as subcommittees of the CAG whose creation and function will be established pursuant to Condition 13 of the Final Order Approving Proposed Transaction in In the Matter of the Application of Cathedral Health Services, Docket No. ESX-C-101-08 (April 23, 2008).

Respectfully submitted,

Renée Steinhagen
Executive Director