

December 1, 2016

Jana Fussell, Coordinator  
Certificate of Need Program  
Oregon Health Authority- Public Health Division  
800 NE Oregon Street  
Portland, OR 97232-2162

Dear Ms. Fussell:

The undersigned providers of behavioral health services have had an opportunity to review the Certificate of Need (CN) application and public hearing materials of NEWCO Oregon, Inc. dba Willamette Valley Behavioral Health (NEWCO). NEWCO proposes to establish a freestanding psychiatric hospital in Wilsonville to serve adolescents, adults and seniors. NEWCO is wholly owned by Universal Health Services, Inc. (UHS), a for-profit corporation and the largest owner of psychiatric hospitals in the nation. UHS also owns Cedar Hills Hospital in Portland.

Our attached public comment raises significant concerns about key underlying assumptions in the NEWCO application and subsequent supporting materials. These assumptions relate to the number of beds needed, the proposed revenue, and the project's financial feasibility. Further, and importantly, its impact on existing providers of behavioral health and on the already very fragile delivery system is very concerning. Finally, based on our review, we have identified concerns related to UHS' conformance to certificate of need requirements for its Portland-based Cedar Hills operations. We have also identified concerns related to the quality of its operations in other states that should be fully vetted by the Public Health Division (Division) in its analysis.

The information in our attached public comment responds directly to the requirements of OAR 333-545-0000. We trust that the enclosed information will assist the Division in its analysis of NEWCO's application, while also contributing to an informed and thorough public dialog. Our specific areas of concern include:

- 1) Using the bed need projection methodology contained in OAR, there is no need for additional acute care hospital beds within a three county service area or 50-mile radius of the proposed site. NEWCO has not demonstrated that any "unusual" circumstances exist to warrant approval of its proposed beds.
- 2) There are numerous flaws with the underlying assumptions regarding the specific populations that NEWCO intends to serve; particularly its inability to be reimbursed for care provided to the adult Medicaid population—the largest utilizers of inpatient psychiatric beds. Because of this, the NEWCO project does not align with needs and will not improve availability or access.

- a. Because NEWCO proposes a freestanding psychiatric hospital, it will not be reimbursed for caring for adult (age 18-64) Medicaid patients. A provision in the Federal Medicaid law referred to as the Institute for Mental Disease (IMD) Exclusion prevents federal Medicaid funds from being used by states to care for adults seeking inpatient care in freestanding psychiatric hospitals. As such, NEWCO will not receive funding to care for the largest segment of the population needing and using inpatient psychiatric care—those residents age 18-64 with Medicaid as the payer. As detailed in our analysis, this raises serious concerns about NEWCO’s ability and intent to meet the needs of Oregon’s large and growing Medicaid population.
  - b. NEWCO estimates the total net need for beds for pediatric and adolescents to be 11 beds in 2025, but proposes 24 beds—meaning its average occupancy would be only 45%. In addition, when Unity opens in early 2017, there will be a gain of six inpatient beds for adolescents, and NEWCO has failed to recognize this.
  - c. NEWCO also likely overstated the need for beds by including 100% of the Service Area population in its calculation. As a payer, Kaiser accounts for more than 18% of all residents, and NEWCO has provided no information to suggest that Kaiser intends to direct patients to its facility. NEWCO has also failed to recognize Kaiser’s lower use rate for inpatient hospitalization.
- 3) Given its faulty underlying assumptions, the project’s conformance to applicable financial feasibility criteria cannot be confirmed.
  - 4) NEWCO’s, parent has had several quality and billing issues at its facilities in the recent past, raising concern regarding the quality of their operations.

Each of the undersigned represents an existing healthcare provider in the Portland region that collectively provides the majority of acute mental health care in the region. For example, Providence Health & Services (PH&S) has more than 125 acute psychiatric and detox beds across the tri-county region serving children, adolescents, adults and seniors. In addition, PH&S provides psychiatric services in the emergency departments of its hospitals that operate psychiatric services, and via tele-psych throughout the rest of the state. PH&S also operates a comprehensive range of partial hospitalization and outpatient services and continues to evaluate and expand services where needed.

Each undersigned is also either a partner in, or has actively supported the development of, the Unity Center for Behavioral Health (Unity). As you know, Unity is scheduled to open in January 2017, and will be a national model for providing compassionate mental health care in times of crisis. Through an unprecedented collaboration between Adventist Health, Kaiser Permanente, Legacy Health and Oregon Health & Science University we have set a goal of providing care for all those in need through a combination of emergency, inpatient

and outpatient service. Unlike the NEWCO proposal, Unity has made a clear and public commitment to serve the full range of patients, including those who are on Medicaid or are uninsured. The inpatient program will include 101 inpatient beds (22 child and adolescent and 79 adult), and received a determination from the Division in April of 2015 that no prior CN review or approval was required.

Unity will provide a dedicated psychiatric emergency room to reduce ED boarding. The ED will operate 24/7 and will be staffed with psychiatrists, social workers, ARNPs and peer support counselors. We anticipate caring for 44-55 patients on an average day in the ED. Mr. Escarda's November 17 public comment letter (p. 5) states that "the new or additional care offered by the Unity Center will be the emergency services, which will not address the more acute psychiatric patients who will still require inpatient stabilization and care". This statement is both uninformed and inaccurate. Our analysis strongly suggests that the Unity Center's ED will reduce demand for inpatient beds: today we know that many psychiatric inpatients are admitted for very short stays simply so they do not board in an acute hospital ED. For example, over the past 30 months at Legacy's Good Samaritan and Emanuel Adult Psychiatric units, 185 patients were discharged in less than 24 hours and another 230 discharged in less than 48 hours. Collectively, this represents 20% of the total admissions to these two units. Unity's planning suggests strongly that the initiation of the Psychiatric ED service will significantly reduce the percentage of patients being admitted for 24-48 hours. This, of course, reduces the need for inpatient beds. Unity is a true community partnership and needs and deserves time to open and stabilize before another provider is approved.

The NEWCO proposal is oversized and its volume and financial assumptions are likely unattainable. The high-cost associated with NEWCO's inpatient care model will take critical resources from the broader system at a time when existing providers have committed resources to increasing access and reducing demand for inpatient beds by providing superior alternatives. Without doing its "fair share" of adult Medicaid, NEWCO would also place increasing burden on existing providers, and we also worry that it would dilute the already existing scarce resources of psychiatrists, psychiatric RN and therapists; leading to fragmentation of care and higher costs.

In the end, this project represents a diminution of care in our community, not advancement. We respectfully request that the Division deny the application. Please feel free to contact any of us with any questions or should you need additional information.

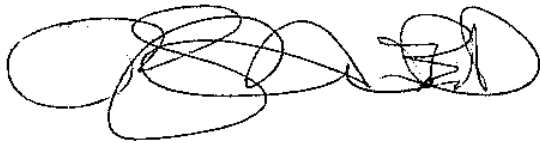
Sincerely,

A handwritten signature in black ink that reads "Tony Melaragno". The signature is written in a cursive style with a long horizontal flourish extending to the right.

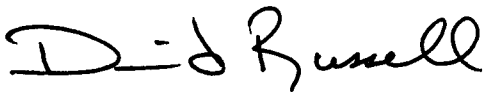
Tony Melaragno, MD  
Vice President  
Behavioral Health and Oncology  
Legacy Health  
503-413-6739  
[tmelarag@lhs.org](mailto:tmelarag@lhs.org)

A handwritten signature in black ink that reads "Janet O'Hollaren". The signature is written in a cursive style with a large, prominent loop on the left side of the name.

**Janet O'Hollaren**  
Chief Operating Officer  
Kaiser Permanente Northwest  
503-332-2174

A handwritten signature in black ink, appearing to read 'Robin Henderson', with a stylized flourish at the end.

Robin Henderson, PsyD  
Chief Executive, Behavioral Health  
Providence Medical Group  
503.893.6666  
[Robin.Henderson@providence.org](mailto:Robin.Henderson@providence.org)

A handwritten signature in black ink, appearing to read 'David M. Russell', with a stylized flourish at the end.

David M. Russell  
Chief Executive Officer  
Adventist Medical Center  
503-261-4404  
[RussellDM@ah.org](mailto:RussellDM@ah.org)

## **Public Comment on the Certificate of Need Application of NEWCO Proposing to Establish a Freestanding Psychiatric Hospital in Wilsonville**

The information below directly to the requirements of OAR 333-545-0000.

- 1) Using the bed need projection methodology contained in OAR, there is no need for additional hospital beds within the service area or a 50-mile radius of the proposed site. NEWCO has not demonstrated that “unusual” circumstances exist so that their proposed beds become approvable.**

The Service Area was defined by NEWCO as the three County area of Multnomah, Washington and Clackamas. We agree that this is the appropriate Service Area.

According to OAR, when a new facility is proposed, an applicant must include an analysis under division 590, the rules for acute hospital beds in general. The rule states:

*New psychiatric beds, whether general or subspecialty, except under unusual circumstances with respect to non-availability, access and less costly alternatives, shall not be approved if the net effect of the project would be additional licensed short-term acute capacity in the psychiatric Service Area, unless additional acute hospital beds are justified in that area by the criteria for acute inpatient beds in division 590 of this Chapter.*

Further, OAR 333-615-0040 states:

- (1) The methods of meeting acute psychiatric bed need, in order of preference, shall be:
  - (a) Conversion of existing licensed space to purposes of psychiatric treatment where such conversion is feasible to provide an adequate inpatient program at less cost than building new licensed space, especially when the average daily census for the facility as a whole for the most recent year ending September 30, converted to expected peak occupancy under the methods of OAR 333-590-0050(8) and (9), does not exceed the current licensed number of beds at the facility;*
  - (b) A project resulting in the smallest feasible net increase in acute licensed capacity within an existing general hospital or specialty hospital license, especially when the average daily census to the facility as a whole, for the most recent year ending September 30, converted to expected peak occupancy under the methods of OAR 333-590-0050(8) and (9), equals or exceeds the current licensed number of beds at the facility;**

*(c) A separately licensed new psychiatric hospital, not part of a general hospital, that will provide adequate psychiatric inpatient care at the most reasonable charges per day and per spell of treatment, for care that must be rendered on an inpatient basis, taking into consideration the factors in OAR 333-615-000(2).*

To determine if there is an acute bed need in the Service Area, NEWCO projected bed need and found no need for additional beds using the State of Oregon bed need methodology through 2030. NEWCO only found need beyond year 2025 using an alternative occupancy standard, as opposed to the OAR mandated maximum peak census methodology<sup>1</sup>. In its March 2016 submittal, at the request of the Division, NEWCO corrected its bed need projections based on licensed beds,<sup>2</sup> Based on the corrected methodology, NEWCO found an oversupply of beds (1,142 in 2025); continuing well past 2030.

In addition to the erroneous occupancy standard, NEWCO also ***included*** normal newborns days in its calculation of bed need. This is faulty because newborns do not occupy inpatient psychiatric beds and because while including the days associated with these newborns, NEWCO excluded the the ‘basinets’ in which these newborns are cared from their bed supply calculation<sup>3</sup>. On any average day in the three County area there are 71 normal newborns hospitalized. By including normal newborn days and excluding the basinets, NEWCO has significantly overstated need.

Our bed need calculation in Table 1 corrects the NEWCO errors and confirms the large surplus of beds in the Service Area.

---

<sup>1</sup> CN application, pages 115 and 116.

<sup>2</sup> March 11, 2016 supplemental response, p. 77.

<sup>3</sup> Normal newborns defined as DRG 795

**Table 1**  
**Bed Need Methodology Summary**

Service Area Use Rate Constant	2015	2020	2025
Service Area Patient Days	563,250	628,825	693,465
Service Area Providers' market share of Service Area Patient Days	98.8%	98.6%	98.6%
Service Area Resident days to Service Area providers	556,295	620,022	683,757
In-migration as a percent of Service Area Provider days	39.8%	39.8%	39.8%
Projected In-migration days	221,149	246,483	271,820
Total Days to Service Area Providers	777,444	866,504	955,577
Beds Needed, Peak Census	2613	2874	3119
Beds Available, Service Area	4129	4129	4129
<b>Surplus/(Deficit)</b>	<b>1516</b>	<b>1255</b>	<b>1010</b>

NEWCO also failed to demonstrate that unusual circumstances related to non-availability, access and less costly alternatives exists. Further, the applicant itself notes that there are currently 20 psychiatric beds per 100,000 residents in the Service Area, a rate that is nearly 2.5 times the rate for the State of Oregon at large (8.7/100,000).<sup>4</sup>

**2) There are numerous flaws with the underlying assumptions regarding the specific populations that NEWCO intends to serve; particularly its inability to secure payment for serving the adult Medicaid population. The NEWCO project does not align with needs and will not improve availability or access.**

NEWCO is requesting approval for 100 beds. During the CN review process, it has changed its proposed bed configuration three times. It now proposes that 24 of the beds be dedicated to adolescent care, 52 for adults age 18-64 and the remaining 24 for those 65 and over. It originally intended to serve pediatric patients, and its pediatric/adolescent bed configurations started at 50 beds (initial application) to 24 now for adolescents only. It also changed its adult bed configuration from 25 to 52 beds. The patient days, length of stay and payer mix can be, and are frequently very different for adolescents and adults. However, despite all of its changes, NEWCO has made absolutely no changes in its patient day projections, payer mix or assumptions, and NEWCO's application specifically states

<sup>4</sup>America's Emergency Care Environment, A State-by-State Report Card – 2014, page 98.



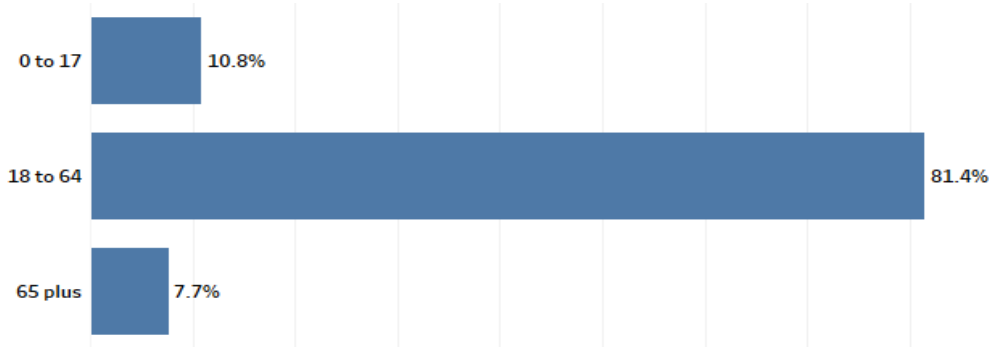
that is has not projected patient days by payer or population<sup>5</sup>. As is demonstrated below, its proposed allocation is not in alignment with current needs.

**a. Freestanding Hospital prohibition on adult Medicaid patients**

While NEWCO’s application offered data to show the volume of inpatient services for those who sought inpatient care for mental health needs in the three County area, it failed to provide data by age or payer.

As depicted in Figure 1, by far, the largest segment of current patients are those age 18 to 64, representing nearly 82% of total psychiatric discharges of residents from the three County area in 2015.

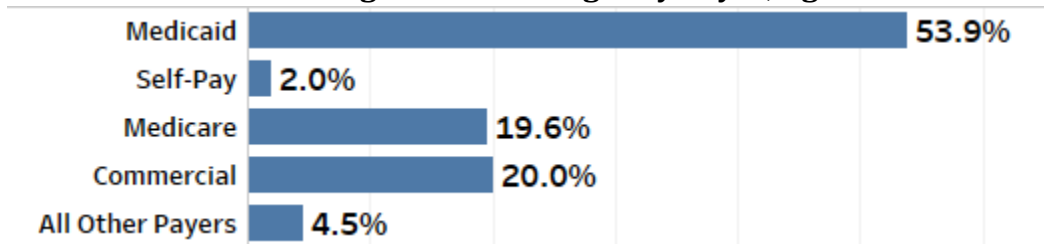
**Figure 1: Age Distribution of Psychiatric Inpatient Discharges**



*Source: Oregon Inpatient Discharge Data, 2015, DRGs 876 & 880-887. Service Area of Clackamas, Multnomah, and Washington counties.*

As depicted in Figure 2, just under 56% of all discharges for the 18-64 population in 2015 were Medicaid or uninsured.

**Figure 2: Discharges by Payer, Age 18-64**



*Source: Oregon Inpatient Discharge Data, 2015, DRGs 876 & 880-887. Service Area of Clackamas, Multnomah, and Washington counties. Oregon Residents.*

Based on the above, if NEWCO were intending to serve **all Service Area** residents in need of care, one would expect that 81% of its requested beds (81 beds) would be for adults and of this, at least 50% would be made available to Medicaid and uninsured patients (40+

<sup>5</sup> October 5, 2016 submittal, p. 5

beds). However, NEWCO is projecting only 52 beds for adults, and their commitment to serving Medicaid is not evident.

The percentage of Medicaid in the adult 18-64 population has grown dramatically in recent years, and we expect this growth (as a % of total days) to continue. NEWCO must agree, as they stated in their CN that:

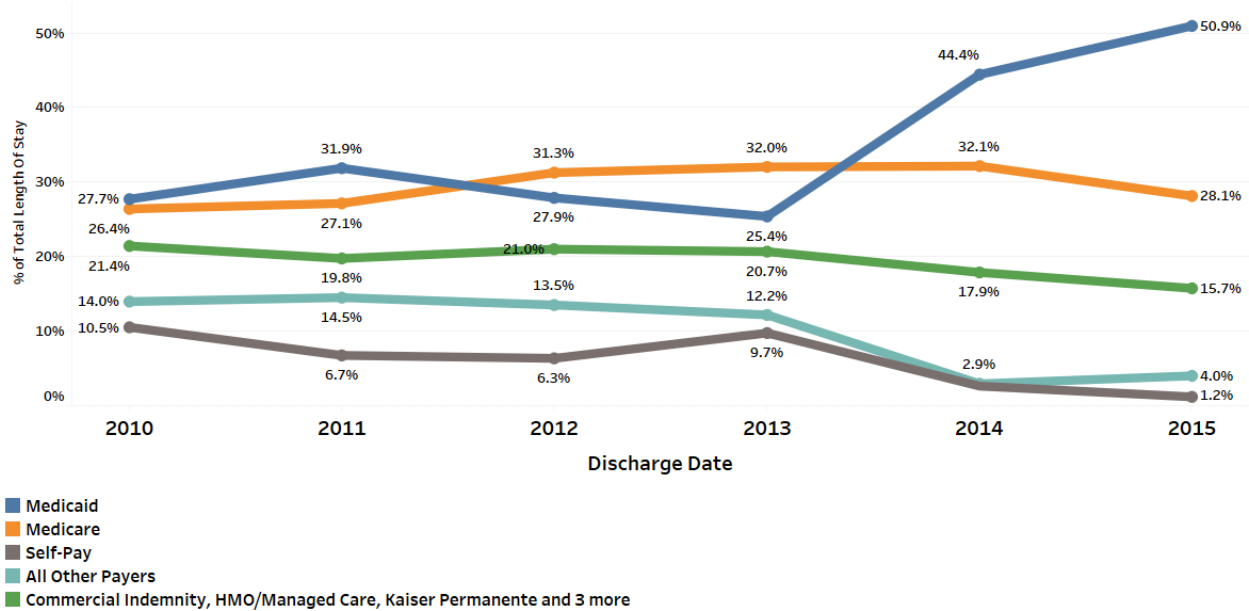
*There have been two key laws that have acted to increase demand for psychiatric care, as a covered insurance benefit...The final rules clarify that the parity law includes coverage for a full continuum of behavioral health services; inpatient, intermediate and outpatient. At the same time, the Patient Protection and Affordable Care Act ("ACA") states that mental health and substance abuse disorder services are an essential health benefit and must be covered at parity by plans on the health insurance marketplace, beginning January 2014. Both of these laws will increase demand by increasing coverage for mental health services<sup>6</sup>*

Since the law's enactment there has been a sizeable shift toward more Medicaid payments for inpatient mental health services. As shown in Figure 3, based on 2015, the most recent Oregon inpatient utilization data available, for psychiatric patients between the ages of 18 to 64, Medicaid paid 51% of the days. Medicaid days as a percent of total paid days has increased from 25% as recently as 2013 to over 50% in 2015. Clearly, when addressing new bed need the Division should determine if the facilities have the ability to accept Medicaid.

---

<sup>6</sup> Applicant application, Page 10

**Figure 3: Percent Days by Payer 2010-2015 Age18-64**



Source: Oregon Inpatient Discharge Data, 2015, DRGs 876 & 880-887. Service Area of Clackamas, Multnomah, and Washington counties. Oregon Residents age 18 to 64.

NEWCO does not adequately address the federal regulation, commonly referred to as the IMD ("Institution for Mental Diseases") exclusion, which prohibits the use of Medicaid funds for free-standing psychiatric inpatient services for adults age 18-64 if there are more than 16 individuals in the facility. Of the 52 beds it is requesting for adults 18-64, one would expect that 26 on any given day would be occupied by Medicaid patients and the uninsured. However, there is absolutely no data in its pro-forma to suggest that it will provide free care to an average of 26 patients per day, or more than 9,400 days annually. Further, and importantly, its pro forma does not include charity care at sufficient levels to demonstrate any commitment to subsidizing care for these patients

NEWCO's CN states that:

*In Cedar Hills' case, the majority of its patient population is comprised of adults aged 18-64 years. Cedar Hills has and continues to provide quality care to psychiatric patients based on need. We fully intend for our proposed facility to operate in the same manner as Cedar Hills; the expected majority of our inpatients will be eligible for Medicaid coverage.<sup>7</sup>*

<sup>7</sup> NEWCO CN Application, Page 13

The 2008 Final Order Issuing a Certificate of Need with Conditions to Cedar Hills required certain ongoing compliance with seven conditions, including, among others:

***Condition 1-*** Reasonable efforts will be made to make it widely known to the public that emergency psychiatric treatment is available regardless of ability to pay if a patient presents at the hospital and requires stabilization.

***Condition 5-*** The applicant will accept admissions and transfers of patients without quotas, limits or other restrictions based upon payer source or ability to pay. The applicant will also provide care to the uninsured in the same proportion as the psychiatric inpatient units of community hospitals located in the Service Area. Beginning one year after commencement of operation of this facility, and on an annual basis thereafter, the applicant will submit a comprehensive report to the CN Program detailing the amount of care provided to uninsured individuals and to Medicaid eligible individual for whom the facility cannot receive payment because of the IMD exclusion. The department will evaluate this information against the experiences of other psychiatric inpatient units located in the Service Area.

Because Cedar Hills does not participate in OAHHS inpatient data base, there is no public data to substantiate its ongoing conformance to the requirement.

By virtue of its CN award, Cedar Hills was required to report regularly to the Division about its ongoing compliance with these conditions. We reviewed several of the reports that Cedar Hills submitted to the Division related to compliance, and the Division's responses. We also reviewed Cedar Hill's most recent Medicare Cost Report (2014) available online. Based on the information we have been able to review, it appears that Cedar Hills is likely not complying with these CN requirements. In its 2014 Medicare Cost Report (included as Attachment 1, we note that Cedar Hills did not file Form S-10, its Hospital uncompensated and indigent care data, which calls into question if they are serving any uninsured/Medicaid patients. This is critically important because Cedar Hills and NEWCO have the same parent, and NEWCO itself noted that it will operate like Cedar Hills. Newco should not be able to proceed with their current proposal until they are able to document full compliance with the 2008 Final Order conditions imposed on their current Oregon facility. At the public hearing Disabilities Rights Oregon (DRO) shared a similar concern and stated that related to Cedar Hills, "there were promises made at that time that were not followed through with" ( page 64, lines 18-19 Transcript of Public Hearing, November 17, 2016).

While NEWCO states in its application that it expects the vast majority of the population they will serve in the 18 to 64 age group will be Medicaid eligible, absolutely no documentation is provided in its pro-forma to support how revenue will flow for these patients. Page 6 of Mr. Escarda's November 17, 2016 public comment also cites the significant increase in discharges and days by Medicaid patients in Oregon. Page 65 of its application includes the following assumptions:

- *Bad debt is assumed 1.2% of gross revenue per year.*
- *Charity care is also assumed 2.1 % of gross revenues per year.*

Based on the NEWCO’s Form CN-5, they project \$45.1million in inpatient gross revenue and additional \$6.1million in outpatient gross revenue. Deductions from revenue, represent 54.5% of gross revenue (inpatient, outpatient and denials). In comparison, we have reviewed a recently submitted Washington State CN application for deductions from revenue. Washington State is an outlier in that it uses State dollars to pay for 100% of adult Medicaid inpatient psychiatric utilization. In this application, one in which there is no IMD exclusion, UHS has assumed deductions from revenue to be 63.5% (or, 17% higher than what is assumed in the NEWCO financials). A copy of the pro forma for the Thurston County application is included in Attachment 2. Clearly, the pro-forma does not show the commitment, either with the deductions from revenue or charity care/bad debt assumptions to truly serve the adult Medicaid population and NEWCO’s assumptions appear to shift the burden for care of these individuals on existing community hospital providers. The more losses we subsidize, the less funding we have available to reinvest in the community for new services and programming.

**b. NEWCO estimates the total net need for beds for pediatric and adolescents to be 11 beds in 2025, but proposes 24 beds—meaning its average occupancy would be only 45%. In addition, when Unity opens in early 2017, there will be a gain of six inpatient beds for adolescents, and NEWCO has failed to recognize this.**

NEWCO is requesting 24 beds for adolescents. They had previously requested as many as 50 beds for peditrics and adolescents. However, in its October 2016 response they now indicate that they no longer plan to serve children. Since we are unable to isolate beds for those under age 11, Table 2 and Table 3 depicts the total psychiatric day trend and beds for those 5-17 since 2010. However, less than 10% of discharges are for children under age 11 (2015). As Table 2 shows, total days during the five-year period have been largely flat. The average daily census is in 2015 was 18.5 and there are currently 38 beds in the Service Area dedicated to this population.<sup>8</sup> This equates to an average of 50% midnight occupancy.

**Table 2  
Psychiatric Discharges, Service Area Residents, Age 5-17.**

	2010	2011	2012	2013	2014	2015
Discharges	834	793	806	772	733	724
Days	6,949	6,966	6,412	6,333	6,619	6,754
ADC	19.0	19.1	17.6	17.4	18.1	18.5
Occupancy Rate	50.1%	50.2%	46.2%	45.7%	47.7%	48.7%

Source: Oregon Inpatient Discharge Data, 2015, DRGs 876 & 880-887. Service Area of Clackamas, Multnomah, and Washington counties

<sup>8</sup> Legacy Emanuel Hospital & Health Center 16 beds, Providence Willamette Falls Medical Center, 22 Beds. In addition, Unity’s CN exemption identified that we will be adding 6 beds to the supply in 2017.

NEWCO uses Portland State University demographic data to estimate that in 2014, there were 270,012 children age 5-17 residing in the Service Area. Over the 2010-2015 timeframe, the growth rate in the number of residents age 5-17 years old in the Service Area has remained nearly constant, with an average annual growth rate of 0.4%.<sup>9</sup> Forecasted growth in this population is expected to be slow as well. Data from the Oregon Economic Agency forecasts a slow average annual growth rate of 0.4% between 2015-2020.

We fully acknowledge a study published in the August 2011 *Archives of General Psychiatry* which evaluated data for the period of 1996-2007 from the National Hospital Discharge Survey, an annual survey conducted by the National Center for Health Statistics to determine hospitalization rates. The data found that hospitalization rates increased the most for children ages 5-12, going from 155 per 100,000 children in 1996 to 283 per 100,000 children in 2007. Among teens, the rate increased from 683 to 969 per 100,000. When reviewing the use rate experience for the 5-17 age group in the Service Area it has been flat since 2010. By using the 2014 use rates to predict future days, the ADC stays close to 20 in the three County area in 2025, which would be 44% occupancy on just the 44 beds already in the Service Area (38 existing plus 6 additional for Unity). Population and days trends in Table 3 suggest there is no need for the additional 24 adolescent beds proposed by NEWCO. And, in fact, NEWCO’s own estimates do not show a need for these beds (see NEWCO Table 5).

**Table 3**

**Inpatient Days, Psychiatric Discharges, Service Area, Age 5-17**

	<b>2010</b>	<b>2014</b>	<b>2020</b>	<b>2025</b>
Days	6,949	6,619	6,835	7,062
Population	285,733	270,879	280,119	289,421
Use Rate	24.3	24.4	24.4	24.4
Beds	38	38	44	44
ADC	19.0	18.1	18.7	19.3

*Source: Oregon Inpatient Discharge Data, 2015, DRGs 876 & 880-887. Service Area of Clackamas, Multnomah, and Washington counties*

- c. NEWCO also likely overstated the need for beds by including 100% of the Service Area population in its calculation of bed need. As a payer, and according to the Office of the Insurance Commissioner, Kaiser accounts for 18% of all residents of the Service Area. NEWCO has provided no information to suggest that Kaiser intends to direct patients to this facility.**

NEWCO calculated bed need based on an overall bed to population ratio. We know that different payers have different utilization rates for inpatient psychiatric care. With at least

<sup>9</sup> Portland State University, Population Research Center (PRC)

18% of all residents, Kaiser is a major payer and contracts for psychiatric services in the Service Area. According to OAHHS data, Kaiser's utilization experience is much different than others. In 2015, only 3% of discharges for psychiatric discharges came from Kaiser as a payer, and this is likely due to the robust nature of their outpatient and primary care programming. There is no evidence provided in the application to suggest that Kaiser will contract with the applicant for beds. Further, there is no evidence in the record that NEWCO understands that the use rate for nearly 20% of the population will be significantly lower. The potential Kaiser patient population should not be considered in this analysis of need.

**3. Given the faulty underlying assumptions, the project's conformance to applicable financial feasibility criteria cannot be confirmed.**

The project's pro forma assumption flaws have been analyzed in detail above. These include:

- Overstating the need for beds (for example, including normal newborn days, with an ADC of 71).
- Failing to quantify the impact of its inability to receive Medicaid reimbursement for the adult population (and therefore understating NEWCO's charity care obligations).
- Not modelling the payer mix for the various cohorts—which means its proforma is unreliable.
- Overstating potential days, because 100% of the population was included, with no recognition of Kaiser's substantial population.

Our analysis strongly suggests that the project never achieves breakeven if these corrections are made.. Importantly, in the highly unlikely scenario that NEWCO did achieve its adolescent census and contracted with Kaiser for care of its psychiatric patients, the existing community providers would be adversely impacted: we would "lose" commercial pay and experience a further increase in Medicaid and charity care. Some providers may be forced to close or limit their services as a result. The damage would be real and impactful to the community.

**4. NEWCO's, parent has had several quality and billing issues at its facilities in the recent past, raising concern regarding the quality of their operations.**

The CN regulations require an applicant to demonstrate that its project conforms to the Quality and Cost requirements outlined in OAR 333-615-0050.

*All proposed psychiatric beds must meet the licensure, certification and accreditation criteria of the Public Health Division, Medicare and the Joint Commission on Accreditation of Health-care Organizations, as appropriate. "Quality" for purposes of review of certificate of need proposals is a description of threshold factors to be considered, not a presumption of clinical judgment, nor a substitute for the licensing or accreditation functions.*

A March 2016 article in the Boston Globe noted that more than 10% of UHS' 213 inpatient psychiatric hospitals are under federal investigation. For example, five behavioral health hospitals operating in Massachusetts are under investigation by the Federal Department of Justice for possible billing fraud.<sup>10</sup>

Other facilities, including, Arbour Health Systems in Massachusetts, have been cited by state regulators for quality concerns and inadequate staffing at its hospital and outpatient clinics. In March of 2016, another of its hospitals, Timberlawn Mental Health System in Dallas, was asked by the State's Department of State Health Services to surrender its license and pay a record \$1 million fine.

In addition, as noted in its most recent SEC filing Form 10K published on August 5, 2016, UHS has been served with subpoenas and other requests for information regarding these facilities and others. Specifically:

- In April, 2013, the OIG served facility specific subpoenas on Wekiva Springs Center and River Point Behavioral Health requesting various documents from January, 2005 to the date of the subpoenas. In July, 2013, another subpoena was issued to Wekiva Springs Center and River Point Behavioral Health requesting additional records. In October, 2013, we were advised by the DOJ's Criminal Frauds Section that they received a referral from the DOJ Civil Division and opened an investigation of River Point Behavioral Health and Wekiva Springs Center. Subsequent subpoenas have since been issued to River Point Behavioral Health and Wekiva Springs Center requesting additional documentation. In April, 2014, the Centers for Medicare and Medicaid Services (CMS) instituted a Medicare payment suspension at River Point Behavioral Health in accordance with federal regulations regarding suspension of payments during certain investigations. The Florida Agency for Health Care Administration subsequently issued a Medicaid payment suspension for the facility. River Point Behavioral Health submitted a rebuttal statement disputing the basis of the suspension and requesting revocation of the suspension. Notwithstanding, CMS continued the payment suspension. River Point Behavioral Health provided additional information to CMS in an effort to obtain relief from the payment suspension but the suspension remains in effect. In February, 2016, UHS received notification from CMS that, effective March, 2016, the payment suspension will be continued for another 180 days.

---

<sup>10</sup> Five Mental Hospitals Targeted in Federal Probe, Boston Globe, March 7, 2016



- In June, 2013, the OIG served a subpoena on Coastal Harbor Health System in Savannah, Georgia requesting documents from January, 2009 to the date of the subpoena.
- In February, 2014, UHS was notified that the investigation conducted by the Criminal Frauds Section had been expanded to include the National Deaf Academy. In March, 2014, a Civil Investigative Demand (CID) was served on the National Deaf Academy requesting documents and information from the facility from January 1, 2008 through the date of the CID. UHS has been advised by the government that the National Deaf Academy has been added to the facilities which are the subject of the coordinated investigation referenced above.
- In March, 2014, CIDs were served on Hartgrove Hospital, Rock River Academy and Streamwood Behavioral Health requesting documents and information from those facilities from January, 2008 through the date of the CID.
- In September, 2014, the DOJ Civil Division advised UHS that they were expanding their investigation to include four additional facilities and were requesting production of documents from these facilities. These facilities are Arbour-HRI Hospital, Behavioral Hospital of Bellaire, St. Simons by the Sea, and Turning Point Care Center.
- In December, 2014, the DOJ Civil Division requested that Salt Lake Behavioral Health produce documents responsive to the original subpoenas issued in February, 2013.
- In March, 2015, the OIG issued subpoenas to Central Florida Behavioral Hospital and University Behavioral Center requesting certain documents from January, 2008 to the date of the subpoena.
- In late March, 2015, UHS was notified that the investigation conducted by the Criminal Frauds Section had been expanded to include UHS as a corporate entity arising out of the coordinated investigation of the facilities described above and, in particular, Hartgrove Hospital.
- In December, 2015, UHS was notified by the DOJ Civil Division that the civil investigation also includes Arbour Hospital, Arbour-Fuller Hospital, Pembroke Hospital and Westwood Lodge located in Massachusetts.
- The DOJ has advised UHS that the civil aspect of the coordinated investigation referenced above is a False Claim Act investigation focused on billings submitted to government payers in relation to services provided at those facilities.
- In January, 2016, UHS was notified that the Department of Justice opened an investigation of the South Texas Health System of a potential False Claim Act case

regarding compensation paid to cardiologists pursuant to employment agreements entered into in 2005.

We request that the Division consider the volume of sanctions and investigations in its determination of whether NEWCO and its parent meet applicable quality requirements.

**Conclusion**

NEWCO's identified need for new beds is overstated. Further, the public policy of the State of Oregon is to encourage community hospitals to meet identified shortages before approving new freestanding capacity. The Unity Center is a significant effort on the part of existing community hospitals and it should be given the opportunity to open and stabilize. The NEWCO project is too much, too early. Too many uncertainties exist about its ability to serve Medicaid. Further, recent and ongoing quality concerns around NEWCO's parent should be closely considered by the Division.