

SWEEPING CHANGES TO CERTIFICATE OF NEED LAWS

The Connecticut Legislature, at the prompting of the Department of Public Health, Division of Office of Health Care Access (OHCA), passed a comprehensive certificate of need (CON) reform bill. If the Governor signs the bill, and all indications are that she will, as this bill is part of the State budget bill, after October 1, 2010, Hospitals and other health care facilities must comply with the new requirements included in Senate Bill 494 (LCO No. 5638): “AN ACT MAKING ADJUSTMENTS TO STATE EXPENDITURES FOR FISCAL YEAR ENDING JUNE 30, 2011, as amended.” This bill will have a substantial impact both positively and negatively on all providers of healthcare in the industry.

The following are highlights of the CON reform:

1. New statutory set of definitions which revises existing definitions, such as, “Health Care Facility” and “Affiliates” also adds new definitions, for example, “Transfer of Ownership.”
2. Extensive new bi-annual reporting obligations for Hospitals, Ambulatory Surgery Centers, and many other health care facilities will be used in a new utilization study and in the establishment of a state-wide health care facilities and services plan.
3. New CON application requirements: For example, the bill repeals the requirement for CON approval for new services and lists specific services that require CON approval. This may



unintentionally exempt new services from the CON process.

4. New exemptions from CON authorization: For example, there is no CON authorization needed to establish outpatient clinics, which could be interpreted to mean hospitals may be able to establish a clinic in another hospital's primary service area without OHCA involvement.
5. OHCA can set policies until regulations are passed. This leaves a significant amount of discretionary decision making in the hands of OHCA.
6. New set of principles to be considered by OHCA in CON deliberations. This section significantly revises existing OHCA considerations and requires that the CON application be consistent with to-be-established regulations and standards and until the regulations are finalized, be consistent with OHCA guidance, leaving substantial discretion in the hands of OHCA.

7. New timeframes and other requirements for CONs that shorten the front end of the CON process, but allow OHCA to extend the current CON period by 60 days at the end of the application process which could result in no change in the time before OHCA reaches a decision. In addition, approved CONs will be authorized for 2 years and subject to revocation by OHCA if OHCA determines the project has not progressed as proposed during those two years.

In the coming weeks we will provide you with a more comprehensive review of the certificate of need changes. Although this bill exempts a number of services for health care providers and other regulatory requirements, it remains unclear how much reform truly will occur as a result of this bill. The bill leaves much discretion to OHCA and the impact of change will depend on who is interpreting these new laws.

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