

Health Care Alert

June 2009

RECENT LAW MODIFIES OFFICE OF HEALTH CARE ACCESS CERTIFICATE OF NEED STATUTES

House Bill No. 6678, An Act Concerning Revisions to Department of Public Health Licensing Statutes (the "Act"), passed the Connecticut House and Senate on June 3, 2009. The bill is currently awaiting the signature of Governor Rell. The Act, among other things, revises some of the Office of Health Care Access ("OHCA") Certificate of Need ("CON") requirements, exemptions, and waivers. The Act is effective July 1, 2009, unless otherwise noted.

I. Defining "Transfer its Ownership or Control".

While OHCA requires a CON for a health care facility or institution that is proposing to "transfer its ownership or control," the applicable statutes had not previously defined this phrase. The Act clarifies this issue and now defines the phrase as a "transfer that impacts or changes the governance or controlling body of a health care facility or institution, including, but not limited to, all affiliations, mergers or any sale or transfer of net assets of a health care facility or institution."

II. New Exemptions.

The Act provides two new exemptions from the CON requirement.

(1) A program licensed or funded by the Department of Children and Families is now exempt from the CON requirement. Please note that this exemption does not apply to psychiatric residential treatment facilities.

(2) Hospitals proposing to offer health care services at an alternative (or new) location within the hospital's primary service area are now exempt from the CON requirement. Hospitals are defined to include short-term acute, general, children's, or chronic disease hospitals or a hospital for the mentally ill that on July 1, 2009 provides outpatient services. This exemption does not apply to any CONs an entity may be required to obtain for certain capital expenditures for the purchase of major medical equipment or new technology to be used at the alternative location. The exemption requires the health care facility to inform OHCA of the type of outpatient services to be provided at the alternative location, the location where such services will be provided, and the reasons for providing such services at an alternative location.



III. Limitation on Exemptions for Psychiatric Residential Treatment Facilities.

Not-for-profit psychiatric residential treatment facilities are not eligible for any CON exemption. This prohibition applies regardless of whether such facility is under contract with a state agency or department. This provision is effective October 1, 2009.

IV. Waivers.

OHCA may waive the CON requirement for the replacement of certain medical equipment. In general, a CON is required for a health care facility proposing to purchase, lease, or accept a donation of major medical equipment or certain equipment utilizing technology new to the state. However, OHCA may waive the CON requirement for health care facilities proposing to replace such equipment. The Act permits a waiver in two situations:

- (1) the health care facility, institution, or provider previously obtained a CON for the equipment; or
- (2) the health care facility, institution, or provider previously obtained a determination that a CON was not required for the original acquisition of the equipment and the replacement value or expenditure is less than \$3 million.

Questions or Assistance?

If you have any further questions regarding the OHCA CON requirements, exemptions, or waivers, please feel free to contact either Joan Feldman or David Mack.

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