

May 16, 2013

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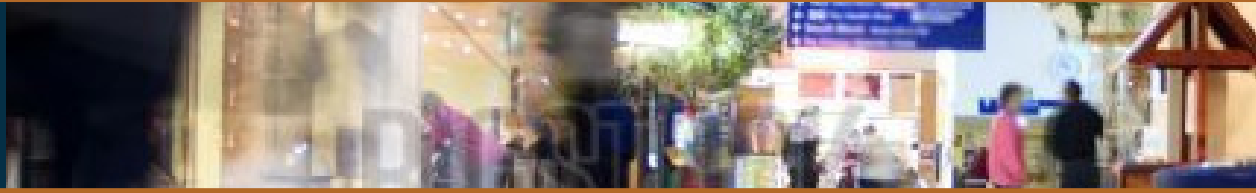


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Certificate of Need Regulations Finalized and Released

Attached please find the Office of Health Care Access's ("OHCA's") final Certificate of Need ("CON") regulations. Overall, the regulations are very similar to the proposed regulations issued in 2010. However, please see below for a brief summary of what we believe to be the most significant changes between the proposed and final CON regulations.

1. OHCA's 60-Day Review Period After Public Hearings:

Under the proposed regulations, OHCA was required to issue a final decision on a CON application within 60 days of the date of the public hearing. Under the final regulations, OHCA will now be required to issue its final decision within 60 days after the date on which OHCA deems the public hearing record to be closed. For example, a CON applicant may be requested to provide OHCA with additional information or "late filings" at the public hearing. In such instances, OHCA will not close the public hearing until it determines that it has received this information and/or documentation to its satisfaction. At this point, we do not have any insight as to how OHCA will determine the completion date (i.e. is it the date OHCA receives the late file or the date that OHCA reviews the late file). The final regulations do state that OHCA will notify the applicant in writing of the date on which OHCA considers the public hearing record to be closed and the date on which the 60-day review period will expire.

2. Relocation of Health Care Facilities:

- a. Relocation Process: For any health care facility that is considering a relocation, the final regulations now clarify that parties must: (i) submit a letter requesting that OHCA make a determination as to whether a CON is required for the proposed relocation; and (ii) complete and submit the specific relocation form available on OHCA's website.
- b. Relocations within the Same Town No Longer Excepted: In general, OHCA will not require a CON to be filed if the relocating facility will not experience



substantial changes in its payer mix or population served as a result of the relocation. Previously, under the proposed regulations, health care facilities that were considering relocations within the same town were presumed to not have substantial changes in their payer mix or population served and, thus, were not required to submit determination requests. Under the final regulations, however, this exception has been eliminated and all proposed relocations (even those within the same town) must comply with OHCA's determination request process.

To view the final regulations, click [here](#) or visit: http://shipmangoodwin.com/files/22151_CON%20Amendments.pdf.

If you have any questions, please contact [Joan Feldman](#) or [David Mack](#) of our [Health Law Practice Group](#).

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