



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

### TESTIMONY PRESENTED BEFORE THE PUBLIC HEALTH COMMITTEE March 12, 2010

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#### **Senate/House Bill 5447 - An Act Concerning The Certificate of Need Process**

The Department of Public Health supports Senate or House Bill 5447.

Good Morning Senator Harris, Representative Ritter and all distinguished members of the Public Health Committee. I am Cristine Vogel, Deputy Commissioner, DPH and I thank you for the opportunity to speak with you today. Health care has changed significantly in the past 15 years and yet the statutes that govern the Certificate of Need (CON) process have not. Through the years, we have all made modifications to address a particular concern, but this year OHCA has thoroughly reviewed the statutes and has researched CON laws in other states and we present you with raised bill 5447, An Act Concerning the Certificate of Need Process.

In summary, there are 4 components of this legislation:

1. When CON authorization is required and when it is not required.
2. Updated criteria for the basis of CON decision-making.
3. Significant streamlining of the administrative process of CON applications.
4. Inventory of facilities and services.

I will summarize the 4 components very briefly and will focus my testimony on the areas where concerns or questions have been raised.

#### 1. *When CON authorization is required and when it is not required:*

It is difficult to understand the changes that are being proposed because our current statutes are complicated, so I have attempted to provide a side-by-side comparison that will be of assistance for any questions that relate to the differences between the current law and the proposed law. In summary, the significant changes are: instead of the very broad statement of "additional function or service" requires a CON, OHCA is specifically listing what services and functions will require a CON; capital expenditure projects will no longer require a CON; and enabling facilities such as outpatient centers and surgical centers to relocate nearby without a CON under certain circumstances.

#### Areas of concern:

- "Transfer of ownership" is not new and does not typically include a minor selling of shares within a outpatient surgical facility
- All Outpatient Surgical Centers must obtain CON authorization without regard to ownership or if located on hospital property
- Outpatient Surgical Centers may, under the proposed law, terminate their entire center or change the type of surgeries they perform within their centers without a CON
- "Acquisition of equipment utilizing technology and not previously used in state" is also in the current law – this has not been used in my 6 years and would be used for that technology such as Proton Beam therapy which costs millions and serve a select patient population.
- Imaging equipment which includes MRIs, CTs and PET/CTs has been discussed as the primary point of concern with this proposed bill and I propose some options to consider:
  - remove CON entirely for all acquisition of imaging equipment
  - support this language which differentiates owner of equipment; or
  - require hospital and non-hospital equipment owners to assist OHCA in the development of regulations that enable a meaningful planning approach to the growth of outpatient imaging in the state. During this process OHCA should have the ability to not accept

Letters of Intent until the regulations are in place. This will not impact quality as under the current and proposed law, existing equipment that had a CON or a CON Determination can be replaced without needing a CON.

*2. Updated criteria for the basis of CON decision-making:*

It remains the applicant's burden to demonstrate to OHCA that the proposal will have a positive impact on the people it intends to serve and will strengthen the health care delivery system. This proposed language is an upgrade of existing language and removes the outdated sections.

<b>New</b>	<b>Current</b>
Consistent with applicable regulations or the state-wide facilities and services plan	Relationship to the current state health plan
Clear community need for the proposal	Clear public need
How the proposal will add to the financial strength of the health care system	Financial feasibility of the proposal
How the proposal will improve quality and safety	Impact on applicant's rates and financial condition
Provision of services to Medicaid patients and the medically indigent	Impact on the interests of consumers and payers for such services
Identified the population to be served and that they have a need for the proposed services	Contribution to the quality, accessibility and cost-effectiveness of health care delivery in the region
Utilization of existing providers in the area	Relationship to the applicant's long-range plan
Proposal does not result in an unnecessary duplication of services	Applicant is competent to provide efficient and adequate service – technically, financially, and managerially expert and efficient
	Rates cover capital and operating costs
	Relationship to utilization statistics
	Teaching and research responsibilities
	Special characteristics of the patient-physician mix
	Voluntary efforts in improving productivity and containing costs
	Other factors deemed relevant

*3. Significant streamlining of the administrative process of CON applications:*

This is the significant reform section of the proposed legislation. Its purpose is to streamline the process and evenly distribute the accountability between the Applicant and OHCA. The significant changes are:

- Remove the Letter of Intent process (currently 60 days) and improve the how notice is posted to the public
- Extend the length of time the CON application is "under review" by OHCA from 10 days to 30 days
- Specify when the Applicant must respond to OHCA's questions (currently there is no limit - proposing 60 days)
- Simplify the application fee process – one set fee amount for \$500
- Remove the current "Waiver" and "Exemption" processes

I have not received any feedback that this area has generated any concerns.

*4. Inventory of facilities and services:*

OHCA proposes to develop an inventory of the facilities and services throughout the state. This would be the first step in creating a state-wide facilities and services plan. Although we feel that much of the information can be gathered from other sources, especially DPH licensing division, OHCA wants to make it clear that we need cooperation the industry as a whole (whether or not a CON is required) in order to provide the public with reliable information. Information that would be collected, for example, would be:

- facility name and address;
- facility type and service type;
- ownership type;

- hours of operation;
- and then some facility specific information, such as, #ORs, # and type of imaging equipment; aggregate total of scans, aggregate total of surgeries, aggregate total dialysis patient visits, and outpatient rehabilitation visits.

This is a significant shift from how Connecticut has been utilizing the Certificate of Need process for many years. Many of the requirements and criteria in this proposal are similar to current law but have been updated in response to the changes in the health care system. I ask for your support in bill #5447 and it is my pleasure to answer any questions that you may have regarding this bill.

### When CON authorization is REQUIRED

Proposed CON Law	Current CON Law
Establish new health care facility	Same as current law
Transfer of ownership of a health care facility	Same as current law
Establish Freestanding Emergency Depts.	Same as current law
Establish, expand or terminate of hospital Inpt & Outpt. behavioral health program & clinics	Same as current law
Terminate emergency department	Same as current law
Establish new Ambulatory Surgery Center (ASC)	Same as current law
Increase number of ASC operating rooms	New
Establish Inpt./Outpt. cardiac services	Same as current law
Acquisition of specific imaging equipment by providers other than hospitals	Partially new
Acquisition of non-hospital based linear accels.	Same as current law
Increase licensed bed capacity	New
Acquisition of equip. utilizing technology not previously used in state	Same as current law
	Intro. of additional function or service
	Termination of a health service
	Substantial reduction of bed capacity

### When CON is NOT Required

Proposed CON Law	Current CON Law
Facilities owned by federal government	Same as current law
Private practice offices	Same as current law
Facility operated by religious group relies on prayer	Same as current law
Residential care, nursing and rest homes	Same as current law
Assisted living agency	Same as current law
Home health agencies	Same as current law
Hospice	New
Outpatient rehabilitation facilities	New
Outpatient chronic dialysis services	Same as current law
Transplant services	New
Free clinics	Same as current law
School-based, community health and FQHCs	Same as current law
Mental health and substance abuse providers not affiliated with a hospital	New
Facility operated by educational institution exclusively for students, faculty and staff	Same as current law
Clinic operated by municipality, health district, etc.	Same as current law
Replacement of existing imaging equipment (MRI, CT, Pet/CT) that received a CON or CON Determination	Same as current law, process new
Acquisition of cone-beam dental imaging equipment	New
Termination of Inpt or Outpt services offered by a hospital excluding behavioral health and clinic care	New
Partial or total elimination of services provided by Outpatient Surgery Center	New
Termination of services that DPH requested relinquish of license	New
Relocation with certain conditions	New