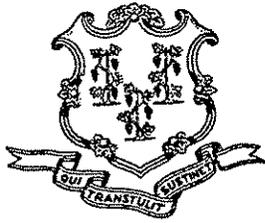


Section 1

Commissioner's letter

Any further correspondence



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

August 24, 2012

Pamela B. Booth, Committee Administrator
Legislative Regulation Review Committee
State Capitol, Room 011
Hartford, CT 06106

Re: Regulations Concerning: *Certificate of Need*

Dear Ms. Booth:

Enclosed for the Committee's consideration is the proposed amendment of the above-captioned regulation.

These regulations were **Rejected without Prejudice** by the Legislative Regulations Review Committee on February 28, 2012. The Department has attached a summary of the changes made in an effort to comply with the comments made by the Legislative Commissioner's Office, and we hope the proposed regulations are now satisfactory.

I am available to answer any questions you may have and can be reached at (860) 509-7280 or via e-mail at jill.kentfield@ct.gov. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jill Kentfield".

Jill Kentfield
Legislative Liaison

Phone: (860) 509-7280, Fax: (860) 509-7100
Telephone Device for the Deaf (860) 509-7191
410 Capitol Avenue - MS # 13COM
P.O. Box 340308 Hartford, CT 06134
An Equal Opportunity Employer

Summary of Comments
Office of Health Care Access Administrative Regulations
Sections 19a-613-1 through 19a-653-4 of the Regulations of Connecticut State Agencies

SUBJECT: Proposed regulations necessary to administer the Certificate of Need process under Public Act 10-179 §§ 87, 89-93.

COMMENTERS: Legislative Commissioners' Office

NUMBER	COMMENT	RESPONSE
	<p>Substantive Concerns</p> <p>On page 2, the meaning of sections 19a-630-2(a)(4) and 19a-630-2(a)(5), which are criteria for determining whether an entity is a “central service facility”, is unclear.</p>	<p>Section 19a-630-2(a)(4) and 19a-630-2(a)(5) have been revised for clarity</p> <p>Section 19a-630-2(a)(4) includes those facilities such as laboratory, pharmacy or x-ray where the facility is not necessarily run by a physician and services are being performed on and provided to a patient along with decisions being made for the patient by someone other than the patient’s physician. The entities resemble a hospital type of diagnostic service in that patients are referred to the center for particular tests rather than to specific physicians. Language is based upon case cite: <u>Comm. On Hospital and Health Care v. Lakoff</u>, 214 Conn. 321 (1990)—in that case, the defendants operated an imaging center that the court held “resembles a hospital type of diagnostic service in that patients are referred to the center for particular tests rather than to specific physicians.” Id. 333-34. The court concluded that the imaging center was a “central service facility.” Id. 334</p>
	<p>On page 5, the provisions of section 19a-639c-2 conflict with the provision s of sections 19a-639c(a) and 19a-638(c)(2) of the general statutes. Sections 19a-639c and 19a-638 do not provide an exception to the statutory requirements for a health care facility relocation within the same town.</p> <p>Technical Corrections</p>	<p>Yes, OHCA has no statutory authority.... historical policy...recommnd removal/deletion.</p>
1	<p>Throughout the regulations, “Office” should be “office” when referring to the physical location where the Office of Health Care Access conducts</p>	<p>Regulations have been revised to provide more consistency. Most of the time “Office” is referring to the</p>

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1	<p>Throughout the regulations, "Office" should be "office" when referring to the physical location where the Office of Health Care Access conducts</p>	<p>Regulations have been revised to provide more consistency. Most of the time "Office" is referring to the</p>

	business, for consistency with the definition of "Office" in section 19a-630-1(f).	division rather than the physical location and therefore only a few of the words were made lower case "office". References to "subsection or subdivision" have been removed for clarity.
2	Throughout the regulations, references to subsections and subdivisions of the general statutes should be deleted, for clarity in the event the statute sections that are referenced are subsequently amended and result in the change of subdivision or subsection designations.	Correction was made for consistency.
3	Throughout the regulations, "Certificate of Need" should be "certificate of need", for consistency.	Capitalization following the introductory language has been corrected.
4	Throughout the regulations, each word in the introductory language following each section number should be capitalized, and each word following a subsection or subdivision designator should be capitalized, for proper form and consistency.	Formatting has been revised accordingly
5	The formatting of the regulation should be corrected. Section 1 should indicate that Sections 19a-613-1 through 19a-613-4, inclusive, are being added, as these sections relate to the description of the Office and its' data collection policies. "Section 2" should be inserted prior to section 19a-630-1, and should indicate that Sections 19a-630-1 through 19a-653-4, inclusive, are being added. The following two sections should be renumbered accordingly. Additionally, as the subject matter of Sections 19a-630-1 through 19a-653-4, inclusive, are certificate of need, "Certificates of Need" should be included in the catch line following "(NEW) Section 19a-630-1"	Deputy commissioner reference has been corrected for clarity
6	On page 1, in the third line of section 19a-613-1, "a deputy commissioner" should be "a deputy commissioner of Public Health", for clarity and, in the fourth line, "19a-612" should be "19a-612d", for accuracy.	Revision has been made accordingly
7	On page 1, in the second line of section 19a-613-2, "Chapter 368z" should be "section 19a-630", for clarity and accuracy.	Correction changing "FOI" to "Freedom of Information" has been made
8	On page 1, in section 19a-613-4, "FOI" should be "Freedom of Information", for proper form.	Addition has been made for proper form.
9	On page 1, in section 19a-630-1, above the line starting with "(a)", introductory language should be added as follows: "As used in sections 19a-630-1 to 19a-653-4, inclusive, of the Regulations of Connecticut State Agencies:", for proper form.	Correction has been made accordingly
10	On page 1, in the first line of section 19a-630-1(a), "as used in subdivisions (8) (9) and (11) of subsection (a) of section 19a-638 of the general statutes" should be deleted, for clarity.	Revision has been made accordingly
11	On page 2, in section 19a-630-2(a)(2), "facility" should be "entity", for consistency and "the individual physician, physicians, practitioner or practitioners" should be "individual physicians or practitioners", for clarity.	Revision has been made accordingly
12	On page 2, in the second line of section 19a-630-2(b), after "(6)", "inclusive, of this section" should be inserted, for clarity.	Revision has been made accordingly
13	On page 2, in section 19a-630-2(b), "whether" should be inserted as the first	Revisions have been made (adding "whether") for

	word of subdivisions (1) through (8), for consistency with the introductory language.	consistency with introductory language
14	On page 2, in section 19a-630-2(b)(2), "no" should be changed to "any", for clarity.	Correction has been made
15	On page 2, in sections 19a-630-2(b)(5) and (6), respectively, "the individual physician, physicians, practitioner or practitioners who provided" and "the physician, physicians, practitioner or practitioners who provided", should be "the individual physicians or practitioners who provide", for clarity.	Revisions have been made accordingly
16	On page 2, in section 19a-630-2(b)(9), "officer" should be "commissioner, the commissioner's designee or the deputy commissioner", for consistency.	Revisions have been made accordingly
17	On page 2, in section 19a-638-1, in the first line, "increases its operating rooms" should be "increases the number of its operating rooms", for clarity, in the third line, "operating room" should be "operating rooms" for accuracy, and, in the fourth line, "operating room(s)" should be "operating room or operating rooms", for proper form.	Revisions have been made accordingly
18	On page 2, in the first and fifth lines of section 19a-638-2, "subsection (5) of section 19a-630-1" should be "section 19a-630-1(e) of the Regulations of Connecticut State Agencies", for accuracy and proper form.	Changes have been made accordingly
19	On page 2, in the last line of section 19a-638-3, a period should be inserted after "determination", "and" should be deleted, and "the" should be "The", for clarity. In the same line, "that docket number" should be "the corresponding docket number", for clarity.	Changes have been made accordingly
20	On page 2, in section 19a-638-4, after "determinations" in the first line, the phrase "as to whether a certificate of need is needed" should be inserted, for clarity.	Changes have been made accordingly
21	On page 2, in section 19a-639a-1, in the first line, the first "section" should be deleted, for clarity, in the second line, "application" should be inserted after "certificate of need", for clarity and consistency, and, in the fifth line, "in accordance with subsection (b) of section 19a-639a of the general statutes", should be deleted, for clarity.	Changes have been made accordingly
22	On page 2, in section 19a-639a-1, in subsection (1), "The Applicant" should be "A statement that the applicant", for clarity.	Changes have been made accordingly
23	On page 3, in the first line of section 19a-639a-3(a)(1), "Copies of the notices" should be "A copy of the notice", for consistency.	Changes have been made accordingly
24	On page 3, in the second line of section 19a-639a-3(a)(2), "applicable subdivision" should be "applicable requirement for a certificate of need", for clarity.	Changes have been made accordingly
25	On page 3, in section 19a-639a-3(a)(6), "Application forms for specific types of proposals are available and may be downloaded from the Office's website:" should be "the appropriate application form for the specific type of proposal, as follows, which are available and may be downloaded from the Office's website:", for clarity and consistency with the introductory	Changes have been made accordingly

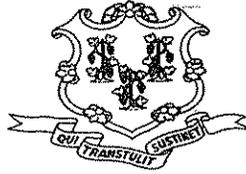
	language.		Changes have been made accordingly
26	On page 3, in section 19a-639a-3(a)(6)(A), "of the general statutes" should be inserted after "19a-630", for proper form.		Changes have been made accordingly
27	On page 3, in section 19a-639a-3(a)(6)(I), the subdivisions of subsection (a) of section 19a-638 of the general statutes should either be corrected to "(8), (9) or (11)", or the citation to the subdivisions should be eliminated, for accuracy of reference.		Changes have been made accordingly
28	On page 4, in section 19a-639a-4(b), "the applicant will" in the third line should be "the applicant shall", in accordance with the committee's directive regarding mandates.		Changes have been made accordingly
29	On page 4, in the introductory language of section 19a-639a-5(b), the colon should be deleted, for consistency.		Changes have been made accordingly
30	On page 4, in section 19a-639a-5(b)(2), "will be extended" in the second line should be "shall be extended", in accordance with the committee's directive regarding mandates, and "beyond" in the third line should be "after", for clarity and proper form.		Changes have been made accordingly
31	On page 4, on the sixth line of section 19a-639a-6, "subsection (g) of section 19a-639a of the general statutes" should be deleted, for clarity and accuracy.		Changes have been made accordingly
32	On page 5, in the last line of section 19a-639b-2, "voidance" should be "voiding", for proper form.		Changes have been made accordingly
33	On page 5, in section 19a-639c-1, subsection designations "(a)" and "(b)" should be inserted before each paragraph, for consistency and proper form.		Changes have been made accordingly
34	On page 5, in the second line of section 19a-639c-1, "a request for determination" should be "a letter requesting that the Office make a determination as to whether a certificate of need is required" and, in the third line, ", which shall be submitted with such letter," should be inserted after "facility", for accuracy and clarity.		Changes have been made accordingly
35	On page 5, in the sixth line of section 19a-639c-1, "relocation" should be "relocate", for proper form and "Applicant" should be "applicant", for consistency.		Changes have been made accordingly
36	On page 5, in the first and second lines of section 19a-639c-3, "and is either unable to demonstrate or chooses not to demonstrate" should be "and is unable to demonstrate", for consistency with section 19a-639c(a) of the general statutes.		Changes have been made accordingly
37	On page 5, in section 19a-639e-1(a)(3), in the second line, "will" should be "may", for consistency and proper form and "that intends to close" should be inserted after "facility", for clarity.		Changes have been made accordingly
38	On page 5, in section 19a-639e-1(b)(3), in the second line, "that intends to close" should be inserted after "facility", for clarity.		Changes have been made accordingly
39	On page 5, throughout section 19a-639e-2, "service(s)" should be "service or services", for proper form.		Changes have been made accordingly
40	On page 6, in the second line of section 19a-643-1a, "of the Regulations of		Changes have been made accordingly

	Connecticut State Agencies" should be inserted after "et seq.", for proper form.	
41	On page 6, in the second line of section 19a-653-1, "this section" should be "section 19a-653 of the general statutes", for clarity and proper form.	Changes have been made accordingly
42	On page 6, in the first line of section 19a-653-2, "of the general statutes" should be inserted after "19a-653", for consistency and proper form.	Changes have been made accordingly
43	On page 6, in the last sentence of section 19a-653-2, "Upon receipt of the request, the Office shall have ten days to notify the facility, institution or person of the date, time and place of the hearing" should be "The Office shall notify the health care facility or person of the date time and place of the hearing, not later than ten days after the Office's receipt of the request.", for clarity and consistency.	Changes have been made accordingly
44	On page 6, in the first line of section 19a-653-3(c), "time extension" should be "extension of time", for consistency, in the third line, "from" should be "beginning on" and "onward" should be deleted, for clarity and, in the fourth line, "at" should be "upon", for clarity.	Changes have been made accordingly
45	On page 6, in Section 2, "Section 2" should be "Sec. 2" and "Section 3" should be "Sec. 3", renumbered as noted in technical correction 5, above	Changes have been made accordingly
46	On page 6, in Section 2, "inclusive" should be inserted after "19a-643-110", for accuracy and clarity.	Changes have been made accordingly, Also added "exclusive of Sections 19a-643-21 and 19a-643-85(c)" – 19a-643-21 allows for the consolidation of the proceeding and 19a-643-85(c) allows for the opportunity of a Public Hearing
Other		All references to "general statutes" have been changed to "Connecticut General Statutes" for consistency and proper form
		Section 19a-643-21 and 19a-643-85(c) were added in to the regulation as section 19a-643-2a and 19a-643-3a. All obsolete references were revised.
		Section 19a-643-201 (b)(23) was added into the regulation as section 3 and revised to reflect the repeal of 19a-643-205
		Section 19a-639a-3 was revised for ease of readability to the consumer
		All technical corrections noted in report 2012-3A were made

The Connecticut General Assembly

Legislative Regulation Review Committee

Senator Andrew Roraback
Co-Chair



Representative Paul Davis
Co-Chair

March 5, 2012

Subject: Proposed Regulation 2012-003

Jewel Mullen, MD, Commissioner
Department of Public Health
410 Capitol Avenue/MS#13COM
Hartford, CT 06106

Dear Commissioner Mullen, MD:

Proposed Regulation

2012-003 Department of Public Health "CERTIFICATION OF NEED" The Regulations of Connecticut State Agencies is amended Sections 19a-613-1 through 19a-653-4, inclusive. Sections 19a-643-1 through 19a-643-110 and 19a-643-1 through 19a-643-205 are repealed.

The above captioned regulation was **Rejected Without Prejudice** by the Legislative Regulation Review Committee on 2/28/2012. The action was based on the recommendations of the Legislative Commissioners' Office. The necessary corrections are listed on the attached pages.

The regulation should be corrected and then resubmitted to the Legislative Regulation Review Committee with a summary of the changes listed by paragraph. If this is a mandated regulation then the regulation must be resubmitted to this office no later than the 1st Tuesday of the second month following the regulation's rejection.

Sincerely,

Handwritten signature of Pamela B. Booth in cursive.

Pamela B. Booth, Administrator
Legislative Regulation Review Committee

Enclosures (2)

The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
William A. Hamzy
Commissioner

Larry G. J. Shapiro
Director



Legislative Office Building
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Hartford, Connecticut
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Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: February 28, 2012

Regulation No:	2012-3
Agency:	Department of Public Health
Subject Matter:	Certificate of Need
Statutory Authority:	19a-2a, 19a-638 (copy attached)

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

1. Section 19a-638 of the general statutes requires the department to adopt final regulations concerning the department's policies and procedures relating to the issuance of a certificate of need by December 31, 2011. The department submitted proposed regulations to the committee on or about December 27, 2011. Final regulations will not have been "adopted" until the committee approves the proposed regulations, which will occur not earlier than the committee's meeting on February 28, 2012.

2. Section 4-168(a)(1)(C) of the general statutes requires that an agency's notice of intent to adopt regulations include a reference to the statutory authority for the proposed regulation. The department's notice of intent states that the proposed regulations are issued under the authority of section 20-275(b). Section 20-275(b) concerns licensing of electrologists. Section 19a-638 gives the department the authority to adopt regulations concerning the issuance of certificates of need.

3. The certification page indicates that this regulation is being amended when, in fact, it is a new regulation being adopted.

Substantive Concerns:

1. On page 2, the meaning of sections 19a-630-2(a)(4) and 19a-630-2(a)(5), which are criteria for determining whether an entity is a "central service facility", is unclear.

2. On page 5, the provisions of section 19a-639c-2 conflict with the provisions of sections 19a-639c(a) and 19a-638(c)(2) of the general statutes. Sections 19a-639c and 19a-638 do not provide an exception to the statutory requirements for a health care facility relocating within the same town.

Technical Corrections:

1. Throughout the regulations, "Office" should be "office" when referring to the physical location where the Office of Health Care Access conducts business, for consistency with the definition of "Office" in section 19a-630-1(f).

2. Throughout the regulations, references to subsections and subdivisions of the general statutes should be deleted, for clarity in the event the statute sections that are referenced are subsequently amended and result in the change of subdivision or subsection designations.

3. Throughout the regulations, "Certificate of Need" should be "certificate of need", for consistency.

4. Throughout the regulations, each word in the introductory language following each section number should be capitalized, and each word following a subsection or subdivision designator should be capitalized, for proper form and consistency.

5. The formatting of the regulation should be corrected. Section 1 should indicate that Sections 19a-613-1 through 19a-613-4, inclusive, are being added, as these sections relate to the description of the Office and its' data collection policies. "Section 2" should be inserted prior to section 19a-630-1, and should indicate that Sections 19a-630-1 through 19a-653-4, inclusive, are being added. The following two sections should be renumbered accordingly. Additionally, as the subject matter of Sections 19a-630-1 through 19a-653-4, inclusive, are certificates of need, "Certificates of Need" should be included in the catch line following "(NEW) Section 19a-630-1"

6. On page 1, in the third line of section 19a-613-1, "a deputy commissioner" should be "a deputy commissioner of Public Health", for clarity and, in the fourth line, "19a-612" should be "19a-612d", for accuracy.
7. On page 1, in the second line of section 19a-613-2, "Chapter 368z" should be "section 19a-630", for clarity and accuracy.
8. On page 1, in section 19a-613-4, "FOI" should be "Freedom of Information", for proper form.
9. On page 1, in section 19a-630-1, above the line starting with "(a)", introductory language should be added as follows: "As used in sections 19a-630-1 to 19a-653-4, inclusive, of the Regulations of Connecticut State Agencies:", for proper form.
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16. On page 2, in section 19a-630-2(b)(9), "officer" should be "commissioner, the commissioner's designee or the deputy commissioner", for consistency.
17. On page 2, in section 19a-638-1, in the first line, "increases its operating rooms" should be "increases the number of its operating rooms", for clarity, in the third line, "operating room" should be "operating rooms" for accuracy, and, in the fourth line, "operating room(s)" should be "operating room or operating rooms", for proper form.
18. On page 2, in the first and fifth lines of section 19a-638-2, "subsection (5) of section 19a-630-1" should be "section 19a-630-1(e) of the Regulations of Connecticut State Agencies", for accuracy and proper form.

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20. On page 2, in section 19a-638-4, after "determinations" in the first line, the phrase "as to whether a certificate of need is needed" should be inserted, for clarity.
21. On page 2, in section 19a-639a-1, in the first line, the first "section" should be deleted, for clarity, in the second line, "application" should be inserted after "certificate of need", for clarity and consistency, and, in the fifth line, "in accordance with subsection (b) of section 19a-639a of the general statutes", should be deleted, for clarity.
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23. On page 3, in the first line of section 19a-639a-3(a)(1), "Copies of the notices" should be "A copy of the notice", for consistency.
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26. On page 3, in section 19a-639a-3(a)(6)(A), "of the general statutes" should be inserted after "19a-630", for proper form.
27. On page 3, in section 19a-639a-3(a)(6)(I), the subdivisions of subsection (a) of section 19a-638 of the general statutes should either be corrected to "(8), (9) or (11)", or the citation to the subdivisions should be eliminated, for accuracy of reference.
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36. On page 5, in the first and second lines of section 19a-639c-3, "and is either unable to demonstrate or chooses not to demonstrate" should be "and is unable to demonstrate", for consistency with section 19a-639c(a) of the general statutes.
37. On page 5, in section 19a-639e-1(a)(3), in the second line, "will" should be "may", for consistency and proper form and "that intends to close" should be inserted after "facility", for clarity.
38. On page 5, in section 19a-639e-1(b)(3), in the second line, "that intends to close" should be inserted after "facility", for clarity.
39. On page 5, throughout section 19a-639e-2, "service(s)" should be "service or services", for proper form.
40. On page 6, in the second line of section 19a-643-1a, "of the Regulations of Connecticut State Agencies" should be inserted after "et seq.", for proper form.
41. On page 6, in the second line of section 19a-653-1, "this section" should be "section 19a-653 of the general statutes", for clarity and proper form.
42. On page 6, in the first line of section 19a-653-2, "of the general statutes" should be inserted after "19a-653", for consistency and proper form.
43. On page 6, in the last sentence of section 19a-653-2, "Upon receipt of the request, the Office shall have ten days to notify the facility, institution or person of the date, time and place of the hearing" should be "The Office shall notify the health care facility or person of the date time and place of the hearing, not later than ten days after the Office's receipt of the request.", for clarity and consistency.
44. On page 6, in the first line of section 19a-653-3(c), "time extension" should be "extension of time", for consistency, in the third line, "from" should be "beginning on" and "onward" should be deleted, for clarity and, in the fourth line, "at" should be "upon", for clarity.

45. On page 6, in Section 2, "Section 2" should be "Sec. 2" and "Section 3" should be "Sec. 3", renumbered as noted in technical correction 5, above.

46. On page 6, in Section 2, "inclusive" should be inserted after "19a-643-110", for accuracy and clarity.

Recommendation:

<p>Approval in whole with technical corrections with deletions with substitute pages Disapproval in whole or in part <input checked="" type="checkbox"/> Rejection without prejudice</p>
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Reviewed by: Heather Bannister / Anne Brennan Carroll

Date: February 15, 2012

Sec. 19a-2a. Powers and duties. The Commissioner of Public Health shall employ the most efficient and practical means for the prevention and suppression of disease and shall administer all laws under the jurisdiction of the Department of Public Health and the Public Health Code. The commissioner shall have responsibility for the overall operation and administration of the Department of Public Health. The commissioner shall have the power and duty to: (1) Administer, coordinate and direct the operation of the department; (2) adopt and enforce regulations, in accordance with chapter 54, as are necessary to carry out the purposes of the department as established by statute; (3) establish rules for the internal operation and administration of the department; (4) establish and develop programs and administer services to achieve the purposes of the department as established by statute; (5) contract for facilities, services and programs to implement the purposes of the department as established by statute; (6) designate a deputy commissioner or other employee of the department to sign any license, certificate or permit issued by said department; (7) conduct a hearing, issue subpoenas, administer oaths, compel testimony and render a final decision in any case when a hearing is required or authorized under the provisions of any statute dealing with the Department of Public Health; (8) with the health authorities of this and other states, secure information and data concerning the prevention and control of epidemics and conditions affecting or endangering the public health, and compile such information and statistics and shall disseminate among health authorities and the people of the state such information as may be of value to them; (9) annually issue a list of reportable diseases, emergency illnesses and health conditions and a list of reportable laboratory findings and amend such lists as the commissioner deems necessary and distribute such lists as well as any necessary forms to each licensed physician and clinical laboratory in this state. The commissioner shall prepare printed forms for reports and returns, with such instructions as may be necessary, for the use of directors of health, boards of health and registrars of vital statistics; (10) specify uniform methods of keeping statistical information by public and private agencies, organizations and individuals, including a client identifier system, and collect and make available relevant statistical information, including the number of persons treated, frequency of admission and readmission, and frequency and duration of treatment. The client identifier system shall be subject to the confidentiality requirements set forth in section 17a-688 and regulations adopted thereunder. The commissioner may designate any person to perform any of the duties listed in subdivision (7) of this section. The commissioner shall have authority over

directors of health and may, for cause, remove any such director; but any person claiming to be aggrieved by such removal may appeal to the Superior Court which may affirm or reverse the action of the commissioner as the public interest requires. The commissioner shall assist and advise local directors of health in the performance of their duties, and may require the enforcement of any law, regulation or ordinance relating to public health. When requested by local directors of health, the commissioner shall consult with them and investigate and advise concerning any condition affecting public health within their jurisdiction. The commissioner shall investigate nuisances and conditions affecting, or that he or she has reason to suspect may affect, the security of life and health in any locality and, for that purpose, the commissioner, or any person authorized by the commissioner, may enter and examine any ground, vehicle, apartment, building or place, and any person designated by the commissioner shall have the authority conferred by law upon constables. Whenever the commissioner determines that any provision of the general statutes or regulation of the Public Health Code is not being enforced effectively by a local health department, he or she shall forthwith take such measures, including the performance of any act required of the local health department, to ensure enforcement of such statute or regulation and shall inform the local health department of such measures. In September of each year the commissioner shall certify to the Secretary of the Office of Policy and Management the population of each municipality. The commissioner may solicit and accept for use any gift of money or property made by will or otherwise, and any grant of or contract for money, services or property from the federal government, the state or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant or contract. The commissioner may establish state-wide and regional advisory councils.

Sec. 19a-638. (Formerly Sec. 19a-154). Certificate of need. When required and not required. Request for office determination. Policies, procedures and regulations. (a) A certificate of need issued by the office shall be required for:

- (1) The establishment of a new health care facility;
- (2) A transfer of ownership of a health care facility;
- (3) The establishment of a free-standing emergency department;
- (4) The termination of inpatient or outpatient services offered by a hospital, including, but not limited to, the termination by a short-term acute care general hospital or children's hospital of inpatient and outpatient mental health and substance abuse services;
- (5) The establishment of an outpatient surgical facility, as defined in section 19a-493b, or as established by a short-term acute care general hospital;
- (6) The termination of surgical services by an outpatient surgical facility, as defined in section 19a-493b, or a facility that provides outpatient surgical services as part of the outpatient surgery department of a short-term acute care general hospital, provided termination of outpatient surgical services due to (A) insufficient patient volume, or (B) the termination of any subspecialty surgical service, shall not require certificate of need approval;
- (7) The termination of an emergency department by a short-term acute care general hospital;
- (8) The establishment of cardiac services, including inpatient and outpatient cardiac catheterization, interventional cardiology and cardiovascular surgery;
- (9) The acquisition of computed tomography scanners, magnetic resonance imaging scanners, positron emission tomography scanners or positron emission tomography-computed tomography scanners, by any person, physician, provider, short-term acute care general hospital or children's hospital, except as provided for in subdivision (22) of subsection (b) of this section;
- (10) The acquisition of nonhospital based linear accelerators;
- (11) An increase in the licensed bed capacity of a health care facility;

(12) The acquisition of equipment utilizing technology that has not previously been utilized in the state;

(13) An increase of two or more operating rooms within any three-year period, commencing on and after October 1, 2010, by an outpatient surgical facility, as defined in section 19a-493b, or by a short-term acute care general hospital; and

(14) The termination of inpatient or outpatient services offered by a hospital or other facility or institution operated by the state that provides services that are eligible for reimbursement under Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended.

(b) A certificate of need shall not be required for:

(1) Health care facilities owned and operated by the federal government;

(2) The establishment of offices by a licensed private practitioner, whether for individual or group practice, except when a certificate of need is required in accordance with the requirements of section 19a-493b or subdivision (9) or (10) of subsection (a) of this section;

(3) A health care facility operated by a religious group that exclusively relies upon spiritual means through prayer for healing;

(4) Residential care homes, nursing homes and rest homes, as defined in subsection (c) of section 19a-490;

(5) An assisted living services agency, as defined in section 19a-490;

(6) Home health agencies, as defined in section 19a-490;

(7) Hospice services, as described in section 19a-122b;

(8) Outpatient rehabilitation facilities;

(9) Outpatient chronic dialysis services;

(10) Transplant services;

(11) Free clinics, as defined in section 19a-630;

(12) School-based health centers, community health centers, as defined in

section 19a-490a, not-for-profit outpatient clinics licensed in accordance with the provisions of chapter 368v and federally qualified health centers;

(13) A program licensed or funded by the Department of Children and Families, provided such program is not a psychiatric residential treatment facility;

(14) Any nonprofit facility, institution or provider that has a contract with, or is certified or licensed to provide a service for, a state agency or department for a service that would otherwise require a certificate of need. The provisions of this subdivision shall not apply to a short-term acute care general hospital or children's hospital, or a hospital or other facility or institution operated by the state that provides services that are eligible for reimbursement under Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended;

(15) A health care facility operated by a nonprofit educational institution exclusively for students, faculty and staff of such institution and their dependents;

(16) An outpatient clinic or program operated exclusively by or contracted to be operated exclusively by a municipality, municipal agency, municipal board of education or a health district, as described in section 19a-241;

(17) A residential facility for persons with intellectual disability licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for the mentally retarded;

(18) Replacement of existing imaging equipment if such equipment was acquired through certificate of need approval or a certificate of need determination, provided a health care facility, provider, physician or person notifies the office of the date on which the equipment is replaced and the disposition of the replaced equipment;

(19) Acquisition of cone-beam dental imaging equipment that is to be used exclusively by a dentist licensed pursuant to chapter 379;

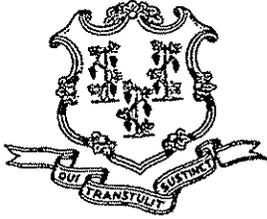
(20) The partial or total elimination of services provided by an outpatient surgical facility, as defined in section 19a-493b, except as provided in subdivision (6) of subsection (a) of this section and section 19a-639e;

(21) The termination of services for which the Department of Public Health has requested the facility to relinquish its license; or

(22) Acquisition of any equipment by any person that is to be used exclusively for scientific research that is not conducted on humans.

(c) (1) Any person, health care facility or institution that is unsure whether a certificate of need is required under this section, or (2) any health care facility that proposes to relocate pursuant to section 19a-639c shall send a letter to the office that describes the project and requests that the office make a determination as to whether a certificate of need is required. In the case of a relocation of a health care facility, the letter shall include information described in section 19a-639c. A person, health care facility or institution making such request shall provide the office with any information the office requests as part of its determination process.

(d) The Commissioner of Public Health may implement policies and procedures necessary to administer the provisions of this section while in the process of adopting such policies and procedures as regulation, provided the commissioner holds a public hearing prior to implementing the policies and procedures and prints notice of intent to adopt regulations in the Connecticut Law Journal not later than twenty days after the date of implementation. Policies and procedures implemented pursuant to this section shall be valid until the time final regulations are adopted. Final regulations shall be adopted by December 31, 2011.



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH
Office of Government Relations

December 27, 2011

Pamela B. Booth, Committee Administrator
Legislative Regulation Review Committee
State Capitol
Room 011
Hartford, CT 06106

Regulations Concerning: *Certificate of Need*

Dear Ms. Booth:

Enclosed for the Committee's consideration is the proposed above-captioned regulation. It is authorized by section 4-168 of the Connecticut General Statutes.

Statement of Purpose: (A) The purpose of the regulations is to implement the new Certificate of Need ("CON") process under Public Act 10-179 §§ 83-93. (B) The regulations define certain terms used in Public Act 10-179, and establish policies regarding the increase in operating rooms, replacement of imaging equipment, determinations, relocations and terminations. The regulations also establish procedures for CON applications, including public notice, the contents of the application, the review period and public hearings regarding CON applications. Finally, the regulations establish the process for assessment of civil penalties. (C) The proposed regulations repeal §§ 19a-643-1 through 19a-643-110 and 19a-643-205. Sections 19a-643-1 through 19a-643-110 are the existing administrative regulations and rules of practice and the majority of them no longer apply under Public Act 10-179. Section 19a-643-205 concerns the filing of budgets by hospitals, which is no longer required under Public Act 10-179.

I am available to answer any questions you may have. Thank you for your consideration.

Sincerely,

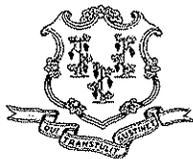
Jill Kentfield, Legislative Liaison
Office of Government Relations



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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner

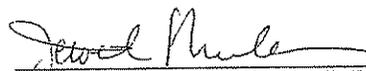
Dannel Malloy
Governor

I, Jewel Mullen, M.D., M.P.H., M.P.A., Commissioner of the Department of Public Health, an Agency of the State of Connecticut, hereby certify that:

- (1) On December 20, 2010, the Agency gave notice by mail to each joint standing committee of the general assembly having cognizance of the subject matter of the proposed regulations.
- (2) On December 28, 2010, the Agency gave notice in the Connecticut Law Journal of its intention to amend regulations concerning *Certificates of Need*. A true copy of the notice is attached as Exhibit A.
- (3) The Agency gave notice by mail to those persons who requested advance notice of regulation-making proceedings.
- (4) The Agency provided a copy of the proposed regulations to those persons requesting it.
- (5) Following publication of the notice in the Connecticut Law Journal, the Agency prepared a fiscal note, including an estimate of the cost or of the revenue impact on the state or any municipality of the state. A true copy of the fiscal note is attached as Exhibit B.
- (6) All interested persons were given until 4:30 p.m., January 27, 2011 to submit data, views or arguments concerning the proposed regulations and to inspect and copy the fiscal note referred to in paragraph 5.
- (7) The Agency has considered fully all written and oral submissions regarding the proposed regulations and determined that no revision of the fiscal note is needed.

Date

11/18/11


Jewel Mullen, M.D., M.P.H., M.P.A.
Commissioner

