



Testimony of the Radiological Society of Connecticut (RSC)  
Senate Bill 361  
Public Health Committee  
February 27, 2013

**SB 361, An Act Concerning Certificate Of Need Requirements For Medical Devices, Equipment And New Technology**

My name is Dr. Alan Kaye. I am a radiologist, and chairman of the legislative committee of the Radiological Society of Connecticut (RSC). The RSC represents over 400 physicians in the specialty of radiology and includes medical physicists. We appreciate the opportunity to testify against SB 361. While we certainly recognize that Certificate of Need (CON) laws have a broader scope than medical imaging, that is where we are the experts, and I will restrict my comments to that aspect of the bill.

Our state is one of approximately 36 that have CON laws, 20 of which regulate the deployment of medical imaging equipment. CON's are granted based on objective analysis of community need, rather than the economic self-interest of any single provider. The basic assumption underlying CON regulation is that excess capacity (in the form of facility overbuilding and overbuying of expensive equipment) directly results in health care price inflation. This assumption is well-supported by extensive research in the health policy literature.

In this era of economic uncertainty and concern about health care spending, we need to make sure that only appropriate testing be done. Opponents of CON laws say that they impose artificial, arbitrary influences on the "health care marketplace." But health care is in no way a "typical" economic product whose consumption depends upon the same "market forces" as apply to other products. As a radiologist, the services I render to my patients like an MRI or CAT scan, are "ordered" by other physicians. Patients do not "shop" for these services the way they do for other commodities. This makes what I do relatively insensitive to the usual market effects, like price or quality, and that is why we need a regulatory approach based on public interest.

For over 30 years, the CON laws have marshaled the deployment of imaging services in Connecticut in a transparent, effective way that has served our citizens well in the following categories:

**1. Control of costs:**

When money is spent on one project, it limits what can be spent on others. By requiring applicants for CON's to demonstrate likely financial viability of the acquisition of expensive medical equipment, the process limits wasteful duplication of limited resources in our state. But reduction in duplication is not the only way that CON's save money. "Induced demand" is

a well-know principle in health economics whereby the utilization of medical services is related to the capacity available, even when that capacity is excessive. Put simply, "Build it and they will come." as in the movie "Field of Dreams." Thus, it behooves responsible leaders to do what we can to refrain from over-purchasing expensive equipment. Some of this induced demand comes from an inherent conflict of interest when physicians are in a position to order tests and collect machine fees for doing them – also known as self-referral. Over the past 20 years, there have been many research studies showing that physicians who own imaging equipment order tests at rates up to 7 times greater than physicians who do not own the equipment. The most recent of these is a landmark report by the Government Accountability Office (GAO) entitled, *Higher Use of Advanced Imaging Services by Providers Who Self-Refer Costing Medicare Millions*, which found physician self-referrals are driving up utilization of particular services and exposing patients to unnecessary health risks while increasing costs to patients and Medicare. The report elicited much outrage, including the following response by Senator Baucus, the Chairman of the Senate Finance Committee: **"The results of this report are eye opening. Self-referrals offer an incentive for providers to order more tests than they would otherwise. It's clear they are driving up costs. Providers' bottom lines shouldn't be getting in the way of their patients' care and best interests."**

CON laws in Connecticut have been instrumental in limiting self-referral, and we suspect that is a major reason why we have SB 361 before us and why some of the other constituencies are supporting it.

Lastly with respect to cost control, there is good evidence that our CON laws have been effective in holding down costs. I will submit with my written testimony a copy of an annotated map of the U.S. showing the relative utilization of imaging services in the 50 states. It shows that Connecticut is in the third highest quartile of imaging utilization compared with our regional neighbors which are in the first and second quartiles. These represent substantial savings.

## **2. Assurances of quality and patient safety:**

Every CON application must attest to a rigorous quality assurance plan, present the credentials of the supervising physicians and those who will be interpreting the examinations performed by the acquired equipment and assure DPH that the applicants are qualified to oversee the quality and safety of the facility. Radiation is an increasing public concern as a possible harm of imaging. Oversight by trained professionals with specific training and documented competency in radiation safety is essential. Particularly with respect to the issues above of induced demand and self-referral, it is in the best interests of our citizens that this important oversight mechanism be in place.

## **3. Access**

Without CON oversight, there would undoubtedly be many more facilities in suburban locations, not as accessible to public transportation and the people who use it. Put another way, they would be in places where economics would trump "need." This type of "cream-skimming" disadvantages radiologists and hospitals who provide to all patients regardless of their resources or ability to pay. Without a broad range of patients to service, we will not be able to pay for our scanners and will be less able to keep the equipment current to provide the best care that ALL of our patients deserve.

So, if CON laws work so well, why are there people who oppose them. Aside from economic self-interest, you will hear about the convenience factor for patients and a presumed negative effect on attractiveness of Connecticut for physician recruitment of certain specialties. Let me address these here:

1. Convenience: To be sure, it is certainly easier for a patient to have a test "right down the hall" in the ordering doctor's office on the same day as the original appointment. Aside from the conflict-of-interest issues above and the added costs to the system that it engenders, this "convenience" is not the way the process works. The types of tests done on the advanced imaging tests that CON laws regulate are subject to delays, some of which are good for patient care, some that are imposed by insurance companies, and one that makes good economic sense. First, many of the CT, MRI and PET scans require a delay for preparation of the patient, such as pre-medication, fasting, hydration, etc. The second required delay is imposed by virtually all commercial payers in our state and many managed Medicare and Medicaid administrators in our state. They require pre-authorization prior to elective advanced imaging tests, which involve a phone call or a computerized entry of data and sometimes discussions with insurance company representatives about the indications for the test. Thirdly, the fact that the test is "convenient" suggests that these expensive scanners and the highly trained staff that operates them are sitting idly by waiting for a patient to show up that needs the tests they do. How is that economically advisable? Is it any wonder that this type of in-office imaging drives up costs? Thus, even if this "convenience" were permitted by the processes (which it is not), is this the type of convenience we can afford? In fact, there has been a study showing that, despite the convenience factor of in-office imaging, same-day testing with nuclear stress tests is a rare occurrence.
2. Physician manpower in Connecticut: Despite the claims of certain specialists that Connecticut is unattractive to physicians, the data belie the assertions. The 2012 U.S. Census Bureau Statistical Abstract showed that in 2007, Connecticut had 356 physicians per 100,000 population. This is 4<sup>th</sup> in the U.S. This is in line with our neighboring states of MA, RI, and NY, which are ranked numbers 1, 5, and 3, respectively. With respect to certain specialties, the data are not as available, but according to the Center for Workforce Studies of the Association of American Medical Colleges 2011 report on physician shortages by state and by specialty, there is no mention of physician shortage in either Connecticut or in any of the specialties that have historically made the case to eliminate CON's for imaging equipment: orthopedic, ENT, and urological surgeons. Using Google's search engine, the only one of these specialties that I could find with a report on distribution of physicians of that specialty by state was for orthopedists from 2004. The American Academy of Orthopedics reported that there were 8.22 orthopedists per 100,000 population in Connecticut, 32% higher than the national average of 6.21. Interestingly, Maryland, a state where there is a law specifically prohibiting non-radiologists from owning their own advanced imaging equipment, has 8.08 orthopedists per 100,000, 30% more than the national average. The evidence does not support the allegation that CON's make Connecticut unattractive for physicians.

In fact, the one Connecticut urology practice that has a CT scanner (the largest in Bridgeport area) has decided to shut it down because of lack of need.

In conclusion, the Radiological Society of Connecticut has a long history of respect for and support of the CON process in our state. Over many years, we have worked with legislators, the Office of Health Care Access, and other agencies to keep the laws modern, relevant, and effective. More now than ever before, we need to be fiscally and ethically responsible, and not abandon the very valuable contributions that the CON law has made to the implementation of medical imaging in Connecticut. We strongly oppose SB 361.

Thank you for the opportunity to testify on this important matter.

Respectfully submitted,

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Radiological Society of Connecticut