



OLR RESEARCH REPORT

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2005-2006 LEGISLATIVE CHANGES TO THE CERTIFICATE OF NEED PROCESS

By: Nicole Dube, Principal Analyst

This report provides a brief summary of 2005 and 2006 legislative changes to the Office of Health Care Access' (OHCA) certificate of need process ([CGS §§ 19a-638 to 643](#)).

SUMMARY

Certificate of need (CON) is a regulatory process administered by OHCA (currently a division of the Department of Public Health (DPH)) for reviewing and approving health care facilities' proposals to (1) establish a new facility or provide new services, (2) change ownership, (3) purchase or acquire certain equipment, or (4) terminate certain services. Generally, a CON is a formal OHCA statement that a health care facility, medical equipment purchase, or service change is necessary. (See OLR Report [2013-R-266](#) for a description of the CON process).

In 2005 and 2006, the legislature made several changes to the CON process. For example, 2005 legislation (1) required a CON review for the acquisition of certain medical imaging equipment (e.g., MRI, CT, and PET scanners) regardless of its cost, (2) required OHCA to hold a public hearing on all CON applications involving equipment using technology that was new or being introduced into the state, and (3) exempted mobile field hospitals from the CON law.

Among other things, 2006 legislation raised, from \$1 million to \$3 million, the capital and major medical equipment expenditure threshold that triggers a CON review. It also modified (1) the CON application process and (2) waivers for terminating or relocating certain services and replacing medical equipment.

Please note, significant legislative changes to the CON process were enacted in 2009 and 2010 and are not addressed in this report. Thus, most of the changes described below were modified or are no longer in effect.

2005 LEGISLATIVE CHANGES

PA 05-75

The act made two changes to the CON process: (1) it expanded the definition of “affiliate” for purposes of CON review and (2) established a deadline by which a person seeking a public hearing on a CON had to make the request to OHCA.

Affiliate Definition. The act redefined “affiliate” more broadly to include not just a licensed provider of direct patient care services, but also any unlicensed corporate holding company, affiliate, or subsidiary of that provider. Specifically, it defined “affiliate” as a person, entity, or organization controlling, controlled by, or under common control with another person, entity, or organization (The definition was changed in 2009 to exclude medical foundations).

Public Hearings. The law requires OHCA to hold a public hearing on a completed CON application if three or more individuals or one person representing an entity of five or more people request it. The act required a person requesting a hearing to do so within 21 calendar days from the date OHCA deemed the CON application acceptable (the deadline was changed to 30 days in 2010).

PA 05-93

The act generally retained the \$400,000 capital expenditure threshold for CON review of major medical equipment acquisition, but subjected the purchase, lease, or donation of specific types of medical equipment to CON review regardless of cost. This equipment included CT scanners, PET scanners, PET/CT scanners, MRI scanners, cineangiography equipment, linear accelerators, or similar equipment with technology that is new or being introduced into the state. The act provided exemptions and waivers from CON for the above types of equipment

under certain conditions. For example, it exempted from CON equipment purchased or leased for under \$400,000 before July 1, 2005 (these thresholds were eliminated in 2010).

The act also required OHCA to hold a public hearing on CON applications involving equipment using technology that is new or being introduced into the state, including scanning equipment, cineangiography equipment, linear accelerators, or other similar equipment regardless of the capital costs (this requirement was eliminated in 2010).

PA 05-280

The act exempted critical access hospitals (now called “mobile field hospitals”) from the CON law. It also exempted any additional critical access hospital beds and related equipment obtained to enhance the state’s bed surge capacity or provide isolation care under the state’s health preparedness planning activities (this provision was eliminated in 2010).

PA 05-151

By law, OHCA can reject a CON application if the health care facility seeking the CON fails to submit required information or submits incomplete information. The act changed the dates by which the entity had to supply the information from 10 business days after receiving OHCA’s notice of the defect to 15 days after OHCA mailed it. It applied the provision to information involving CONs for the conversion of nonprofit hospitals to for-profit entities. It also made clear that the provision applied to health care facilities or institutions (and, consequently, their affiliates). ([PA 10-179](#) eliminated this provision, replacing it with new requirements.)

The act required entities exempt from the CON process (e.g., certain municipal outpatient clinics, outpatient rehabilitation services, and clinical laboratories, among others) to apply every two years, instead of every year, to renew their status ([PA 10-179](#) eliminated this provision).

The act also made changes to the laws concerning civil penalties for health care facilities and institutions that fail to submit data OHCA requires on major medical and imaging equipment they own, operate, or plan to acquire. It extended the \$1,000 per day penalty to a wider range of health care entities and broadened the range of equipment they had to report data on ([PA 09-232](#) and [PA 10-179](#) changed this provision).

PA 05-168

The act required OHCA, using its discretion, to exempt from CON review any health care facility or institution proposing to purchase or operate an electronic medical record system after September 30, 2005 ([PA 10-179](#) eliminated this provision).

2006 LEGISLATIVE CHANGES

PA 06-28

The act raised to \$3 million the capital and major medical equipment expenditure threshold that triggers a CON review. The previous threshold was \$1 million for capital costs and \$400,000 for major medical equipment. By law, the acquisition of imaging equipment is subject to CON review regardless of cost unless it was purchased or leased for under \$400,000 before July 1, 2005 (see [PA 05-93](#) above). But, the act limited this exemption by specifying the equipment had to be in operation before July 1, 2006 ([PA 10-179](#) replaced this provision).

By law, OHCA can waive CON requirements for facilities and providers that want to replace major medical or imaging equipment for which they already obtained a CON if the replacement equipment costs, or is valued at, less than a specified amount. The act raised this threshold from \$2 million to \$3 million ([PA 10-179](#) eliminated the threshold).

The law subjects facilities and providers that own, operate, or seek to acquire major medical equipment costing over a threshold amount to civil penalties of up to \$1,000 for each day they fail to report required information to OHCA. The act raised the threshold from \$400,000 to \$3 million ([PA 10-179](#) changed this provision; among other things, the threshold was eliminated).

PA 06-64

The act (1) modified the letter of intent phase on CON in emergency situations, (2) allowed OHCA to waive CON for specific termination or relocation of certain services, and (3) modified the existing CON waiver for replacement equipment.

Letter of Intent. Previously, the law allowed OHCA to waive the letter of intent phase of a CON in an emergency situation so that a health care facility could comply with federal, state, or local health, fire, building, or life safety code requirements. The act expanded the waiver option to emergency situations where the facility had to maintain continued access

to a health care service it provides. These waivers did not exempt an applicant from a CON review, the public hearing, or any other aspect of the CON process ([PA 10-179](#) eliminated this provision).

Termination or Relocation of Services. Previously, the law allowed OHCA to exempt any nonprofit facility, institution, or provider from CON requirements, other than terminating a service or facility, if certain conditions were met. The act limited the exemption only to nonprofits under contract with the state. It also allowed OHCA to grant a CON exemption, under certain conditions, for a nonprofit wanting to terminate a service or facility if the nonprofit was under contract with the state ([PA 10-179](#) revised this provision; nonprofits under state contract are now exempt from CON).

If a nonprofit wanted to relocate its services, the act required OHCA to determine that the needs of the area previously served would continue to be met in a better or satisfactory manner before exempting the nonprofit from CON ([PA 10-179](#) eliminated this provision).

It also exempted from CON requirements Department of Mental Health and Addiction Services-funded alcohol and drug treatment programs seeking to terminate or relocate services ([PA 10-179](#) eliminated this provision; outpatient rehabilitation facilities are currently exempt from CON).

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