



Connecticut Department of Public Health

Testimony Presented Before the Public Health Committee

March 2, 2016

**Commissioner Raul Pino, M.D., M.P.H.
860-509-7101**

**House Bill #5451 - An Act Concerning The Department Of Public Health's Recommendations
For Various Revisions To The Office Of Health Care Access Statutes**

The Department of Public Health (DPH) supports House Bill #5451 and provides the following information regarding the Department's bill:

Sections 1 and 2 will revise the current payment process for consultants hired by the Office of Health Care Access (OHCA) to assist in the analysis of certain certificate of need applications or to conduct a cost and market impact review where the certificate of need application involves the transfer of ownership of a hospital. Under the current process, OHCA contracts with the consultant for services and the consultant submits its bills directly to the purchaser of the hospital for payment. The purchaser must remit payment directly to the consultant within thirty days. OHCA has experienced problems with this process in the recent past. Specifically, several bills submitted by a consultant went unpaid by the purchaser thereby forcing OHCA to contact the purchaser to demand payment for the consultant. Under the current process, the consultant is unable to demand payment from the purchaser directly since there is no privity of contract between the consultant and the purchaser. The proposed language will require the purchaser to establish and initially fund an escrow account for purposes of paying the consultant. The escrow account is managed by a third party escrow agent, thereby extinguishing any connection between the purchaser and the consultant. Additionally, the initial funding of the escrow account alleviates any concerns about nonpayment.

Sections 3 and 4 seek to clarify and simplify certain changes made by Public Act 15-146. Specifically, section 39 of Public Act 15-146 added an exception to subsection (a) of section 19a-638 for the replacement of imaging equipment. However, exceptions to certificate of need requirements are contained in subsection (b) of section 19a-638. Therefore, section 3 proposes the removal of the exception language from subsection (a) of section 19a-638 and section 4 adds the exception language to subsection (b) of section 19a-638, where the other exceptions are located. The proposed change also clarifies that a piece of imaging equipment may be replaced with any other type of imaging equipment, as enumerated in subdivision (10) of subsection (a) of section 19a-639, without certificate of need review. As currently worded, it is

Phone: (860) 509-7269

410 Capitol Avenue - MS # 13GRE, P.O. Box 340308 Hartford, CT 06134

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unclear if a piece of imaging equipment can be replaced with any other type of imaging equipment or if it must be a replacement in kind.

Section 5 will eliminate an expired date by which OHCA is required to adopt final regulations. OHCA is in the process of adopting regulations and expects to be completed by the end of 2016.

Section 6 proposes a change to specify that the notice to patients regarding the imposition of facility fees should be worded in a general manner and not specify any individual patient. A copy of such notice must be filed with OHCA to be posted on OHCA's website. This will avoid duplicate notices being filed with OHCA as well as eliminate the possibility of patient specific information being published.

Section 7 seeks to clarify that the filing of annual facility fee information by hospitals as required by section 19a-508c (l)(1) follow the definition of section 19a-646(a)(3) rather than section 19a-490. The latter definition includes non-acute care hospitals, such as Chronic Disease Hospitals. OHCA defines "hospital" for purposes of its hospital financial reporting process in Section 19a-646(a)(3) as short-term acute care general or children's hospitals

Section 8 allows for certain reports to be provided by hospitals and hospital systems to the Attorney General and the Commissioner of Public Health by January 15th of each year rather than by December 31st. This will allow for complete reporting on the previous year.

Sections 9 and 10 lengthen the two percent late fee period from five to seven days in order to provide OHCA more time to provide notification to hospitals who have not remitted their payment by the assessment due date. The Department of Public Health's Fiscal Services Unit (DPH-Fiscal) receives notification of hospital assessment payment transmittals from the Office of the State Treasurer (OTST). DPH-Fiscal notifies OHCA of delinquent payments, and OHCA must provide notification to the hospital(s). The turnaround time for notification between OTST and DPH-Fiscal can take as much as three or more days, affording OHCA very little time to notify delinquent hospitals during the two percent late fee period. OHCA has experienced some hospitals making their payment by the first five day late fee period (a 2% penalty), but OHCA has already notified the hospitals that they owe a 5% percent late fee penalty. The proposed change is expected to alleviate these timing problems.

Section 11 removes the mandate that OHCA develop an inventory questionnaire to obtain certain information. Instead, the proposed change allows OHCA more flexibility about the form being used to collect the information without actually eliminating the task of collecting the information. Additionally, OHCA proposes changing the frequency of collecting the information from biennially to every three years. Generally speaking, the information collected will not significantly change if it is collected every three years rather than every two years. However, it will decrease the burden to OHCA and the industry in having to maintain a two year cycle. Moreover, the proposed changes will combine the statewide healthcare facilities and services

plan and the utilization study into one report since the utilization information is currently being presented in the statewide healthcare facilities and services plan. This will eliminate the redundancy, and expense, of duplicative reports published by OHCA.

Section 12 replaces the word "willfully" with "negligently" in section 19a-653. Over the past several years OHCA has issued several notices of its intent to impose a civil penalty for the failure of a health care facility to file a certificate of need. These matters have come before OHCA for hearing purposes and each time the civil penalty was waived due to OHCA's inability to establish a "willful" motive on the part of the health care facility. It has been OHCA's experience that a health care facility can overcome the willful standard simply by stating under oath that it did not intend to usurp the certificate of need process. While OHCA has no reason to doubt the health care facilities' truth and veracity, it believes the standard should be reduced to negligence so as to stress the importance of filing certificate of need applications and data in a timely fashion.

The Department would like to thank the committee for raising the Department's bill.

