

Connecticut CON Task Force Issues Final Report

Connecticut Health Law

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A major purpose of the Certificate of Need (“CON”) Task Force established by Governor Malloy last February was to deliver recommendations on how to improve the existing CON program in light of the evolving health care industry and changing market conditions. On January 13, 2017, after eight months of meetings, the Task Force issued a wide-ranging and somewhat confusing Final Report with a laundry list of “recommendations” and “options” for the Governor to consider. The Report was the result of various majority and plurality votes of its 17 members. Among the recommendations and options issued, there are several that are sure to be controversial if incorporated into a bill to amend the CON laws. These include:

- **Transfers of ownership:** The Task Force voted in favor of applying an expanded CON review, including a cost and market impact review (CMIR), to all hospital mergers and acquisitions (not just those involving for-profit entities and larger hospital systems, as is the case under current law).
- **Acquisition of imaging equipment:** The Task Force voted in favor of maintaining CON review of advanced imaging equipment acquisitions. It also voted favorably on restricting physician self-referral involving this equipment by adopting new CON application review criteria and, by a narrower margin, the members voted in favor of restricting self-referral to such imaging equipment by statute as well.
- **Reduction of services:** Under current law, no CON is required for hospital service reductions as opposed to terminations of service. However, a plurality of the Task Force members voted in favor of a change that would require CON review for the reduction of services by a hospital.
- **Relocation of services:** Current law requires CON review for relocations of CON-regulated health care facilities under circumstances where the population served and payer mix will substantially change as a result of the proposed relocation. In another plurality vote, Task Force members favored a broad change requiring CON review for the relocation of “services”, except that only “notification” to OHCA would be required for applications that propose relocations to an area of unmet need identified by the State. It is unclear from the Final Report what exactly the term “services” is intended to include.
- **Termination of services:** With respect to terminations of services (which is generally restricted to inpatient and outpatient hospital services under current law), a plurality of the Task Force members voted to change OHCA’s review criteria to focus on the termination’s impact on Medicaid recipients and have OHCA apply a financial analysis that looks beyond the facility terminating the services to the entire health system that may be involved.

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- **Increased obligations on providers:** A plurality of the Task Force voted to have an advisory panel of subject matter experts assist OHCA in its CON review, where deemed appropriate by the agency, with the costs of the experts being borne by the applicant.

CON post-approval compliance mechanisms: The Task Force voted in favor of a number of post-CON approval compliance measures. This included a plurality vote to allow OHCA to exact remedies in cases where commitments involving health care prices are not met. This would include refunding to the original bill payer (insurer, or patient) of amounts in excess of the “promised” price and loss of part or all of the “approvals” granted by OHCA in association with the CON application.

Given Connecticut’s large projected budget deficits and the fact that several of the Task Force recommendations would require additional State resources, it will be interesting to see how the General Assembly reacts to any legislation incorporating these and the other changes proposed by the Task Force. Like the guessing game currently going on nationally under the Affordable Care Act, Connecticut’s health care providers will just have to wait and see.

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