Certificate of Need Task Force
Minutes
October 17, 2016

Members Present: Lieutenant Governor Nancy Wyman (Chair); John Canham-Clyne (Unite Here Union); Tekisha Everette (Health Equity Solutions); Anne Foley (Office of Policy and Management); Fred Hyde (Columbia Business School/ Consultant); Alan Kaye (Radiological Society of CT); Susan Martin (Middlesex Hospital); Margaret Morelli (Leading Age); Commissioner Raul Pino (Department of Public Health); Gary Price (Center for Aesthetic Surgery); Jennifer Smith (SEIU District 1199); Keith Stover (CT Association of Health Plans); Jeff Walter (Formerly of the CT Non-profit Alliance); Joseph Wankerl (ConnectiCare); and David Whitehead (Hartford Health Care)

Members Absent: Commissioner Roderick Bremby (Department of Social Services) and Robert Patricelli (Women's Health USA)

Alternates Present: Christopher Lavigne for Commissioner Roderick Bremby (Department of Social Services)

Meeting called to order at 1:02 p.m. by Chair, Lt. Governor Nancy Wyman

I. **Welcome and Introductions:** Members introduced themselves.

II. **Public Comment**: Public comment was submitted by the following:
   (a) Peter Rockholz, Behavioral Health Consultant, Comment
   (b) Lynne Ide, Universal Health Care Foundation of CT, Comment
   (c) Susan Yolen, Planned Parenthood & Merger Watch, Comment
   (d) Ann Pratt, Connecticut Citizen Action Group, Comment
   (e) Ocean Pellett, United Action CT, Comment
   (f) Divya Malhotra, Stamford Health, No written comment submitted. Ms. Malhotra commented that eliminating CON for non-hospital organizations will create an un-level playing field for hospitals.

III. **Approve September 19, 2016 Meeting Minutes.** Approval of the September 19, 2016 meeting minutes was moved by Anne Foley and seconded by Jennifer Smith. Minutes were approved unanimously on a voice vote.

IV. **Discussion of Recommendations on Actions Subject to CON and Application Criteria:** Lieutenant Governor Wyman thanked Task Force members who completed the September survey. She encouraged members to express their opinions during the meeting and noted the discussion will serve as the basis for the development of recommendations to the Governor. In areas where consensus is not reached, it was noted that the final plan will offer an option supported by the majority, as well as alternatives that reflect other points of view.

   Kelly Sinko, Policy Development Coordinator, OPM, presented draft recommendations regarding: (1) actions subject to the CON process conducted by the Office of Health Care Access (OHCA); (2) actions subject to the CON process conducted by the Department of Social Services (DSS); and (3) the criteria used by OHCA when considering a CON application. She explained that recommendations were developed based on responses to three member surveys, CON research and literature reviews, and over 12 hours of presentations and member discussions. Anne Foley, Under Secretary, OPM led the group in discussion following the presentation of each recommendation. Highlights of discussion regarding each category of recommendations are below:

A. Actions Subject to OHCA CON

Acquiring Equipment*:* Two draft recommendations were presented to members for their consideration.

Option 1a - eliminate CON review for all equipment acquisitions, but require notification and consider restrictions on scanner self-referrals.
Option 1b - maintain CON review for the acquisition of scanners only.

There was no clear majority support for one option over the other, and some members voiced their opposition to both options, preferring to retain the current CON review of scanners, new technology, and nonhospital based linear accelerators. Discussion focused on:

- whether CON review is currently effective in containing costs and increasing quality and access in the health care market, and
- whether the removal of CON review for equipment acquisitions can lead to lowered costs, higher quality, and better access.

Supporting Views for Option 1a included:

- A competitive market can have positive effects on the cost and quality of services and the potential for increased access to services due to the elimination of barriers to market entry.
- The initial premise of CON programs was based on requiring that new entrants prove that there is a specific need for the equipment, and that recent research largely debunks the ability of CON programs to contain costs using that strategy.
- To continue Connecticut's leadership in health care reform, it is important to remove barriers to innovation.

Supporting Views for Option 1b included:

- Free market forces, specifically competition, do not have the same impact on cost and quality in the healthcare field as they do in other industries.
- Eliminating CON review without a legislative solution to mitigate the practice of self-referral would lead to a rapid increase in the number of advanced imaging equipment in the state and increased costs, as well as decreased access for Medicaid recipients or those in high-need areas.

Initiating Services/Increasing Capacity - *Proposed recommendation***:** Maintain CON review of the establishment of new hospitals or specialty hospitals; eliminate CON review of new freestanding emergency departments, new outpatient surgical facilities, new central service facilities, new mental health facilities, new substance abuse treatment facilities, new cardiac services; increased licensed bed capacity; and two or more new operating rooms in a three-year period.

There was no clear majority support for the proposed recommendation. Discussion focused on:

- whether CON review is currently effective in containing costs and increasing quality and access in the health care market by requiring market entrants to demonstrate need before the establishment of new services or facilities; and
- whether the removal of CON review for new market entrants can lead to lowered costs, higher quality, and better access.

Supporting views for the proposed recommendation included:

- Most studies demonstrate that there is no empirical evidence that CON programs are successful in containing health care costs.
- Through the preservation of the competitive market and removing barriers to entry, excess capacity can be naturally limited, and result in a market standard that provide higher quality at a lower price.
- Limiting capacity through CON programs gives preferences to incumbents in the system.
- Instead of CON review, quality enforcement can be more effectively addressed through the current licensing and regulatory system of the state.

Opposing views for the proposed recommendation included:

- Subjecting hospitals to CON review, while exempting other types of health care facilities, creates an unlevel playing field in the market.
- Eliminating CON review of new market entrants would allow services to be provided in places where a public need was not demonstrated.
- A tool to incentivize the acceptance of Medicaid patients would be eliminated, without a viable strategy in which to replace it.

There was consensus from Task Force members to eliminate CON review for new central service facilities, increased bed capacity, and the establishment of two or more operating rooms within a three-year period.

A majority of members voiced support to maintain CON review of new hospitals, specialty hospitals, and freestanding emergency departments.

There was also support from several members to continue CON review of outpatient surgical facilities and cardiac services.

Finally, one member voiced support for continuing CON review of new mental health and substance use treatment facilities.

Terminating Services - *Proposed recommendation***:** Maintain CON review of hospital inpatient/outpatient services, hospital mental health/substance use services; and hospital emergency departments; eliminate CON review of surgical services of an outpatient surgical facility.

The majority of members agreed with the presented proposed recommendation. Two members opposed eliminating the need for a CON for outpatient surgical facilities, citing the maintenance of a level playing field between health care facilities as a rationale.

In general, members also supported the creation of an expedited CON process for the termination of services meeting specific qualifications regarding financial loss, patient volume, and provider availability, with the caveat that qualification for the expedition would be based on prior notification to OHCA when financial challenges were becoming a foreseeable issue for the service. Members also expressed that the CON review of terminations should take into account the financial health of the entire hospital system in which the proposed termination is a part of, instead of focusing only on the facility or service being proposed for termination. Finally, members supported the clarification of the definitions of "termination" and "inpatient and outpatient services", which would delineate clearly when a "reduction" of services would be considered a termination.

Transfers of Ownership – Health Care Facilities and Large Group Practices - *Proposed recommendation***:** Apply CON review to health care facilities and large group practices only if they are being acquired by a

hospital or hospital system; eliminate central service facilities from this review; apply these reviews to the same provisions as transfers of ownership of hospitals

The majority of members supported the recommendations as presented. However, two members opposed the recommendation, citing the maintenance of a level playing field between health care facilities as a rationale.

Transfers of Ownership, Hospitals - *Proposed recommendation***:** Maintain and strengthen; expand cost and market impact review and post-transfer compliance reporting to all mergers and acquisitions; impose consequences for non-compliance with post-transfer conditions

The majority of members supported the recommendations as presented. However, two members opposed the recommendation, citing the maintenance of a level playing field between health care facilities as a rationale.

Conversions - *Proposed recommendation***:** No changes.

The majority of members agreed with the recommendation to maintain CON requirements as they currently exist in statute.

B. Actions Subject to the Department of Social Services (DSS) CON Review: The majority of members did not oppose the recommendations as presented which included maintaining the current DSS CON process with the following revisions: (a) Conduct a periodic review of the nursing home bed moratorium; (b) allow nursing homes to relocate or build new facilities as long as they do not add beds and maintain the same footprint; and (c) remove continuing care facilities from CON review.

One member expressed concern that allowing nursing homes to relocate outside their original footprint could lead to beds moving out of high-need urban areas and into more wealthy suburban areas. One member suggested that DSS also employ more flexibility for new nursing home beds by taking into account not just the number of available beds in a certain mile radius but the type of beds available in the area.

C. Application Criteria

Kelly Sinko presented an overview of the twelve guidelines and principles that OHCA must consider when reviewing a CON application. She noted that CON applications for transfer of a hospital are subject to four additional review criteria. Proposed revisions to the application criteria were made to strengthen the role of planning, especially in underserved areas; protect access to services for Medicaid recipients, and ensure the strength of the health care market, including maintaining patient choice and provider diversity.

- **Planning*:*** Members did not oppose draft recommendations for guidelines and principles that affect planning which included maintaining criteria #1 regarding the alignment of CON applications with policies and standards in current Department of Public Health (DPH) regulation and revising criteria #2 to provide a greater focus on the state-wide health care facilities and services plan such as identifying geographic areas containing underserved populations, identified gaps in services and evaluation of unmet needs.
- **Quality, Access, and Cost:** Members did not oppose the recommendation to combine and strengthen criteria #4, #5, and #12 to eliminate duplicative language and modify to ensure acquisitions, new services, terminations, and transfers of ownership did not negatively impact the health care market.
- **Medicaid Recipients:** Members did not oppose the recommendations for criteria #6 that was modified to strengthen language assuring that Medicaid recipients have access to needed services.

One member suggested that OPM staff research the use of the "indigent" and if not statutorily defined replace with more person-centered language. The majority of members also agreed to revise the presented recommendation to maintain existing language regarding the applicants' past history of providing services to underserved populations and various payer mixes.

- **Provider Diversity and Patient Choice:** Members did not oppose the proposed recommendation to maintain criteria #11 in its current statutory form.
- **Hospital Service Terminations:** Members did not oppose the recommendation as presented for criteria #7, #8 and #10. Criteria #7 was modified to include the identification of populations currently using the service proposed for termination and assurance that these populations will have access to alternate locations to obtain the services. Members requested that language regarding potential future need for the service also be addressed. Criteria #8 was proposed to be retained in its current statutory form. Criteria #10 was revised to require applicants to demonstrate good cause if the proposed termination of a service would result in reduced access for underserved populations or Medicaid recipients.
- **Elimination of Criteria:** Members did not oppose eliminating criteria #3, #7, #8 and #9, as currently written that require demonstration of need for a service or prevent duplication of services. Kelly Sinko stated that elimination of this criteria was proposed because it no longer aligns with research and the revised goals of CON or is duplicative of other criteria. One member expressed concern about eliminating criteria #3 that requires applicants demonstrate a clear public need for a service. Another member noted that the OHCA needs to know who is providing services in various geographic regions of the state so that can be taken into account when reviewing applications. Additionally, members agreed that criteria #4, #10, and #12 are either duplicative or no longer relevant based on the other proposed revisions.
- **Additional Criteria for Hospital Transfers of Ownership:** Members did not opposed maintaining the additional criteria for hospital transfers and newly applying the criteria to hospital and hospital system acquisitions if health care facilities.

V. Next Steps:

- Anne Foley provided an overview of Task Force expectations over the next month: (1) Staff will revise recommendations based on today's conversation and provide a draft at the November meeting; (2) the November meeting will focus on discussing decision-making authority, the CON application process, evaluation methods, and post approval compliance
- The group was informed that the November 21, 2016 meeting has been extended by one hour and will convene from 1:00 P.M. – 4:00 P.M. in Room 1D of the LOB.

VI. Adjournment: Keith Stover motioned to adjourn, which was seconded by Anne Foley. The meeting adjourned at 4:01 P.M.