

# CON Proposed Recommendations

Office of Policy and Management

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# CON Proposed Recommendations

- Today we will focus on recommendations for:
  - CON Decision-Making Process
  - CON Application Process
  - CON Post Approval Compliance Mechanisms
  - Relocating Services
  - CON Evaluation Methods

# CON Proposed Recommendations

- Recommendations were formulated based on:
  - Research
  - Task Force Discussions
  - OHCA suggestions
  - Survey Responses
- Relevance of some recommendations will depend upon the alternatives put forth by the Task Force regarding actions and services subject to CON.
- Task Force member feedback is important!

Results & Recommendations from  
Survey #3:  
CON Decision-Making Authority

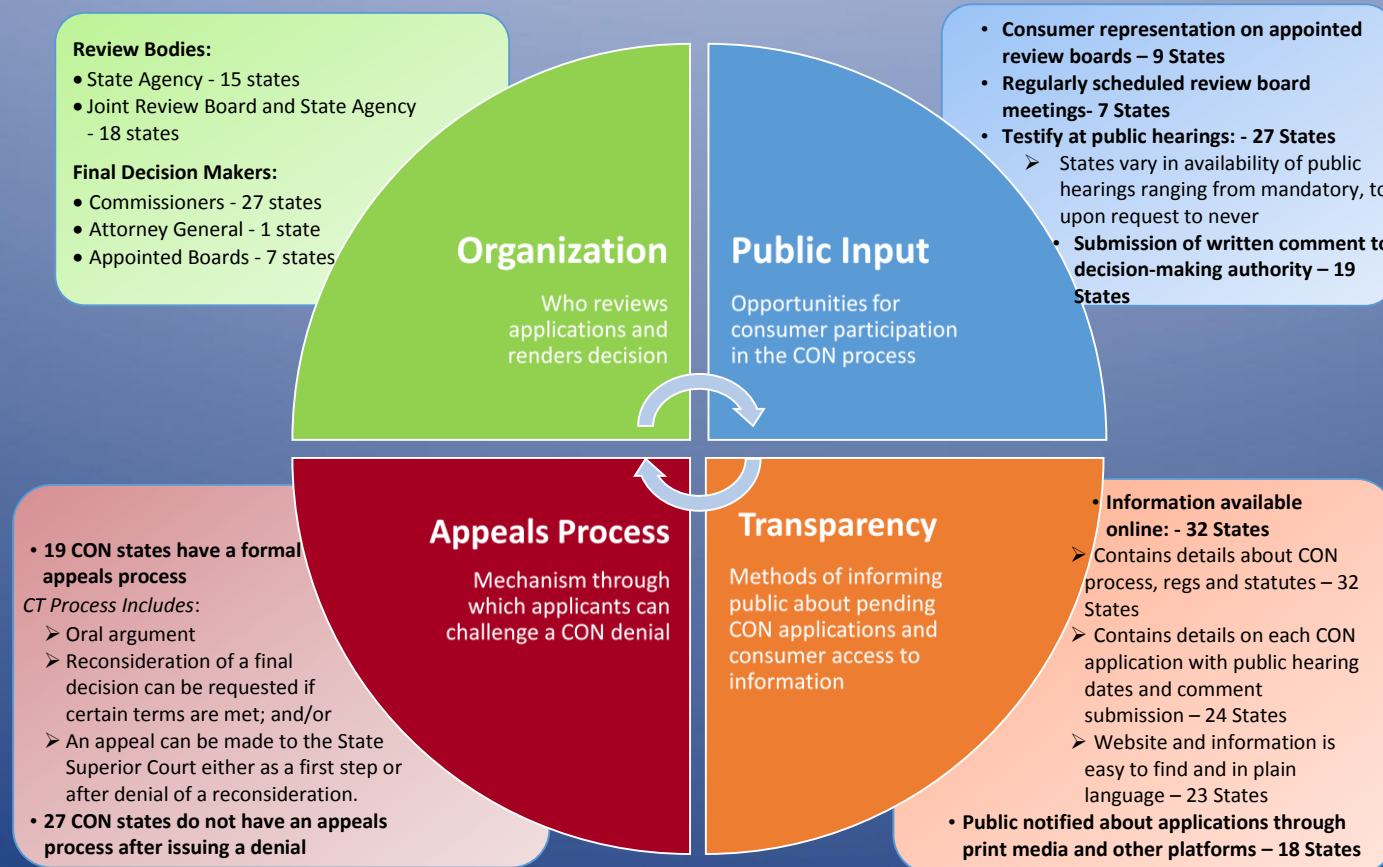
# CON Decision-Making: National Perspective

- CON decision-making authority and process varies among states.
- 32 states and the District of Columbia utilize CON to regulate hospitals.
- The 2016 Merger Watch Report, *When Hospitals Merge*, presented information on decision-making processes in relevant states.

# Four Categories of CON Decision-Making

- **Organization:** Who reviews applications and renders decisions
- **Public Input:** Opportunities for consumer participation in the CON process
- **Transparency:** Methods of informing the public about pending applications and consumer access to information
- **Appeals Process:** Mechanisms through which the public can appeal a CON decision

# Highlights of CON Decision-Making Across the Country



# CON Decision-Making: Organization

- Nationally, CON application review and decision - making authority rests in three main categories:
- State Health Departments;
  - ❖ CT falls into this category
- Joint Administrative Teams and Appointed Boards; and
- Attorney General's Office.



# CON Decision-Making Survey Results: Organization

## Survey Question

- Should Connecticut consider changing the decision-making structure for CON applications to a joint review process involving both administrative staff and an appointed board?
- Member Responses:
  - 2 – Yes, CT should have Joint Review Board
  - ✓ 7 – NO, CT should not have a Joint Review Board

## Comments

- *“Do not think [an appointed board] is necessary if the decision making process is objective and based on data and an approved state plan.”*
- *“Not in favor of a Board. Having a Board will complicate the process and not necessarily add value.”*
- *“We currently have input from all above mentioned”*
- *“If the approval process is based on objective data and an approved statewide plan, then the makeup of the decision making body is less relevant.”*
- *“I would limit the board to the Commissioners of DPH, DOI, and OPM, and the AG”*
- *“My initial response is no, but depends on who appoints if we were to consider a board. This needs to be an independent process. What would make sense is a panel of subject matter experts that could make recommendations.”*

# CON Decision-Making Survey Results: Organization

## **Task Force Recommendation: Maintain Current Structure**

- Maintain the organizational structure of the CON process as it currently exists with OHCA staff responsible for reviewing health care facility CON applications and DSS staff responsible for reviewing long-term care facility applications.
- Final decisions on CON applications should continue to be rendered by the Deputy Commissioner of the Department of Public Health (DPH) and the Commissioner of the Department of Social Services (DSS), respectively.
- The Attorney General's Office should continue its limited role in the CON process consisting of the review of charitable assets in hospital conversion applications and providing legal guidance to OHCA as needed.

# CON Decision-Making Survey Results: Organization

- Proposed Recommendation:
- For All OHCA Applications: Establish a panel of Subject Matter Experts to assist OHCA in application review.
  - Cost of retaining experts covered by applicants
  - Include representatives from specific fields (i.e. behavioral health, cardiac, radiology etc.)
  - Include consumer representatives

# CON Decision-Making: Public Input

- Nationally, states offer several opportunities for public input:

Allow public to participate in review process through:	Number of States	
	Yes	No
Conducting regularly scheduled review meetings (“batched” applications)	7	26*
Allowing written comments	20*	13
Conducting mandatory public hearings	5	28*
Conducting public hearings upon request	22*	11

\*CT is represented in this category

# CON Decision-Making: Public Input – Batching

## Question

- Should applications be "batched" and reviewed at regularly scheduled times throughout the year, with some exceptions?
- Member Responses:
  - 3 – Yes, CT should batch with certain exceptions
  - ✓ 6 – NO, CT should not batch applications

## Comments

- An exception should be made for the acquisition of “new technology”

# CON Decision-Making: Public Input – Mechanisms

## Survey Question

- Are there any other changes you would like to see to the current public hearing process, including the ability for public input and the timing of notifications?
- Member Responses:  
5 members submitted a response to this open-ended question

## Comments

- *"I believe the current mechanism allows for public input"*
- *"Public hearing should be mandatory; written public comment submission should be an option"*
- *"No. Current process works well."*
- *"Schedule public hearings within 30 days of CON application deemed complete. Limit Intervener status to those cases where a significant financial impact can be demonstrated within the defined service area."*
- *"Public should be able to submit written comments."*

# CON Decision-Making: Public Input

## Task Force Recommendations:

- Maintain and expand current methods of soliciting and accepting public input on pending CON applications.
  - Establish a panel of subject matter experts that can include consumer representation
- Require that transfers of ownership of health care facilities other than hospitals (freestanding emergency departments, outpatient surgical facilities, mental health facilities, and substance abuse treatment facilities) to hospitals or hospital systems also receive mandatory public hearings.

# CON Decision-Making: Transparency

- Transparency = how accessible information on the CON is to the general public.
- Nationally, the level of transparency varies:

Public communication includes:	Number of States	
	Yes	No
Details about CON process, regulations and statutes on a website	32*	1
Details about each CON application with public hearing dates and comment submission on a website	24*	9
“Easy to find” information on the website for the consumer	23*	10
Notifications about CON applications via newspaper or other platform	18*	15

\*CT is represented in this category



# CON Decision-Making: Transparency

## Survey Question

- Are there any changes you would like to see in the way OHCA notifies the public about the CON process?
- Member Response:  
5 responses were received

## Comments

- *“In the digital age within which we live, I am curious about the role social media could/can play in this. For now, I don't have any suggested changes.”*
- *“No. Current process works well.”*
- *“Is there any assessment of the effectiveness of the various modes of noticing the public?”*
- *“Use of electronic postings exclusively.”*
- *“Press releases”*

# CON Decision-Making: Transparency

- **Task Force Recommendations:**
- Expand current methods of informing the public about the status of CON applications, public hearings, decisions and appeals.
  - Require applicants to provide a physical copy of the application/determination/appeals at local sites within the affected community (libraries, community centers, Town Halls) and on additional web sites (local health departments, municipal web sites)
  - Continually research and implement new innovative ways to reach the public and solicit participation in the CON process

# CON Decision-Making: Appeals Process

- Nationally, 19 of the 33 CON states allow members of the public to appeal CON decisions

State post-approval process includes:	Number of States	
	Yes	No
Ability for public to contest a CON decision	19	14*

\* Connecticut is represented in this category

# CON Decision-Making: Appeals Process

## Question

Should there be a mechanism in which members of the public can have an opportunity to challenge or request the reexamination of a CON decision?

- Member Responses:
  - 2 – Yes, the public should be allowed to challenge a decision
  - ✓ 7 – NO, the public should not be allowed to challenge a decision.

## Comments

- *"I would suggest streamlining the functions and having all CON applications reviewed in place. This is probably evident from my vote to have a joint commission but I want to be explicit and say it does not make sense to have two offices with duplicating functions."*
- *"Limit the CON approval process to 90-120 days, and there should be an expedited review process, i.e. within 30 days for service relocations, change in ownership, service additions and terminations, outpatient operating room capacity. Distinguishing between substantive and non-substantive review, defined."*

# Decision-Making Recommendations

- Respondents indicated that, in general, no significant changes are needed to the current CON decision-making process.
- Suggested changes for consideration include:
  - Establish a Panel of Experts that includes consumer representation (OHCA suggestion)
  - Continually research and implement new innovative ways to reach the public and solicit participation in the CON process
  - Expand criteria for when a public hearing is required

# Proposed Recommendations:

CON Application Process and Post  
Approval Compliance Mechanisms

# Recommendations: CON

## Application Process

- Streamline the application process.
  - What specific efficiencies can be made to the application process?

# Recommendations: CON Application Process

## For Select Applications

- Create an expedited CON application process for:
  - Initiating services & increasing capacity if service/facility is located in a “high need” area; &
  - Terminating services due to the loss of physicians.
- Require a single CON and CMIR for the sale of all assets for:
  - Hospital conversions and acquisitions



# Recommendations: CON Post - Approval Compliance Mechanisms

## Current Post-Approval Compliance Mechanisms

- OHCA CON post-approval compliance authority defined in CGS § 19a-639 and § 19a-653(a)

# Recommendations: CON Post Approval Compliance Mechanisms

## Proposed Revisions to Post-Approval Compliance Mechanisms

- Remove the term “willful” from statute CGS § 19a-653(a) regarding penalties to allow OHCA greater flexibility.
- Increase enforcement authority by adding language to CGS § 19a-653(a) to impose civil penalties on any person or health care facility or institution which fails to comply with any provision or condition of a certificate of need decision or agreed settlement pursuant to CGS § 19a-639a.
- Align OHCA and DPH licensing division inspection and monitoring activities

# Proposed Recommendations: Actions Subject to CON

Relocation of Services

# Actions Subject to CON: Relocation of Services

Question For CON Task Force:

After hearing OHCA's presentation regarding the current CON Process for the relocation of services, are any changes needed?

# Proposed Recommendations:

CON Evaluation Methods

# Recommendations: CON Evaluation Methods

- Key Question: What methods can OHCA and DSS employ to allow the agencies to ascertain whether the revised CON process is achieving the established program goal to ***improve access to and quality of health care services and contain costs by preserving competition in the health care market and implementing statewide planning efforts aimed at promoting health equity and fulfilling unmet needs.***

# Recommendations: CON Evaluation Methods

- Proposed Evaluation Mechanisms
  - Expand OHCA's role in quality monitoring to ensure alignment with clinical best practices and guidelines for quality & efficiency.
  - Align OHCA quality monitoring to requirements for licensure when possible.
  - Ensure that the Statewide Health Care Plan tracks access to and cost of services across the state.
  - Implement evaluation mechanisms beyond a point in time snapshot when an entity enters and exits the market to include factors that allow the state to determine CON impact on quality, access and cost